

Legal Bulletin

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Corporate Law

The normative's act title:

The Law on state registration of legal persons and individual entrepreneur's nr. 220-XVI from 19.10.2007 was amended by the Law on amending and supplementing certain acts nr. 127 from 18.06.2010

Publication:

Official Legal Monitor nr. 155-158/543 from 03.09.2010

Came into force:

03.09.2010

Main provisions:

The recent amendments to the Law on State registration of legal persons and individual entrepreneur's nr. 220-XVI from 19.10.2007, come to facilitate the registration of persons that are engaged in entrepreneurial activity and to provide easy access to the public information which constitutes an additional security for the business, taking into account the current economic climate.

Those amendments play an important role in trying to update the Republic of Moldova's needs to the European standards. Thus, was introduced „the unitary-window”, according to it, the state registration authority shall collaborate with other public authorities to obtain the necessary information for the state registration of the legal persons and individual entrepreneurs, without requiring additional information that it is contained in other documents. This procedure will greatly simplify the efforts of potential investors, since it will remove some bureaucratic barriers that existed with reference to different documents (licenses, permits, certificates) that are issued by other authorities than the state registration authority.

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Other amendment that is introduced by the law on amending and supplementing certain acts nr. 127 from 18.06.2010, determines that the legal persons that was excluded from the state register and in regard of which was recommenced the liquidation procedure, at the request of the Court, the state registration authority shall restore ex officio the information that existed until the date of its exclusion from the state register. This is an appropriate amendment which brings security to the business partners, that for some reasons omitted the term for submitting claims to the companies that are in the liquidation procedure.

Also, the Law determines:

- The procedure of employment regarding the state registries functionaries, that under the new amendments the nomination's procedure was replaced with the competitive employment. This will increase transparency in the employment's procedure of the civil service, which is also more than welcomed;
- The name of a legal person that was excluded from the state register will be used by other legal person after the expiry of two years from the date of its exclusion from the state register. Although this provision has not previously existed, it comes to restrict the use of a name previously registered, because until the amendment's moment, the name of a legal person could be used immediately, without the need of expiring a term of two years.
- The amendments made by the economic entities and registered in its constitutional documents will be transferred by the state registration authority to other state entities, so the enterprises will not have anymore the obligation to transmit this information to such competent bodies as: the Main State Tax Inspectorate, the National Office for Social Insurance, the National Statistics Office etc.

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Public Law

- The normative's act title:** The law on Advocacy nr. 1260-XV from 19.07.2002 was amended by The law on amending and supplementing certain acts nr. 102 from 28.05.2010
- Publication:** Official Legal Monitor nr. 135-137/476 from 03.08.2010.
- Came into force:** 03.08.2010
- Main provisions:** New amendments to The law on Advocacy include a number of innovations. An important change and an innovation for the Republic of Moldova is article 6 from the Law above. In accordance with the provisions from art. 6 not just the local lawyers, but also the lawyers from abroad can practice the law in Republic of Moldova. Art. 6 mentions: “lawyers from other countries may exercise their profession in Moldova if they abide under the roles set by Law, except the condition of citizenship”. Thus, to work as an attorney, it needs to meet the roles as follows:
- full legal capacity;
 - a diploma of licentiate higher education in law or equivalent;
 - an impeccable reputation.

For foreign attorneys is important to say that they can have activities in Republic of Moldova if they certified their status in owns countries, and this is mentioned in the special Register kept by the Council of Lawyer’s Union from Republic of Moldova, hereinafter Lawyer’s Union.

However, we can not consider that the modified Law offers the full freedom for the foreign lawyer, because under paragraph 3 thereof: “The attorney from other country can’t represent individuals’ or entities’ interests in other Courts then in the International Commercial Arbitration”. This means that foreign lawyers may provide any other advices, including even the assistance of a

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national attorney in a Court.

Also the Law says that a foreign attorney may activate in an individual attorney's office or in an associate attorney's office by contract.

The Lawyer's Union shall keep a Register where are included all foreign attorneys who have the right to work as a lawyer on the territory of Republic of Moldova. The Register shall be published on the official web page of the Lawyer's Union.

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Intellectual Proprety Law

The normative's act title: The Law on Copyright and Related Rights

Conditions for elaboration Draft law on copyright and related rights was developed by the State Agency for Intellectual Property in the period 2007-2008, in order to create an effective operation system for the protection of copyright and related rights and harmonization of national legislation with EU directives.

Publication: On 4th of December 2008 the project was approved by the Government and on 2nd of July 2010 was adopted by the Parliament. The new law on copyright and related rights will come into force at the expiration of three months from the date of its publication in the Official Legal Monitor. In the same time the Law nr. 293-XIII from 23rd of November 1994 on copyright and related rights will be abrogated.

Came into force: At the expiration of three months from the date of its publication in the Official Legal Monitor.

Main provisions: The new Law on Copyright and Related Rights was adopted at the session of the Moldovan Parliament of July 2, 2010. After Republic of Moldova signed the Partnership and Cooperation Agreement with

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member states of European Union in 28th November 1994, the most important mission was to harmonize national legal aspects with European Standards.

The Draft Law on Copyright and Related Rights was drawn by the State Agency on Intellectual Property (AGEPI) in the years 2007-2008, to create an effective mechanism for operating the system of protection of copyright and related rights. At the initial stage, AGEPI received consulting advice from EU delegates, in accordance with the terms of references, of the Technical Assistance for the Commonwealth of Independent States (TACIS). The program included full analyze of national legislation and international best practices.

The completed draft was approved at the session of the Moldovan Government on December 4th, 2008. On May 28, 2010, it was adopted in the first reading by the Parliament and on July 2, 2010 – in the final reading. The new Law on Copyright and Related Rights will come into force on expiry of three months from the publication date in the Official Gazette and the Law No. 293-XIII of November 23rd, 1994, will be repealed. The new Law on Copyright and Related Rights contains provisions about:

1. works protected by Copyright and unprotected works;
2. moral rights and economic rights of authors and/or right holders;
3. Copyright in works created in the execution of duties;
4. specific provisions for each category of works;
5. terms of copyright protection and related rights;
6. exceptions and limitations on economic rights;
7. action area of related rights;
8. sui-generis rights of computer programs and database producers;
9. protection of unpublished work;
10. organisations for the collective;
11. application of Copyright and Related Rights.

According to last regulations new definitions was introduced, as follows: accessibility in interactive mode, distribution, folk expression, loan, work, video grams, and satellite. Also new Law on Copyright and Related Rights established formation of Mediation Court, part of AGEPI. The Mediation Court will examine and resolve Copyright and Related Rights disputes.

An important aspect added is the possibility of negotiating the

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amount of remuneration and conditions of licensing which required review of collective management system.

An innovation in the new Law on Copyright and Related Rights is exemption period of three years for the exclusive right to exploit a service creation by the employer on behalf of whom the work has been created. Negotiation of the period and the earnings is required when the contract is signed between employee and employer.

We consider that the draft of new law contains new limitation for the reproduction of work for personal use, or reproduction by libraries, archives and other similar entities, including the electronic format. The new Law on Copyright and Related Rights offers more limitations regarding the reproduction of works protected by Law, including works posted by Internet.

During the elaboration of this Law was consulted public and private sector as well. The Draft Law on Copyright and Related Rights was presented at seminars and round tables attended by representatives of governmental institutions, right holders, judges and other interested persons. Also the draft was approved by the Center for harmonizing the legislation regarding the compatibility with Communitarian Law. According to the Declaration of Compatibility most of the provisions are compatible with European directives and the partially inconsistent norms were adjusted to national legislation.

Copyright is in legal terms "the right to control copying". Copyright are exclusive statutory rights to exercise control over copying and other exploitation of the works for a specific period of time. We mention that the copyright owner is given two sets of rights: an exclusive, positive right to copy and exploit the copyrighted work, or license others to do so, and a negative right to prevent anyone else from doing so without consent, with the possibility of legal remedies if they do. On our opinion, the new Law on Copyright and Related Rights tries to complete the existing gaps in a present Law. Even if its need to see how will work in practice, the new Law seems to be more effective for national copyright protection.

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Civil Law

- The normative's act title:** The law on judicial organization nr. 514-XIII of 06.07.1995.
- Project of law:** A draft of law contains provisions on liquidation of District Economic Courts in the Republic of Moldova.
- Main provisions:**
- Economic disputes in the Republic of Moldova currently fall under the jurisdiction of the Economic District Court, Economic Court of Appeal and Economic College of Supreme Court, all of which are located in Chisinau, the country's capital. Consequently, where two traders from different regions of the country have a situation for trial, they are required to come to Chisinau for their cases to be heard by specialised judges.
- However a new draft law aimed at reorganising the Judicial System suggests that all economic disputes should be judged by national common law Courts and by the non-specialised judges. Currently there are only 35 judges on duty at the economic courts, but after the reforms the number of cases and judges from the common law courts will swell considerably.
- The reforms will see the end of the Moldova's specialised economic courts. A decision made in part because of the Moldovan government's desire to see an end to the corruption surrounding many of the Economic Court's judges which led to questionable decisions, often overturned by the Supreme Court or lost on appeal to the European Court of Human Rights. These cases damaged the national image and cost millions of Euros.
- The reforms were strongly recommended by Council of Europe, which opined the judges from Economic Courts should be part of whole system of common law Courts. The reforms are popular elsewhere too: the German Foundation for International Legal Cooperation, for example, said that the existence of special Courts is hardly compatible with the law principle of equality, because there is no assurance they will use the same law as the Common Law Courts.

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However, the reform's sceptics say the institutions themselves are not to blame and that the problem lies with the judges, and if they are simply moved to common law courts this won't solve the underlying corruption issues.

The Centre of Analyses and Prevention of Corruption mentioned in their report on the draft law that they are not convinced that the reforms will achieve their goals. They believe it will be better if attention is focused on bringing the judges who aren't in accordance with the requirements into line, rather than altering the system in general.

In our opinion, the liquidation of Economic Courts is not the best solution to reform the judicial system in Republic of Moldova. Firstly, in transferring economic cases to the common law Courts unjustified financial resources will be needed to move the judges. Also, the problem of corruption in the judicial system will not disappear by simply transferring economic cases to common Law Courts, because in the country's districts which the Centre for Combating Economic Crimes and Corruption has highlighted as worrying, corruption may actually increase.

Not all the specialist economic judges are corrupt, however, and the specialised economic courts remain the best place in which to hear economic disputes. We think that many of the judges from Economic Court of Appeal will not relocate to the districts. Many of the actual judges will leave or will retrain probably as lawyers. That's why we believe that the state will lose the best specialists in the field and most of the human investment made so far. We consider that the reform of the judicial system should first look at the area of ethics and professional standards and training. Secondly, the National Institute of Justice must exert its influence in this area, and the close study of European legislation and the adherence to European standards should be the number one priority these days.

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