
LAW FIRM

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NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

No. 11/2009
November 2009

Limited Liability Companies – Law Application Practice

The Federal Notarial Chamber published its Recommendations on the Application of Certain Provisions of the Federal Law on Limited Liability Companies (the "Recommendations" and the "Federal Law" respectively) for notarization of transactions with shares of limited liability companies (the "LLC"). The Recommendations, *inter alia*, state the legal approach of the notarial corps to the practical implementation of the Federal Law in respect of the said transactions.

The Recommendations note that subject to obligatory notarization are transactions for disposal of a share in the LLC by one participant to another participant of the LLC (except for the pre-emptive right), by the participants to third parties, and share pledge agreements.

The Recommendations further note that the list of documents which, according to the Federal Law, are to be required by notaries for the purpose of notarization of transactions with LLC shares is not exhaustive and depends on specific circumstances of a transaction, and enumerate other documents recommended for that purpose. If the documents submitted to the notary evidence that the transaction is void, e.g., disposal of the unpaid portion of a share, such transaction may not be notarized. Where the Federal Law establishes limitations that do not affect the validity of the transaction, the notary may attest such transaction and warn the parties of possible consequences.

The Recommendations substantiate the opinion of the Federal Notarial Chamber (the "FNC") that one instrument may not contain several share disposal transactions. According to the FNC, a specific transaction should be aimed at creating rights and obligations of a certain creditor and a certain debtor, therefore the number of obligations should correspond to the number of contracts giving rise to the obligations. The FNC also expresses its views regarding the possibility of amendment and termination of share disposal contracts.

It is noted that the authority of the selling (disposing) party to sell (dispose of) its share is confirmed on the basis of the company's charter effective at the time of the transaction, as is reflected in an excerpt from the Consolidated State Register of Legal Entities.

The Recommendations contain explanations regarding applicants for recordation of changes in the Consolidated State Register of Legal Entities in connection with the transfer of a share. In the transactions subject to obligatory notarization the proper applicants are the participants disposing of

their shares.

Based on the rules for the emergence of a lien by virtue of a contract or by the law, the FNC believes that the circumstances giving rise to a lien on the share by virtue of the law also include the so-called share sale on credit (i.e., the share is recognized as being pledged to the seller until its full payment by the buyer) and thus the share passes to the buyer with the concurrent establishment of encumbrance by a pledge. In the opinion of the FNC, a lien by virtue of a contract arises with respect to the pledged share as of the time of state recordation of the pledge in the Consolidated State Register of Legal Entities. It is the FNC's view that a pledge of the share occurs (by virtue of both a contract and the law) not at the time of execution of the pledge agreement but at the time of state recordation of the pledge in the Consolidated State Register of Legal Entities. A fee for notarization of a share pledge agreement is 0.5% of the agreement price, but no less than 300 rubles and no more than 20,000 rubles.

For the purpose of consummation of a share sale transaction and confirmation of the seller's rights to transfer the share it is explained that where the rights to the share were initially acquired by the seller under a contract entered into by an exchange of documents expressing an offer and its acceptance, a document issued by the company and containing information about the participant's offer, the quoted price, other conditions of sale and the acceptance of the offer may serve as an instrument expressing the contents of the initial share purchase transaction, made in a simple written form. Such company document should be issued and signed by the company's individual executive body.

Regarding determination of law applicable to the civil-law relationship in a share sale transaction with foreign participation, the Recommendations state that in the absence of international treaties envisaging the possibility of application of foreign law to transactions with shares of Russian companies subject to application shall be Russian law. The FNC believes that foreign law may be applied when the notary attesting a transaction with the Russian company's shares involving foreign participation establishes the legal capacity of the foreign citizen or the foreign company involved.

The Recommendations also contain explanations on the matters of spouses' joint ownership of a share in LLC, criteria for determination of the number of copies of the foundation agreement in the event of its notarization, notarization of copies of the foundation agreement, verification by the notary of payment for the disposed share, and other matters.

Joint Stock Companies

On August 13, 2009, the Federal Service for Financial Markets issued Order on the Peculiarities of Maintaining a Register of Registered Securities Holders by the Issuers of Registered Securities, No. 09-33/pz-n.

Operations in the register of registered securities holders (the "Register") should be recorded in accordance with the rules for maintaining the Register approved by the company's board of directors (supervisory committee) or the company's executive body if such issue is referred to its competence by the charter. According to the Order, the rules should contain, *inter alia*, the list of operations, the manner of and the deadlines for conducting the operations, the procedure for submission of documents on the basis of which the operations are conducted, the rules for registration, processing and safe keeping of incoming documentation, job description for persons that maintain the Register. The rules for maintaining the Register should be accessible by all interested persons.

The Order states that open joint stock companies and closed joint stock companies that have completed the public offering of their securities or are in the process of offering are obligated to disclose the rules for maintaining the Register in Internet. Closed Joint Stock Companies that do not offer their securities to the public are obligated to disclose the rules for maintaining the Register either in Internet or by sending certified copies of the rules to the shareholders. Any amendment of the rules for maintaining the Register should be disclosed at least 30 days before such amendment comes into force.

Under the general rule, joint stock companies may not impose a charge for conducting operations in the Register, provision of corresponding information, and for other actions connected with the maintaining of the Register.

Joint stock companies maintaining the Register themselves must file annual reports with the Federal Service for Financial Markets. The Order specifies the deadlines for filing the reports and the information the reports should contain. In particular, the reports are to provide a general information about the company, the number of placed securities, and the number and scope of operations conducted in the Register.

Banking – Court and Law Application Practice

In its Ruling of September 7, 2009, No. VAS-8274/09 (issued on a corresponding appeal), the Panel of Judges of the RF Supreme Arbitration Court expressed the Court's opinion that the imposition by banks of a charge for opening and servicing of loan accounts under loan agreements is unlawful, because such contractual provision violates consumer rights. In the view of the Court, the opening and servicing of a loan account may not be qualified as a separate banking service, since loan accounts are not bank accounts and are used to reflect in the bank's balance sheet the operations with loans being granted to and repaid by borrowers under loan agreements. Thus, the contractual provision imposing a charge for the opening of a loan account infringes upon the borrower's consumer rights granted by the law. The Ruling referred the case to the Presidium of the RF Supreme Arbitration Court for consideration and a review of the appealed court judgments in order to remove the controversies with law and establish uniformity in the construction and application by the courts of law rules.

Bankruptcy – Court and Law Application Practice

On November 5, 2009, the Presidium of the Supreme Arbitration Court issued Informative letter (No. 133) on Application of Article 5 of the Federal Law on Amendment of Certain Legislative Acts of the Russian Federation, dated July 19, 2009, No. 195-FZ, which gives explanations regarding a remuneration of court-appointed trustees.

The new procedure for determination of the amount of an appointed arbitration manager's remuneration and expenses on bankruptcy proceedings applies where a court-appointed manager is approved after the enactment of the amendment but in the bankruptcy proceedings initiated and conducted in accordance with previously effective rules (the Bankruptcy Law as amended on December 39, 2008).

Foreign Citizens

On November 23, 2009, by its Ordinance No. 1758-r, the RF Government established a quota for issuance to foreign citizens and persons without citizenship of permits for temporary residence in Russia for the year 2010. The total quota is 159,515 permits, out of which Moscow may issue 2,000 permits and the Moscow Region – 10,000 permits.

Refinancing Rate

According to the information published by the Central Bank of Russia on November 24, 2009, the rate of refinancing has been established at 9% per annum effective November 24, 2009. The previous rate 9.5% was effective as of October 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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