
LAW FIRM

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Court Practice and Law Application Practice

Joint Stock Companies

The Letter issued by the Presidium of the Supreme Arbitration Court of Russia on June 25, 2009, No. 131, provides guidelines for examination by state arbitration (arbitrazh) courts of disputes over preemptive rights with respect to shares in closed joint stock companies.

The Presidium points out that the Federal Law "On Joint Stock Companies" extends the preemptive right with respect to shares in a closed joint stock company ("CJSC") **exclusively** to share purchase agreements; the charter of a CJSC may not extend the preemptive right to any other type of agreements for transfer of shares or to share sale transactions between shareholders of the same CJSC. If donation agreements and share purchase agreements are bogus and serve to conceal a single agreement for sale and purchase of shares, a shareholder who would otherwise be entitled to exercise its preemptive right may claim that the purchaser's rights and obligations under the single agreement, that was originally intended, be transferred to it. It is further stated that the preemptive right does not apply where a CJSC purchases shares issued by it.

The Letter provides recommendations regarding the procedure for giving notice of a selling shareholder to other shareholders. A shareholder who would otherwise be entitled to exercise the preemptive right may claim that the purchaser's rights and obligations be transferred to it **only if** a selling shareholder's notice to other shareholders is required by the charter of the CJSC and neither the selling shareholder nor the CJSC has given such notice; if the charter of the CJSC provides that a selling shareholder must give notice to the CJSC only and the latter has failed to meet its obligation to give notice to other shareholders, such failure by the CJSC does not entitle any of the other shareholders to claim that the purchaser's rights and obligations be transferred to it.

If a share purchase agreement has been executed in violation of the preemptive right, such violation does not affect the validity of the agreement. Participation of a person who has purchased shares in a CJSC in violation of the preemptive right in a general meeting of the CJSC does not constitute a breach of law or affect the validity of resolutions of such meeting. A claim for transfer of rights and obligations of the purchaser under an agreement for purchase of shares in the CJSC is to be dismissed if the claimant, who had been a shareholder of the CJSC as of the date of entry into that agreement, subsequently sold its shares to another person, which resulted in termination of the claimant's preemptive right with respect to the disputed shares. It is clarified that the statute of

limitation for bringing a claim for transfer of the purchaser's rights and obligations is three months. Proper defendants under such claim are the seller and the purchaser.

The Letter also provides other explanations, including those regarding sale of shares in a CJSC at an auction, purchase by a CJSC of its own shares, as well as acquisition of rights and obligations of a holder of the register of shares.

Bankruptcy

- On July 23, 2009 the Plenum of the Supreme Arbitration Court issued the Resolution "On Certain Issues Regarding Application of the Federal Law "On Executory Procedure", No. 59, which provides guidelines for enforcement of writs of execution and performance of enforcement activities in the event of bankruptcy of a debtor.

It is explained that upon issuance of a bankruptcy supervision order by a court any claims, other than current payments, confirmed by writs of execution may only be enforced against the debtor subject to provisions of the Federal Law "On Insolvency (Bankruptcy)".

The Resolution provides clarifications regarding enforcement of writs of execution by banks, identifies situations where the debtor's bank is not liable for non-compliance with a writ of execution, as well as disputes in respect of which the executory procedure is not to be suspended upon issuance of a bankruptcy supervision order. It also gives explanations regarding suspension of the enforcement of writs of execution, application of preventive measures, enforcement of claims relating to current payments covered by writs of execution, and other issues.

- In its Resolution "On Certain Issues Regarding Satisfaction of Pledgeholder's Claims in the Event of Bankruptcy of Pledgor" of July 23, 2009, No. 58, the Plenum of the Supreme Arbitration Court provides some clarifications.

The Resolution lists circumstances that are to be investigated by a court during examination of matters relating to acknowledgement and inclusion of creditors' claims secured by a pledge in the register of secured claims. It states that in case a pledged property ceases to be possessed by the creditor the court should reject the creditor's request for acknowledging its claims as claims secured by the pledged of the debtor's property. The general provisions of the Russian Civil Code setting forth grounds for refusal of levy of execution on pledged property do not apply to bankruptcy proceedings. A loss of the pledged property after inclusion of the creditor's relevant claims in the register of secured claims serves the grounds for striking off such claims from the register. The Resolution explains the procedures applicable to situations where the creditor failed to disclose a relevant pledge at the time when its claims were examined. It defines the consequences applicable to claims secured by a pledge in the event that the creditor has failed to assert its claims against the debtor in due time. The Resolution also discusses issues relating to creditors' voting at the general meeting in connection with various bankruptcy procedures. It explains the consequences of entry into an agreement for extrajudicial levy of execution on pledged property before and after issuance of a bankruptcy supervision order, and provides clarifications regarding specific procedures for levy of execution on pledged property during implementation of various bankruptcy procedures, evaluation of pledged property, satisfaction of creditor's claims secured by a pledge, and other issues.

- In its Resolution "On Current Payments under Monetary Obligations During Bankruptcy Proceedings" of July 23, 2009, No. 63, the Plenum of the Supreme Arbitration Court explains that current payments only include obligations that provide for the use of money as a means of payment or repayment of a monetary debt. With regard to contractual obligations requiring that the debtor makes regular payments for use of a property or continuous provision of services, current payment claims are those relating to periods of time that expire later than the commencement date of related bankruptcy proceedings. The Resolution also explains how to determine the date of accrual of debtor's obligations and provides clarifications on qualification of claims as current payments in certain cases (in particular, under loan agreements, commercial credit agreements, surety

agreements or bond obligations).

- Also, on July 23, 2009 the Plenum of the Supreme Arbitration Court issued Resolution No. 60 "On Certain Issues Connected with Adoption of the Federal Law "On Amendments to the Federal Law "On Insolvency (Bankruptcy)", dated December 30, 2008, No. 296-FZ". The Resolution clarifies certain issues that need to be addressed in connection with amendment of the bankruptcy legislation, including but not limited to qualification of claims as current payments and inclusion thereof in the register, rights of current payment creditors to challenge actions of arbitration managers, challenging resolutions of general meetings of creditors, and repayment of debtor's liabilities by its founders (owners, third parties).

Real Property

On July 21, 2009 the Presidium of the Supreme Arbitration Court of Russia issued Information Letter No. 132 "On Certain Issues Relating to Application of Articles 20 and 28 of the Federal Law "On State Registration of Real Estate Rights and Transactions" by Arbitration Courts", in which it provides clarifications on certain aspects of registration of real estate rights and transactions on the basis of acts issued by judicial authorities.

Judicial acts determining that a certain real property belongs to a certain person by virtue of property law or contractual law provide a legal basis for registration of rights to such real property. Such judicial acts include, in particular, rulings on approval of a settlement. The registrar is not authorized to make a legal evaluation of any judicial act that has gone into effect or reevaluate any evidence or circumstances of the case on which the judicial act is based. The Resolution explains that issuance of a judicial act with respect to a real property is not equal to disposition of a real property. Therefore, if the registrar refuses to register title to such real property pursuant to a judicial act by referring to the fact that the issuing judicial authority has no right to dispose of the property, such refusal will be illegal. Likewise, if the registrar refuses to register title to a real property pursuant to a judicial act by referring to an existing encumbrance on such property which is however not mentioned in the judicial act, such refusal will be illegal.

The Resolution states that a judicial act that has gone into effect also serves the sufficient grounds for registration of rights to a real property if such rights existed prior to enactment of the Federal Law "On State Registration of Real Estate Rights and Transactions". A person which has obtained a relevant judicial act is not required to submit any other title documents for the purpose of applying for registration of title. It is further stated that if a real estate right of a person is recorded in the Consolidated State Register of Real Estate Rights and a judicial authority issues an act by which another person is recognized as the holder of the same right, such judicial act will have legal effect with respect to the first-mentioned person only if such person was involved in the related legal proceedings as a defendant. Thus, a person seeking recognition of its right to a real property by a judicial authority is required to submit a relevant extract from the Consolidated State Register of Real Estate Rights or a certificate of the registrar confirming that no right is registered with respect a disputed real property.

Civil Law. Transactions.

On July 23, 2009 the Plenum of the Supreme Arbitration Court issued Resolution No. 57 "On Certain Procedural Issues of Examination of Matters Relating to Non-Performance or Improper Performance of Contractual Obligations", which clarifies certain provisions aimed at preventing abuse of procedural rights during legal proceedings relating to non-performance or improper performance under agreements or holding them to be invalid or not made.

Commencement of legal proceedings in connection with challenging an agreement does not prevent examination of a claim for recovery under the agreement and such examination should not suspend the first-mentioned proceedings or enforcement of an award rendered in connection therewith. During the proceedings for recovery under the agreement an arbitration court should assess facts evidencing that the agreement has been made and is valid, regardless of whether or

not any objection or a counter claim has been brought. Regardless of what parties are involved in the proceedings for recovery under the agreement and in those relating to challenging thereof, a determination made with regard to facts of the case during the earlier proceedings should be taken into consideration by an arbitration court which examines the later claim. If the latter court comes to a different conclusion, it should state reasons for such dissenting conclusion.

The Plenum of the Supreme Arbitration Court explains that if during examination of the claim challenging an agreement the creditor brings a counter claim such claims should be examined in conjunction with each other as they are interrelated and the consolidated examination thereof will facilitate proper resolution of the matter. An award satisfying the claim challenging the agreement does not cancel a judicial act issued in the proceedings for recovery under such agreement; it rather serves the grounds for review of acts in connection with newly discovered facts.

Land Planning

- On July 30, 2009 the Russian Government issued the Resolution "On Approval of the Form of a Map (Plan) of a Land Planning Object and Related Requirements", No. 621.
- A map (plan) of a land planning object is a document that shows graphically and describes in words the location, size and boundaries of the object and other characteristics thereof. The map (plan) is made based on a description of the location of boundaries of a land planning object and/or afield determination of its boundaries in accordance with applicable law. The map (plan) of a land planning object is made using information from the state real property cadastre, cartographic material, remote sensing materials and afield measurement findings. The Resolution sets requirements for the text and graphic components of the map (plan) of a land planning object, map appearance and approves the form of the map (plan) of a land planning.
- On August 20, 2009 the Russian Government issued the Resolution "On Approval of Afield Determination of Boundaries of Land Planning Objects", No. 688, which describes the procedure for and manner of afield determination of boundaries of land planning objects.

Refinancing Rate

According to the information of the Central Bank of Russia dated August 7, 2009, the updated refinancing rate of the Bank of Russia effective from August 10, 2009 is 10.75 % per annum. The previous rate effective from July 13, 2007 was 11% per annum. Therefore, interest rates for operations effected by 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. Znamenska 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