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LAW FIRM

# ANDREY GORODISSKY & PARTNERS

## NEWSLETTER

### REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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#### **Limited Liability Companies Joint Stock Companies**

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation to the Extent of the Limitations for Companies in the Formation of the Charter Capital, Remedies Available to Creditors in the Event of a Decrease of the Charter Capital, Requirements to Companies When the Charter Capital is Inconsistent with the Net Assets Value, and Limitations to the Issuance of Bonds, dated December 27, 2009, No. 352-FZ, came into force on December 31, 2009.

Where the value of the net assets of a joint stock company becomes less than its charter capital, the new regulation obligates the board of directors (supervisory board) to include in the annual report a section on the status of the company's net assets and sets requirements to the contents of the section.

The requirements to notification of local tax authorities of an increase of the charter capital of a joint stock company have been changed. Now, the notification is to be sent within three days after the date of the company's resolution on the decrease of the charter capital. A joint stock company is also obligated to publish the corresponding information in an authorized periodical twice, with one month in between. The publication should indicate, inter alia, how and on what conditions the company's creditors may make their valid claims. A court may deny the creditor's claim for early performance of an obligation (or termination of an obligation and compensation of losses) if the decrease of the charter capital does not infringe upon the creditor's rights or the provided security of performance of the obligation is sufficient.

The shares of a joint stock company may be paid by way of a set-off of the pecuniary claims to the company. This provision applies where additional shares are placed through a closed subscription. With respect to limited liability companies the new regulation stipulates that, subject to a mutual resolution of all participants, pecuniary claims to the company may be set off by additional contributions of its participants and (or) contributions of third parties. The said provisions on the possibility of a set-off do not extend to credit organizations.

The new Law specifies persons that may act as a surety for the bonds of a company. They are: commercial organizations with the net assets worth no less than the amount of surety; state corporations and companies in cases provided for by the law; international financial organizations that meet the requirements of the law. The term of a surety should be at least one year longer than

the term for performance of the obligations under the bonds.

According to the general rule, a company may issue bonds after its charter capital has been paid in full. The nominal value of all bonds should not exceed the charter capital and (or) the amount of security provided by third persons. In the absence of a security, bonds may be issued no earlier than in the third year of the company's activity. The said limitations do not apply to: bonds with coverage by mortgage; companies whose securities are listed in a stock exchange; companies with credit rating by a duly accredited rating agency; bonds intended for qualified investors. For the latter category there exist certain limitations, in particular, such bonds may not be included in the assets of open unit investment trusts and joint stock investment trusts not intended for qualified investors.

The records of the Consolidated State Register of Legal Entities should reflect that the joint stock company is in the process of decreasing its charter capital and show the value of the company's net assets as of the end of the latest completed reporting period. For this purpose the company decreasing its charter capital should file the corresponding information with the local tax authorities within three business days from the date of the resolution on the decrease of the charter capital. The information about the net assets value is to be filed quarterly in accordance with applicable laws.

### **Taxation**

Federal Law on Amendment of Part I of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation, No. 383-FZ, was adopted on December 29, 2009.

The new Law makes more specific the procedure where tax authorities forward to law enforcement authorities materials on a tax violation with the signs of an offence for decision making as to institution of criminal proceedings. In that case the enforcement of the tax authorities' decision on holding the lawbreaker liable for tax violation is suspended, as is the term for recovery of the tax debt. If upon consideration of the materials the law enforcement authorities issue a refusal to open a criminal case, a ruling on closing of the criminal case (if it was opened) or if a court finds the suspect not guilty, the enforcement of the tax authorities' decision on holding the lawbreaker liable for violation and recovery of the tax debt resumes. If the court finds the suspect guilty, the decision to hold the person liable for tax violation is revoked.

The amount of taxes (duties) recognized as big and especially big has been increased. For individuals a big amount is a sum exceeding 600,000 rubles for three consecutive financial years (provided that the share of the unpaid amounts exceeds 10% of the amounts due) or exceeding 1,800,000 rubles. An especially big amount is a sum exceeding 3,000,000 rubles for three consecutive years (provided that the share of the unpaid amounts exceeds 20% of the amounts due) or exceeding 9,000,000 rubles. For organizations a big amount is a sum exceeding 2,000,000 rubles for three consecutive financial years (provided that the share of the unpaid amounts exceeds 10% of the amounts due) or exceeding 6,000,000 rubles. An especially big amount is a sum exceeding 10,000,000 rubles for three consecutive years (provided that the share of the unpaid amounts exceeds 20% of the amounts due) or exceeding 30,000,000 rubles. The person who has committed a tax offence for the first time is relieved of criminal liability on the condition of payment of all debts and penalties in full, and criminal proceedings against him are terminated. Under the general rule, suspects and charged offenders are not arrested.

The majority of the provisions of the Federal Law came into force on January 1, 2010.

### **Bankruptcy**

On December 17, 2009, the Plenum of the RF Supreme Arbitration Court adopted Ruling on Compensation of Expenses in Bankruptcy Proceedings, No. 91.

The Ruling clarifies some points connected with payment for the services of persons invited by the court appointed manager. It is noted that the law provisions on maximum remunerations to such persons extend to specialists and service personnel and do not extend to persons being on the debtor's payroll. The Ruling further touches upon the issues of reasonableness of the invitation of

such persons and commensurability of the payment for their services. The debtor may claim from the court appointed manager a reimbursement of unjustifiably paid amounts. If the debtor does not have sufficient money to pay bankruptcy expenses, the deficient sum may be paid by the court appointed manager or (with its consent) the creditor or another person. The Ruling considers certain aspects of payment of a remuneration to court appointed managers. The Ruling further touches upon certain peculiarities of the recovery of expenses from a bankrupt individual entrepreneur, from the owner of the assets of a bankrupt unitary enterprise. It is noted that if bankruptcy is claimed by the debtor himself or by an authorized body, it should be proved in court that the debtor has money sufficient to cover expenses in a bankruptcy case. If the court appointed manager sees that the debtor's property is insufficient for covering bankruptcy expenses, the manager must file a petition for termination of the bankruptcy proceedings and stop making any further expenses.

### **Securities**

The Federal Service for Financial Markets issued Order on the Procedure for and Terms of Filing Reports by Professional Participants in the Securities Market, No. 09-49/pz-n.

Reports prepared as per approved forms are to be filed with local divisions of the Federal Service for Financial Markets on paper and in an electronic form on a magnetic carrier or as an electronic document with the electronic digital signature through telecommunication channels, including Internet. The electronic report form is filled in with the help of a program placed on the Internet site of the Federal Service for Financial Markets. The reports of credit organizations should be accompanied with a balance sheet. A professional participant should keep the hard and the electronic copy of its reports for at least five years. The individual executive body and the controller of a professional participant bear liability for the veracity, fullness and timely filing of reports.

### **State Duties**

Federal Law on Amendment of Article 45 of Part I and Chapter 25.3 of Part II of the RF Civil Code and of Certain Legislative Acts of the Russian Federation, and on Recognition as Stale of the Federal Law on Duties for Issuance of Licenses for Activities Connected with Manufacture and Circulation of Ethyl Spirit, Alcohol and Alcohol Containing Products, No. 374-FZ, was adopted on December 27, 2009.

State duties for certain legal actions have been increased. In particular, state duties for filing claims with common and arbitration courts, for state registration of civil status acts, for actions connected with entry to and exit from Russia, for issuance of automobile license plates. The state duty for registration of a legal entity has been increased to 4,000 rubles (as compared to 2,000 rubles). A state duty is not paid for correction of errors in documents, if they are the errors of the authority that issued the documents.

The majority of the provisions of the new Law came into force on January 29, 2010.

### **Foreign Citizens**

The RF Ministry of Health and Social Development issued Order on Distribution Among the Constituents of the Russian Federation of a Quota of Work Permits to Foreign Citizens, Approved by the RF Government for the Year 2010, dated December 22, 2009, No. 1008n. A quota on work permits to foreigners is established for each RF constituent. The quotas are distributed within each constituent as per professions, specialties and skills. For example, the quota for Moscow is 250 000 permits, out of which 76 624 permits to head executives of institutions, organizations and enterprises and their structural subdivisions, 4 783 permits to the middle-level personnel in the financial-economic, administration and social fields, 36 366 permits to unskilled workers.

The RF Ministry of Health and Social Development issued Order on Approval of the List of Professions (Specialties, Positions) of Skilled Specialists Applying for Work in Their Professions (Specialties) Not Subject to Quotas for the Year 2010, dated December 22, 2009, No. 1010n. The quotas do not extend to foreigners who come to Russia to work as (general) director of a joint stock company, director of a department, director for economy, director of a representative office,

director of a firm, information protection engineer, president of an association, chairman of the management board and deputy chairman of the management board.

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