

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

No. 4/2010

April 2010

Securities Market

1. On March 4, 2010, the Federal Service for Financial Markets issued Order on Approval of the Regulations on the Types of Derivative Financial Instruments, No. 10-13/pz-n.

The Regulations list notions, indicators and circumstances recognized as basic assets. It is established that a derivative financial instrument may have more than one basic asset. The types of a derivative financial instrument are: (a) option contract; (b) futures contract; (c) stock-exchange forward contract; (d) off-exchange forward contract; (e) swap contract. For each of the said types of a derivative financial instrument the Regulations specify conditions on the basis of which a contract is recognized as a derivative financial instrument and terms that the corresponding contracts may contain. Established are criteria for distinguishing option, futures, off-exchange forward and swap contracts as delivery contracts and settlement contracts. It is further established that all stock-exchange forward contracts are recognized as delivery contracts. According to the Regulations, all contracts being derivative financial instruments may contain terms and conditions that are not expressly stated in the Regulations; such terms and conditions are not taken into consideration in the determination of the corresponding types of a derivative financial instrument.

2. On February 25, 2010, the Federal Service for Financial Markets issued Order on Approval of the Requirements to Underwriters of Foreign Issuers Prospectuses, No. 10-12/pz-n.

As of the date of underwriting of a foreign issuer's prospectus the broker should: (a) possess own money in the amount of 150 million rubles; (b) be dealing in brokerage for at least three years; (c) have organized the placement and (or) placed at least ten issues (additional issues) of securities during the past three years in brokerage.

3. On March 23, 2010, the Federal Service for Financial Markets issued Order on

Approval of the Procedure for Registration of Prospectuses of Foreign Issuers Securities and Admission of Foreign Issuers Securities to Placement and (or) Circulation in the Russian Federation by the Federal Executive Authority for the Securities Market, No. 10-20/pz-n.

The procedure does not extend to foreign securities that may be admitted to circulation in the Russian Federation by a Russian stock exchange. The Order sets forth obligatory conditions for admission of foreign securities to placement and (or) public circulation in Russia, as well as a procedure for registration of foreign issuers prospectuses and for decision-making as to admission of foreign securities to the Russian market. Registration of prospectuses of foreign bonds and admission of foreign bonds to the Russian market have specifics.

4. On March 23, 2010, the Federal Service for Financial Markets issued Order on Approval of the Requirements to Depositories Recording Rights to Foreign Securities Admitted to Public Placement and (or) Circulation in the Russian Federation, No. 10-19/pz-n.

To record rights to foreign securities admitted to public placement and (or) circulation in Russia, a depository should meet the following criteria: (a) act as a depository for at least one year; (b) render services connected with receipt of income or other payments from the said securities to each deponent whose rights to securities are recorded by such depository.

5. On February 18, 2010, the Federal Service for Financial Markets issued Order on Approval of the Regulations on the Certification of Signature by Professional Participants of the Securities Market, No. 10-10/pz-n.

The Order extends to cases where signature is certified by securities market professionals on the basis of contracts with other securities market professionals, joint stock investment foundations, management companies of investment foundations, unit investment trusts and non-governmental pension funds.

The signature of an individual on transfer documents may be certified by securities market professionals, except where the law establishes otherwise. The Order sets forth a procedure for certification of signature: the person requesting certification of his signature should produce an identification document, personally write an endorsement and affix his signature in the presence of the certifying officer of a securities market professional. Securities market professionals should: (a) keep record of all individual signature certifications in a special register (subject to the requirements to the contents of records as established by the Order); (b) on request of the person who has applied for certification of signature, issue a notice of receipt of documents from such person; (c) create an electronic document in strict conformity with and on the basis of the information contained in the paper document produced by the applicant for certification of signature; (d) ensure proper safe keeping of documents during five years or during another period as set in the contract.

Circulation of Medicines

Federal Law on Circulation of Medicines No. 61-FZ was adopted on April 12, 2010. It regulates relationships arising in connection with the circulation of medicines, i.e., development, preclinical trials, clinical trials, expert examination, state registration,

standardization and quality control, manufacture, production, storage, transportation, importation to Russia, exportation from Russia, advertizing, release, sale, transfer, use, and destruction of medicines.

State control over safety, quality and effectiveness of medicines has priority. The Federal Law extends to the circulation of narcotics, psychoactive medicines and radiopharmaceutical medicines with regard for peculiarities stipulated by special laws. The results of clinical trials of medicines for medical use conducted outside Russia are recognized in Russia on the basis of the reciprocity principle in accordance with international treaties.

State control over circulation of medicines is exercised through: (a) inspections of the subjects of medicines circulation as to compliance with set rules; (b) licensing of medicines manufacture and pharmaceutical activity, inspections as to compliance with license requirements; (c) control of medicines quality in civil circulation; (d) issuance of permits for importation of medicines to Russia; (e) monitoring of medicines safety; (f) collection of information about pricing, use of prices and markups.

The Federal Law contains regulation in the following areas: state pharmacopeia; state registration of medicines; manufacture and marking of medicines; pharmaceutical activity; destruction of medicines; information about medicines; liability for violation of Russian laws in the circulation of medicines and reparation of harm caused to health as the result of medicines use.

The Federal Law will come into force as of September 1, 2010.

Non-Commercial Organizations

The Ministry of Justice issued Order on Approval of the Forms of Reports of Non-Commercial Organizations, dated March 29, 2010, No. 72. The Order approves the forms of reports on the activity of non-commercial organizations, composition of management bodies, disposal of money and use of other property, as well as special forms of reports for certain types of a non-commercial organization (public associations, religious organizations) and for structural subdivisions of foreign non-commercial organizations.

Limited Liability Companies. Court Practice

The Presidium of the RF Supreme Arbitration Court issued Informative Letter on Certain Issues Connected with the Application of Article 5 of the Federal Law on Amendment of Part One of the RF Civil Code and Certain Legislative Acts of the Russian Federation (dated December 30, 2008, No. 312-FZ), dated March 30, 2010, No. 135.

Among other things, the Presidium explains that a failure to bring the charter of LLC in compliance with the new laws at the time of first amendment of the charter is not an irreparable violation. A court may direct LLC to remedy the violation. LLC's failure to comply with the court direction is, in view of the Presidium, a gross violation of the law. The Presidium explains to the courts that a failure by LLC to bring its charter in compliance with the new law requirements does not entail any limitation of such LLC's legal capacity or a limitation of circulation of such LLC's shares. The general meeting of participants of LLC may decide to introduce changes in the charter other than those connected with the bringing it in compliance with the new laws, but such changes will not be registered until the charter has been brought in compliance with the new laws. Agreements on the

exercise by LLC participants of their rights continue to be in force after enactment of the new laws. The Informative Letter contains other clarifications regarding application of the new LLC laws.

Economic Crimes

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation, dated April 7, 2010, No. 60-FZ, introduces changes in, *inter alia*, the RF Criminal Code and the RF Code of Criminal Procedure.

The changes in the Criminal Code concern a number of offences in the sphere of economic activity. In particular, Article 169 (impeding of lawful entrepreneurial activity), Article 171 (illegal entrepreneurship), Article 172 (illegal banking), Article 173 (false entrepreneurship).

The amounts of big damage and especially big damage caused by the majority of economic crimes have been increased. At present, big damage amounts to 1.5 million rubles (as compared to 250,000 rubles) and especially big damage amounts to 6 million rubles (as compared to 1 million rubles). However, there are exceptions. For example, under Article 174 (laundering of money or other property criminally acquired by other persons) and Article 174.1 (laundering of money or other property acquired by the person as the result of a crime), big damage amounts to 6 million rubles (as compared to 1 million rubles). Under Article 193 (non-repatriation of money in foreign currency), big damage amounts to 30 million rubles (as compared to 5 million rubles). Under Article 194 (avoidance of customs duties levied on organizations or individuals), big damage amounts to 3 million rubles (as compared to 500,000 rubles) and especially big damage amounts to 36 million rubles (as compared to 1.5 million rubles).

A number of changes in the Code of Criminal Procedure are connected with the application of certain restraints. Arrest as a restraint may not be applied to a suspect or an accused in the absolute majority of economic offences. Article 106 has been amended to include bail as a restraint.

The Federal Law came into force on April 9, 2010.

State Cadastre of Real Estate

The Ministry of Economic Development issued Order on Approval of the Procedure for Keeping the State Cadastre of Real Estate, dated February 4, 2010, No. 42, which establishes the structure and composition of cadastral data, and the rules on recording cadastral data in the Register of Real Estate, as well as the structure, composition and rules of keeping cadastral files.

The Procedure does not set the rules for reproduction of cadastral data and is not applied to constructions located in the territory of more than one cadastral circuit. The Order lists cadastral procedures to be performed by cadastral authorities when recording cadastral data in the Register of Real Estate, namely: recordation of data on previously recorded real estate; state cadastral registration; recordation of changes in real estate; striking off the cadastre; recordation of cadastral data in accordance with documents received from governmental authorities and local self-government authorities as a matter of informational cooperation in the keeping of the state cadastre of real estate; correction of clerical and cadastral errors in the cadastral data.

Refinancing Rate

According to the information published by the Central Bank of Russia on April 29, 2010, the rate of refinancing has been established at 8% per annum effective April 30, 2010. The previous rate 8.25% was effective as of March 29, 2010. Interest rates for operations of the Bank of Russia have been revised accordingly.

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This newsletter is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru

ANDREY GORODISSKY & PARTNERS

Ul. Znamenka 13, Bldg. 3, 3rd Floor, Moscow 119019, Russia
tel.: +7 (495) 933 7567 e-mail: office@agp.ru
fax: +7 (495) 697 9226 Internet: www.agp.ru