

Court Order and Mandatory Reclamation Procedure: Amendments to the Commercial Procedure Code of the RF Enter into Force June 1, 2016

Newsletter

March 17, 2016

Among various amendments to the Commercial Procedure Code of the Russian Federation (**CPC**) adopted by the Federal Laws of 02.03.2016 No. 45-FZ, No. 47-FZ, special attention should be given to the following three (enter into force on 01.06.2016):

- first, a **court order (for debt repayment)** will come into existence – it is a special type of judicial act, which can be issued in short term without summoning of a debtor. If the debtor does not agree with the order, he will have only 10 days to file protest to annul the order;
- second, it **will be impossible to resort** to court **before directing a reclamation** to the future defendant;
- third, the ambit of **summary proceedings will be expanded**, and the proceedings themselves will become even less burdensome for the courts.

See our newsletter for more details.

1. COURT ORDER

While court orders (in Russian *судебный приказ*, *sudebny prikaz*) have already been in effect in the courts of general jurisdiction in accordance with the Civil Procedure Code of the RF, now they will become available in certain instances for companies/individual entrepreneurs under the rules of the commercial procedure.

In the commercial procedure, the court order can be issued in three cases:

- 1) the creditor alleges the debt under the contract with a debtor. The amount of debt must not exceed **RUR 400 000** and the debtor must not challenge the debt;
- 2) the creditor (e.g. a state authority) seeks to collect mandatory payments or penalties. The amount of debt must not exceed RUR 100 000;
- 3) the creditor's claim is based on the notary's protest of the promissory note for non-payment, non-acceptance and non-dating the acceptance, provided that the amount in dispute does not exceed RUR 400 000.

In any of the cases above, the creditor may seek a court order against the documents confirming the debt (which can be uploaded among others via the electronic system "Moi arbitr"). The debtor must be notified about filling of the petition on the issuance of the court order.

The judge issues the court order **without summoning the parties and without a trial** within 10 days after the receipt of the petition.

The copy of the court order is directed to the debtor within 5 days, and the debtor will have **10 days to file the protest**, otherwise the order will enter into force in 10 more days and can be presented for execution. If, on the contrary, the protest will be received, the court will annul the court order and the creditor and the debtor will be advised on the possibility to file a claim.

Therefore, it is important for companies in debt (which do not agree with the court order) to react to the receipt of the court order as soon as possible.

2. MANDATORY RECLAMATION PROCEDURE

Previously, mandatory reclamation procedure was in most cases only contractually required. Now its application is being gradually expanded.

Preliminary administrative challenge of individual **acts of tax authorities**, acts and omissions of their officials (such as decisions of tax authorities on tax liability) has recently become mandatory. From now on, **the mandatory reclamation procedure** is introduced pertaining to **disputes between private parties**.

To illustrate, in order to file a claim as of June 1, 2016 regarding, for instance, defective goods delivery, the claimant must, first, direct a reclamation to the supplier and wait until the deadline to respond. This deadline can be set in a contract; if the contract does not contain it, the 30-day deadline provided by the CPC will apply.

If the reclamation is not directed or the reclamation procedure is otherwise violated (for example, a claim is filed before the response deadline), the claim will be returned. The return of the claim does not infringe the right to take legal action later (after the fulfillment of the reclamation procedure).

Obviously, the reclamation procedure applies only if the contract between the parties does not set forth any other pre-trial settlement procedure, such as mediation.

3. SUMMARY PROCEEDINGS

Summary proceedings (or simplified proceedings, in Russian: *упрощенное производство, uprotschennoe proizvodstvo*) expand the limits in the commercial procedure. Just to remind you: summary proceedings are provided for uncomplicated cases, without summoning the parties, with strict and short terms for providing documents of both parties and, therefore, mean more rapid adjudication of the case by the court.

From June 1, 2016 claims on repayment of debts of legal entities of up to RUR 500 000 (before June 1, 2016 – up to RUR 300 000), and debts of individual entrepreneurs of up to RUR 250 000 (before June 1, 2016 – RUR 100 000) shall be subject to the summary proceedings.

In addition, cases on repayment of mandatory payments and penalties (e.g. taxes) in

amount of from RUR 100 000 to RUR 200 000 will be subject to the summary proceedings. Before June 1, 2016 the limit is RUR 100 000.

Other grounds for trying cases under summary proceedings remain, including the situations when **the claimant requests summary proceedings and the defendant does not object**.

The rules on issuance of the decision of the court in summary proceedings will also be changed from June 1, 2016. Immediately after the consideration of the case, the operative part of the decision shall be prepared and published on the Internet (latest on the next day after the consideration of the case). **The full (reasoned) text of the decision will not be prepared**, unless any of the participants of the case requests such within 5 days after the operative part of the decision is published.

The decision will enter into force in 15 days (before June 1, 2016 – 10 days) after its issuance, unless an appeal is brought against it. The court of appeal will generally consider the appeal without summoning the parties (the court is allowed to summon the parties if it finds it necessary depending on the complexity and the character of the case, the appeal and statement of defence) – before June 1, 2016, such cases are heard with the participation of the parties.

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