LAW FIRM

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Joint Stock Companies

On May 31, 2010 the Russian Federal Tax Service published its Letter of May 21, 2010 "On entry of information on reduction of a charter capital of a joint stock company and on the net value of its assets into the Consolidated State Register of Legal Entities", No. MH-37-6/2212. This Letter determines – in accordance with the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs" (as of December 27, 2009, No. 352-FZ) – the procedure for submission by joint stock companies (JSC) of information for making changes in the Consolidated State Register of Legal Entities ("Register") regarding the reduction by JSC of its charter capital and the net value of its assets as of the end date of the last elapsed reporting period. Within 3 business days following the date of the JSC's resolution to reduce its charter capital, the JSC must submit an application for making changes to the Register and the resolution authorizing the charter capital reduction.

An application stating JSC's current net assets must be submitted to the registration authority on a quarterly basis: within 90 days after the end of a previous year, i.e. by March 31, and within 30 days after the end of each of the 1st, 2nd and 3rd quarter, i.e. by April 30, July 30 and October 30, respectively.

The application must be signed by a person who authorized to act on behalf on a JSC without a power of attorney. The applicant's signature on the application must be certified by a notary public.

A JSC is required to submit information on its net assets starting from the net assets assessment as of December 31, 2009. After June 10, 2010 administrative liability may be imposed on a JSC if it fails to submit such information in due time.

Work of Foreign Citizens in Russia

On May 19, 2010 the Federal Law "On Amendment of the Federal Law "On Legal Status of Foreign Citizens in the Russian Federation" and Certain Legislative Acts of the Russian Federation", No. 86-FZ, was adopted. The Law determines, in particular, the specifics of employment of highly skilled foreign specialists.

The quota for issuance of invitations for entry into Russia for work purposes and the quota for issuance of work permits do not apply to highly skilled specialists. A highly skilled foreign specialist

is a foreign citizen who has job experience, skills or achievements in a specific field provided that a compensation payable to him/her according to the terms of his/her employment in Russia for a period up to one year is not less than two million rubles. The compensation requirements may be reduced by the Russian Government.

Employers and customers ordering work (services) (collectively "employers") who hire highly skilled specialists are fully responsible for assessment of competency and qualification of foreign employees and bear the related risks. For the purposes of such assessment they should rely upon other employers' references, information on work performance of a foreign employee as well as other unbiased and verifiable information and documents.

Highly skilled specialists may be hired by employers who are: (a) Russian commercial organizations; (b) Russian scientific organizations or health care institutions; or (c) foreign entities' branch offices accredited in Russia. It is required that during two years prior to submission of a request for hiring highly skilled specialists the employer submitting such request was not held liable under administrative law for illegal hiring of foreign citizens or stateless persons for work in Russia. An employer who has failed through its fault to perform its obligations to a highly skilled specialist may hire again highly skilled specialists not earlier than after expiration of two years from the date when an authorized government body becomes aware of such failure.

The Law determines the list of documents and information to be submitted by an employer to an authorized government body for issuance of a work permit to a highly skilled specialist and an invitation for his/her entry into Russia. The Law also defines the reasons for rejection of an employer's request and the reasons for refusal to grant a work permit and an invitation to a highly skilled specialist. The time limit for consideration of a request is 14 days from the date of its filing with an authorized government body.

A work permit for a highly skilled specialist is granted for the term of his/her employment agreement or civil-law agreement. The Law determines the implications of early termination of such agreements with a highly skilled specialist and the procedure for renewal of a work permit.

The Law sets forth the procedure for notifying authorized government bodies by employers about circumstances determined by law, such as the performance of obligations to pay salaries to highly skilled specialists. A highly skilled specialist and his/her family members coming to Russia must be provided with insurance coverage under a voluntary medical insurance contract. Provision of such insurance coverage is a material term of a highly skilled specialist's employment agreement. A highly skilled specialist and his/her family members coming to Russia may obtain a residence permit for the term of such specialist's agreement.

The Law determines the procedure for and implications of notifying authorized government bodies by a foreign citizen himself that he is a highly skilled specialist.

Also, changes have been made to the regulation of work activities carried on by foreign citizens coming to Russia in accordance with a visa-free procedure for individuals who do not pursue the purpose of gaining profit. Such foreign citizens are required to obtain a relevant license from an authorized government body. The Law determines the procedure and timelines for obtainment a license.

Generally, as of January 1, 2013 all foreigners coming to Russia for work in accordance with a visa-free procedure must be photographed and have their fingerprints taken at the time of issuance of work permits. This requirement does not apply to highly skilled specialists and to instances specifically provided for by international treaties.

The main body of the Federal Law will go into effect on July 1, 2010.

Trial Proceedings

On April 30, 2010 the Federal Law "On a compensation for violation of the right to trial within a

reasonable time or the right to enforcement of a court's act within a reasonable time", No. 68-FZ, and a number of laws in pursuance thereof were adopted.

A person whose rights to trial and/or enforcement of a court's act within a reasonable time have been violated may submit an application for a compensation for such violation to a common court or arbitration court. A compensation may only be awarded if the violation has occurred for reasons beyond control of the applying person ("applicant"), other than force majeure.

An amount of cash compensation is determined by a common court or arbitration court taking into account the applicant's claims, circumstances of the case where a violation has occurred, duration of such violation and impact of its consequences on the applicant, and following the principles of reasonableness, fairness and case-law of the European Court of Human Rights.

An application should be submitted to a common court or arbitration court (depending on which of court examined the case where the applicant's right was violated). Trial courts for consideration of such applications are: (a) the Supreme Court of a republic (or equivalent courts of other constituents of the Russian Federation) – for cases falling under the jurisdiction of magistrates, district court or garrison military courts; (b) the Supreme Court of the Russian Federation – for cases falling under the jurisdiction of federal courts (except for magistrates, district court and garrison military courts); (c) federal arbitration court of districts. Relevant amendments have been made to the Federal Constitutional Laws "On Arbitration Courts in the Russian Federation" and "On Military Courts of the Russian Federation".

A claim for compensation may be stated in a request for revision of a court act by way of supervision. There is a time limit for submission of an application for compensation. A court's decision by which a compensation has been awarded is to be enforced within three months after it has been brought for enforcement, in accordance with the procedure set by the budget legislation.

Relevant amendments have been made, in particular, to the Code of Arbitration Procedure of the Russian Federation ("CAP"). The Law determines the criteria for reasonable timelines for proceedings at arbitration courts and for enforcement of a court's act. For the purpose of determining reasonable timelines, it is necessary to take into account legal and factual complexity of a case, conduct of parties to the proceedings, sufficiency and efficiency of court's actions and the overall duration of legal proceedings. Circumstances relating to the organization of court's activities or the fact that a case is considered by more than one judicial instance may not be regarded as valid grounds for going beyond the reasonable timelines for legal proceedings. If after acceptance of a statement of claim for consideration the case remains unexamined for a long time, interested parties may submit a request for acceleration of the examination to the chairman of the arbitration court concerned.

Some changes have been made to the CAP provisions on procedural timelines. The period for examination of a case and issuance of a decision may be prolonged for up to six months by the chairman of the court upon a substantiated request of the judge examining the case. The same rule applies to the period for examination of appeals by courts of appellate or cassation instance. Now the period for examination of cases in connection with challenging of normative legal acts, individual legal acts, decisions or action (inaction) of government authorities is three months (formerly – two months). Procedural timelines for cases in connection with imposition of administrative liability and recovery of mandatory payments and fines have been changed. The period for examination of requests for setting aside a tribunal's decision or for issuance of a writ of execution for enforcement of a tribunal's decision or for recognition and enforcement of a foreign judgment or arbitral award has been increased to three months (earlier such period was one month).

CAP has been supplemented with new chapter 27.1 which regulates the procedure for examination of cases relating to claims for compensation. The new chapter determines the time limit for submission of an application for compensation and set forth the requirements applicable to such application. An application for compensation should be submitted to an arbitration court having jurisdiction over such application through an arbitration court which has rendered a decision. It also determines the procedure for acceptance of an application for compensation, reasons and procedure for leaving an application without movement or rejection of an application. An application for compensation should be examined by an arbitration court within two months from the date of its

filing with the court. An application for compensation is examined by an arbitration court represented by a collegiate body of judges. The new chapter determines the list of circumstances to be assessed by a court examining such cases and the requirements applicable to a court's decision. A decision rendered by an arbitration court in such case is effective immediately upon its rendering and may be challenged at a cassation instance. Cassation appeals from said decisions are examined in accordance with the cassation procedure at the same court by a collegiate body comprised of other judges.

Due to the adoption of the said Federal Law relevant amendments have also been made to the Code of Civil Procedure, Code of Criminal Procedure, Code of Administrative Offences and the Budget Code of the Russian Federation.

The Federal Law went into force on May 4, 2010.

Position of the RF Constitutional Court
Civil Procedure

On April 21, 2010 the RF Constitutional Court passed Resolution «On the case related to the assessment of constitutionality of Part One of Article 320, Part Two of Article 327 and Article 328 of the Russian Federation Code of Civil Procedure in connection with complaints of Ms. E.V. Aleinikova and of Three K Limited Liability Company and inquiries of the Norilsk Municipal Court of Krasnoyarsk Region and the Central District Court of Chita», No. 10-П.

The RF Constitutional Court ruled unconstitutional the provisions of the RF Code of Civil Procedure, which set the mechanism for exercise of the right to challenge magistrates' decisions and appellate instance court's competence in connection with deliberation of appeals to the extent that such provisions do not afford persons with regard to whose rights and obligations the magistrate has taken a decision without getting of such persons involved in the case the right to challenge the relevant court decision and do not provide for the appellate instance court's competence to refer the civil case to the magistrate for retrial in cases where the magistrate has examined the case in the absence of any of the persons participating in the case who had not been given a notice of the time and venue of the court hearing or has taken a decision on rights and obligations of persons not involved in the case. The RF Constitutional Court has held that the federal legislators should make relevant amendments to the RF Code of Civil Procedure consistent with the above legal proposition.

Court Practice
Bankruptcy

On April 27, 2010 the Informational Letter of the Presidium of the RF Supreme Arbitration Court, N. 137, «On certain matters related to transitional provisions of the Federal Law No. 73-FZ, dd. April 28, 2009, «On making of amendments to certain legislative acts of the Russian Federation» was issued.

The Letter establishes that provisions of the above Federal Law, related to reasons for invalidity of transactions, are not applicable to transactions consummated before June 5, 2009, irrespective of the date of commencement of the bankruptcy proceedings. The procedural rules of transaction challenging, provided for by the said law, are applicable after June 5, 2009, irrespective of the date of consummation of the transaction or of the date of commencement of bankruptcy proceedings.

Provisions of the Federal Law, related to secondary liability of relevant persons for debtor's obligations, are applicable only where the events that serve as a ground for imposition of secondary liability occurred after June 5, 2009. Furthermore provisions of the said law, related to imposition of secondary liability, are to be applied by courts after June 5, 2009, irrespective of the date on which the said events took place or the bankruptcy proceedings were commenced. Secondary liability imposition cases initiated out of the bounds of bankruptcy proceedings are in any event to be considered in accordance with procedural rules of bankruptcy law, that were in effect before June 5,

2009.

Statements of challenging of transactions or requests for imposition of secondary liability, which were previously accepted for adversary proceeding, may not be referred for trial within bankruptcy proceedings.

Court Practice
Protection of Ownership Right

On April 29, 2010 the Plenum of the RF Supreme Court and the Plenum of the RF Supreme Arbitration Court passed Resolution «On certain issues arising in court practice during dispute resolution, related to protection of ownership or other property rights», No. 10/22, which contains explanations with regard to application by courts of the laws on the creation, termination and protection of ownership or other property rights.

The Resolution contains inter alia a number of explanations with regard to resolution of disputes connected with: (a) protection of economic control and operating control rights of state-owned (municipal) enterprises and institutions; (b) acquisition of ownership; (c) application of usucaption rules; (d) unauthorized construction; (e) recovery of property unlawfully possessed by other persons; (f) elimination of violations of rights, not related to dispossession; (g) release of property from attachment; (h) contesting of real property rights; (i) rights to land plots on which apartment buildings are located.

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