
LAW FIRM

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NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Securities Market

On June 10, 2009, the Federal Service for Securities Market (the "FSSM") issued Order on Approval of the Regulations on the Procedure for Issuance by the Federal Service for Securities Market of a Permit for Offering and (or) Organization of Circulation of Russian Issuers' Securities Outside the Russian Federation, No. 09-21/pz-n. The new procedure will come into force as of January 1, 2010.

The list of documents required for obtainment of the said permit has been broadened to include: an excerpt from the personal account (depo account) of the holder of Russian issuer's shares, if the permit is requested with respect to the Russian issuer's shares; a document showing that the Russian issuer is engaged in activities having strategic importance for the defense and security of the state; a payment instruction confirming payment of the charge for consideration of the application and issuance of the permit.

Requirements to the contents of the application have been made more detailed. The FSSM is entitled to check information provided by the applicant in certain specific cases only. Previously, the FSSM had absolute discretion in that respect. The conditions precedent to issuance of the permit have remained unchanged. The rules to be complied with in the offering and (or) organization of circulation of Russian issuers' shares outside Russia have been updated. According to the updated rules, a Russian issuer or a holder of the Russian issuer's shares that were offered for sale must notify the FSSM of the results of the offering in Russia and abroad, and such notification should contain prescribed details. The Order specifies instances where the permit loses its effect.

The new Order supersedes the FSSM's previous Order of January 12, 2006 (No. 06-5/pz-n) on the procedure for issuance of permits and will come into force as of January 1, 2010.

Limited Liability Companies

The Corporate Management Department of the RF Ministry of Economic Development considered an inquiry seeking clarification of the provisions 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) concerning "re-registration" of limited liability companies. In its letter of September 11, 2009 (No. D06-2639) the Department expressed its approach to the issues set forth in the inquiry.

Federal Law No. 312-FZ (the "Law") introduced amendments to the Civil Code and the Law on Limited Liability Companies. The basic aim of the Law is to make LLC more attractive for investors, improve the mechanisms of protection of the rights of LLC participants, lessen the risks of hostile takeovers and increase the flexibility of corporate management regulation. The charters of companies incorporated prior to the effective date of the Law are to be brought in compliance with the Law before January 1, 2010. However, a failure to do that does not automatically make the company's charter invalid after January 1, 2010 and may not serve as a ground for liquidation of the company upon a court order, unless the company committed gross or repeated violations of law. The facts of violation must be proved by the claimant. When considering a claim for liquidation of the company, the court may rule that the company remedy the violation by making necessary amendments to the charter within the term set by the court. If such ruling is not complied with, the court will proceed with the matter of liquidation.

Foreign Investment

Pursuant to Part 6 of Article 11 of the Federal Law on Foreign Investment in Companies Having Strategic Importance for the Defense and Security of the State (the "Law"), the RF Government issued Decree on Adoption of the Rules for Prior Approval of Transactions Entailing Control and Approval of Control by Foreign Investors or a Group of Persons Including the Foreign Investor Over Companies Having Strategic Importance for the Defense and Security of the State, dated October 17, 2009, No. 838 (the "Decree").

The transactions in question are specified in the Law. An application for prior approval is filed with the Federal Antimonopoly Service (the "FAS") by the foreign investor – a separate application for each transaction, indicating the scope of rights the investor will acquire as the result of the transaction (with regard to the existing rights).

When considering the request, the FAS may collect information about the target company from different authorities, organizations and individuals. The application should indicate, *inter alia*, the material terms and conditions of the transaction, and the full list of persons that will be able to control the target company. The application must enclose the draft of a contract or other agreement containing information about the transaction, including the scope of rights being transferred, the rights and obligations of the purchaser, the price and term of the transaction.

The application and all enclosed documents should be in the Russian language. If the original documents are in a foreign language, they should be accompanied with a duly certified Russian translation. The application may be filed by a person acting on the basis of a power of attorney.

All information contained in the application and accompanying documents should be full and true. If it is not possible to submit information in the required scope, it may be submitted in the scope available, but the applicant should indicate the reasons for non-submission of requisite data and documents, and the source from which they could be claimed.

Labor Law

Pursuant to Article 91 of the Labor Code, the Ministry of Health and Social Development issued Order on Approval of the Procedure for Calculation of the Standard Working Time for Certain Calendar Periods (Month, Quarter, Year) Depending on the

Established Duration of Working Time Per Week, dated August 13, 2009, No. 588n.

According to the new procedure, the standard working time is calculated on the basis of a 5 days' working week and the duration of daily performance of labor duties. Saturday and Sunday are days off. If a working week consists of 40 hours, the duration of daily work is 8 hours. If a working week consist of less than 40 hours, the duration of daily work equals to the number of hours per week divided by 5 days. The working day preceding a holiday is reduced by one hour. If a day off coincides with a holiday, it is shifted to the next working day. Days off are not shifted if work cannot be stopped on holidays (e.g., at enterprises with continuous production, enterprises rendering daily services). The standard working time calculated in such a manner applies to all modes of work and recreation.

Thus, the standard working time of a specific month (in a year) is calculated in the following way: the duration of a working week is divided by 5 and multiplied by the number of working days as per the calendar of the 5 days' working week of a specific month (in a year). From the resulting figure subtracted are the hours by which the working time on the eve of holidays is reduced.

The Order came into force on October 17, 2009.

Court Practice

On October 16, 2009, the Plenum of the RF Supreme Court issued Ruling Regarding Court Practice in Cases on Abuse of Official Powers and Excess of Official Powers, No. 19. The Ruling gives explanations regarding official malfeasances such as abuse of official powers and excess of official powers: defines the notions "organizational-administrative functions" and "administrative-economic functions" the performance of which can be connected with the said offences. It is noted specifically that the offences of civil servants should be distinguished from the offences of executive officers of commercial or other organizations (their wrongful actions fall under another category of offences – abuse of powers). The Ruling discusses cases where a certain action cannot be regarded as an offence (e.g., the limits of paramount necessity have not been exceeded or the action was performed in pursuance of an order or direction binding on the person in question).

The Ruling supersedes the Ruling of the USSR Supreme Court of March 30, 1990 (Regarding Court Practice in Cases on Abuse of Power or Office Powers, Excess of Power or Office Powers, Negligence and Forgery).

Banking

The Central Bank's Direction Regarding Revocation of a Banking License Upon a Decrease of the Bank's Own Capital Below the Level Established by the Federal Law on Banks and Banking, dated August 14, 2009, No. 2276-U, sets forth criteria for the determination and confirmation of a decrease of the bank's capital. It provides, *inter alia*, that the existence of grounds for revocation of the license should be confirmed in certain cases by the bank's financial statements for four consecutive reporting dates or by other information received in the course of a remote supervision and (or) discovered during an audit of the bank (its branch), showing that the bank lets its capital decrease below 90 million or 180 million rubles during three consecutive months.

Direction No. 2276-U will come into force as of January 1, 2010.

On October, 2009, the Central Bank of Russia issued Direction No. 2277-U Regarding Amendment of the Central Bank's Instruction on the Procedure for Decision Making as to State Registration of Credit Organizations and Issuance of Banking Licenses, dated January 14, 2004, No. 109-I. A credit organization in the form of a limited liability

company is not longer required to submit a foundation agreement to obtain registration and a banking license (according to the Law on Limited Liability Companies, the foundation agreement ceased to be a statutory document as of July 1, 2009).

In certain cases a prior approval of the Federal Antimonopoly Service may be required for setting up a credit organization. Provisions concerning a ruble equivalent of the minimum amount of the charter capital of a credit organization have been excluded. The new Direction sets forth the procedure for notification about the opening by a credit organization of its representative office abroad and the procedure for state registration of amendments to the credit organization's charter in connection with the opening of the representative office abroad. The new Direction also sets a deadline for making a decision as to issuance of a banking license for broadening the activity of a credit organization.

Direction No. 2277-U came into force on October 24, 2009.

Refinancing Rate

According to the information published by the Central Bank of Russia on October 29, 2009, the rate of refinancing was established at 9.5% per annum effective October 30, 2009. The previous rate 10% was effective as of September 30, 2009. 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

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