

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Antitrust Regulation

Federal Law on Amendment of the Federal Law on Competition Protection and Certain Legislative Acts of the Russian Federation, dated July 17, 2009, No. 164-FZ, is aimed at increasing the fight against monopolistic activity and unfair competition.

The new Law sets forth that the provisions of the Federal Law on Competition Protection are applied to the agreements of Russian and (or) foreign companies entered into abroad and to the actions of such companies where those agreements/actions concern the production means, intangible assets or shares (participation shares) of and rights with respect to companies doing business in Russia or otherwise influencing the state of competition in Russia; supplements the list of grounds on which the anti-monopoly authority may recognize the position of a company as predominant; determines conditions on the basis of which the position of a company having less than 35% share in the market of a certain commodity may be deemed predominant; indicates circumstances to be considered by the anti-monopoly authority in analyzing the state of competition; introduces changes in the provisions on the monopolistically high and the monopolistically low price of goods.

The new Law further defines the term "**a group of persons**" and amends the provision that makes it possible to ascertain a group on the basis of the whole set of criteria (Article 9(14) of the Law), changing the criterion for considering other persons as belonging to a group of persons which form one group with the same person; and introduces an additional criteria on the basis of which persons may be recognized as belonging to one group.

Anti-monopoly authorities have been granted the right to carry out **inspections** of compliance with the competition laws. Inspections may be scheduled and unscheduled. A scheduled inspection may be conducted upon expiration of 3 years from the date of incorporation (registration) of a legal entity (individual entrepreneur) or from the date of completion of the latest scheduled inspection. A scheduled inspection may be conducted no more frequently than once every 3 years. The grounds for unscheduled inspections include notifications and applications of individuals, legal entities, mass media communications that draw attention to the signs of violation of anti-monopoly laws. An inspection should be completed within 1 month, but this term can be extended by 2 months. The Law sets a procedure for access of the anti-monopoly authority's officers to the territory/premises of the person being inspected and vests in the inspectors the right to examine documents, territory, premises (except for the living quarters), and things of the person being inspected. The results of the inspection are reflected in a statement of inspection.

In the provisions on state control over economic concentration the indices requiring obtainment of the anti-monopoly authority's prior consent to performance of certain actions have been changed. In particular, prior consent is required for setting up a commercial organization where the aggregate value of the assets of the founders (their groups of persons) and the persons contributing shares, participation shares, property (except for money) to the charter capital exceeds **7 billion rubles**, or the aggregate revenue of the said persons in the last calendar month of the year exceeds **10 billion rubles** (previously, the figures were **3 billion** and **6 billion** respectively). Expressly excluded from the regulation has been a cash contribution to the charter capital of the company being set up. Besides, amended has been the ground on which obtainment of prior consent to setting up or reorganization was not required. At present, setting up or reorganization without prior consent is lawful where it is done by persons belonging to one group not only in terms of compliance with the procedure for prior submission of a corresponding list of persons to the anti-monopoly authority, but also in terms of actual formation of such group as per the criteria indicated in Article 9 of the Law.

The indices requiring prior consent of the anti-monopoly authority to transactions with shares, participation shares, property of commercial organizations or rights with respect to commercial organizations have been increased. According to new rules, prior consent to such transactions is required where the aggregate value of the assets of the buyer and its group of persons and those of the entity which shares and (or) property or the rights with respect to which are sold and its group of persons exceeds **7 billion rubles** (formerly, **3 billion rubles**), or where their aggregate revenue in the previous year exceeds **10 billion rubles** (formerly, **6 billion rubles**), and provided that the aggregate value of the assets of the entity which shares, participation shares and (or) property or the rights with respect to which are acquired and its group of persons exceeds **250 million rubles** (formerly, **150 million rubles**). Similarly, intra-group transactions without prior consent but with subsequent notification have become possible, the fact of belonging to a group of persons being determined on the basis of the criteria indicated in Article 9 of the Law (formerly, such transactions required prior submission of the list of persons in the group).

The indices for subsequent notification of the anti-monopoly authority have been doubled.

The new Law increases the term for notification in connection with receipt of the list of persons forming a group to fourteen days (as compared to ten days); sets forth the consequences of the provision of untrue information about the persons in the group; amends the list of persons applying to the anti-monopoly authority; supplements the list of documents and information to be submitted by the applicant together with the corresponding request or notification; amends the provisions on the procedure for consideration of applications and notification by the anti-monopoly authority; supplements the list of grounds for claims concerning violation of anti-monopoly laws and consideration of such claims by the anti-monopoly authority, and sets a three-year limitation period (time bar) in respect of such claims; grants the anti-monopoly authority the right to combine and separate cases concerning violation of anti-monopoly laws.

The provisions of Federal Law No. 164-FZ on amendment of the Law on Competition Protection will come into force on August 23, 2009.

Federal Law on Amendment of the RF Code of Administrative Offences (the "Code") and Certain Legislative Acts of the Russian Federation, dated July 17, 2009, No. 160-FZ, has been adopted to introduce more rigorous measures for violation of antimonopoly laws. It defines new types of administrative offences in the field: *abuse of the predominant position by an economic entity whose share in the market of certain commodity is less than 35%* (Article 14.31.1 of the Code), *coordination of economic activity* (Article 14.32(2) of the Code); increases the amount of fines imposed for making agreements limiting competition and for concerted actions limiting competition (Article 14.32 of the Code); and sets forth conditions which a person that voluntarily notified the anti-monopoly authority of having made an impermissible agreement or of having performed impermissible actions should meet to be relieved from administrative liability for the corresponding offence.

Federal Law No. 160-FZ will come into force on August 22, 2009.

Bankruptcy

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation, dated July 19, 2009, No. 195-FZ, introduces changes into, *inter alia*, the Federal Law on Insolvency (Bankruptcy).

According to the new Law, as of the date of the supervision order, a claim to the debtor's pledged property, including a claim to such property in an out-of-court procedure, is not allowed. The Law also supplements the provisions on sale of the pledged property in certain bankruptcy procedures; amends the provisions setting the amount of compensation (in percent) of the court-appointed administrator and the amount of fees of persons retained by the administrator to ensure discharge of his duties; amends the provision on the minimum insurance money under contracts for insurance of liability of court-appointed administrators in specific bankruptcy cases; establishes a procedure for reimbursement of the plaintiff for court expenses and expenses on payment of the administrator's compensation incurred by the plaintiff due to the insufficiency of the debtor's funds (the plaintiff is not responsible for payment of the court-appointed administrator's compensation). As of the date of the supervision order, creditor claims, ***other than those concerning current payments***, may only be made in accordance with the requirements of the Law on Insolvency (Bankruptcy). Now, the first creditors meeting may choose both a self-regulating organization introducing candidates for administration and a candidate from among those suggested by the organization. The Law specifies what information the court-appointed administrator's proposal regarding sale of the debtor's enterprise should contain. It also establishes that in the event that the debtor's assets are replaced during bankruptcy proceedings the debtor should be ***the sole founder*** of the open joint stock company (companies).

The provisions of Federal Law No. 195-FZ amending the Law on Insolvency (Bankruptcy) came into force on July 22, 2009.

Non-Profit Organizations

Federal Law on Amendment of the Federal Law on Non-Profit Organizations No. 70-FZ was adopted on July 17, 2009.

The new Law states that in the course of state registration of non-profit organizations the Ministry of Justice and its territorial divisions may not require submission of documents other than those specified by the law. Improper execution of documents required for state registration may no longer serve as a ground for refusal of registration, but may only lead to a suspension of the registration process for a period not exceeding three months during which the applicant must bring the documents in compliance with corresponding requirements. Upon submission by the applicant of properly executed documents, the term set for state registration begins anew.

The grounds for refusal of state registration of a non-profit organization have been supplemented with the following: the corresponding decision was made by the non-profit organization's officer or management body lacking authority; the information provided to the registering authority turns out to be untrue; the deficiencies that caused suspension of the registration process have not been remedied within the set term. The decision to refuse state registration or suspend the state registration process should be issued by the registering body within 14 business days, and the applicant should be notified accordingly within 3 business days from the date of the decision.

Persons that do not meet the requirements of law to the founders (participants, members) of a non-profit organization may not act as such. When a non-profit organization is liquidated, payments to creditors of the third and the fourth order should be effected upon expiration of one month from the date of approval of an interim liquidation balance sheet (previously, that rule applied to creditors of the fifth order). Changes have been made in the provisions on control over the activity of non-profit organizations.

The majority of the provisions of Federal Law No. 70-FZ came into force on August 1, 2009 (the provisions regarding control over the activity of non-profit organizations will come into force as of January 1, 2010).

Mortgage

Federal Law on Amendment of the Federal Law on Mortgage No. 166-FZ was adopted on July 17, 2009.

Any borrower being the mortgagor under a mortgage agreement is now entitled to insure the risk of liability to its creditor for non-performance or improper performance of the obligation to repay the loan. Previously, such right was vested in a borrower being the mortgagor under a contract for mortgage of a home or an apartment.

The new Law supplements the provisions regarding a claim to the mortgaged property **in an out-of-court procedure**; sets forth circumstances the concurrent existence of which makes it impossible to make a claim to the mortgaged property without a court order and any change in which allows to avoid court proceedings. Besides, where a claim to the mortgaged property is made in an out-of-court procedure, should the mortgagor and the mortgagee have provided for such procedure in an agreement which states that the mortgaged property is purchased by the mortgagee for itself or for third parties with a set-off of the purchase price against the mortgagee's claims to the debtor secured by the mortgage, the purchase price should be **equal** to the fair market value of such property as determined by a professional appraiser.

The provisions regarding mortgage of an enterprise, building, construction and non-residential premises have been supplemented as follows. Unless the federal law or a contract stipulates otherwise, a building/construction and the land under it or non-residential premises that were purchased in full or in part with money borrowed from a bank or other credit organization, or from another company specifically for that purpose are regarded to be in mortgage as of the time of state registration of the borrower's title to the building/construction or the non-residential premises and title or lease rights to the land. The mortgagees under such mortgage are the persons that lent the money.

Federal Law No. 166-FZ came into force on August 2, 2009.

The Rate of Refinancing

According to the information of the Central Bank of Russia of July 10, 2009, the rate of refinancing was established at 11% per annum as of July 13, 2009. The previous rate 11.5% was effective as of July 5, 2009.

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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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