

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Securities Market

Federal Law on Amendment of the Federal Law on the Securities Market and Article 5 of the Federal Law on Protection of Rights and Lawful Interests of Investors in the Securities Market, No. 74-FZ, establishing a new procedure for placement and circulation of securities of foreign investors in Russia, was adopted on April 28, 2009.

Foreign securities are allowed to be circulated in Russia, provided they have been assigned an international code (number) of securities identification and an international code of the financial instruments classification, and have been qualified as securities in accordance with the procedure established by the Federal Service for Financial Markets ("FSFM"). Allowed for placement and (or) public circulation in Russia may be securities issued by: foreign organizations founded in the states that are members of the Organization for Economic Co-operation and Development (OECD), members or observers of the Financial Action Task Force on Money Laundering (FATF) and (or) members of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval); foreign organizations founded in the states and the foreign states themselves (or their central banks) with which Russia has entered into an agreement for interaction of governmental agencies in the regulation of the securities market; international financial organizations on the list approved by the RF Government.

There is a ban in Russia on public offering and trading of securities if their public offering (trading) is not allowed or is not provided for by Russian laws, as well as of documents bearing monetary and other obligations but failing to be qualified as securities under Russian laws.

Securities of foreign issuers are allowed to be offered in Russia subject to registration of the offering prospectus by the FSFM and to be traded on the

condition of their listing with a Russian stock exchange. Such listing may be obtained on application of a foreign issuer or a broker that signed the offering prospectus, provided that the securities have been listed at a foreign stock exchange being on the list approved by the FSFM and may be offered to the public at large.

A foreign issuer's securities that comply with the Law admission requirements but are not listed with a Russian stock exchange are allowed to be traded in Russia by the decision of the FSFM, if such securities meet the criteria defined in the Law (including liquidity factors and investment risk factors set by the FSFM). The FSFM makes such decision on application of a Russian stock exchange. Concurrently, a decision to register the offering prospectus is made.

Title to foreign securities allowed for public offering (trading) in Russia is recorded by Russian depositaries that maintain a corresponding account with the foreign organization keeping a record of the rights to the issuer's securities and being on the list approved by the FSFM.

Foreign securities which are not allowed for public offering and (or) trading in Russia and foreign financial instruments which are not recognized as securities under the Russian law may not be offered in any form and by any means, including advertizing, to the public at large and to persons other than the qualified investors. Their offering and trading in Russia are subject to the requirements and limitations established for trading of securities intended for qualified investors. A stock exchange may admit for listing such securities intended for qualified investors, but is not allowed to disclose and provide to any interested person information about such securities and transactions with them.

Besides, the Law lists instances where the offering of foreign securities may be suspended, prescribes the procedure for formalization of the offering completion, sets forth requirements to the offering prospectus, conditions of termination/resumption of the trading, prescribes the procedure for disclosure of information about foreign securities by Russian stock exchanges. The Law also regulates the issues of liability for the misstatement of facts in the securities prospectus.

The Federal Law entered into force on May 14, 2009.

Bankruptcy

Pursuant to Federal Law on Amendment of Certain Laws and Regulations of the Russian Federation, dated April 28, 2009, No. 73-FZ, new provisions have been introduced into bankruptcy law.

The Federal Law on Bankruptcy (Insolvency) has been supplemented with a new chapter on contestation of debtor's transactions. A claim challenging the debtor's transactions is adjudicated by the state commercial court as a part of bankruptcy proceedings.

The debtor's transaction may be found null and void if it was made during the year preceding the acceptance of the debtor's bankruptcy notice, if pursuant to such transaction the debtor received a disproportionate consideration, including where the price of the transaction differs for the detriment of the debtor from the price at which similar transactions are made in comparable circumstances. Transactions made by the debtor during three years prior to the acceptance of its bankruptcy notice and aimed at causing damage to the property rights of its creditors may also be found invalid. Such transactions are regarded as shady transactions. The state commercial court may find the debtor's transactions invalid, if they entailed a preference of certain creditors before other creditors, in particular, changed the order of satisfaction of the creditors' claims.

Once the debtor's transaction is invalidated, all property delivered by the debtor to the buyer under the transaction must be returned to the bankruptcy assets. If this is not possible, the buyer should pay the actual purchase value of everything received from the debtor under the transaction.

Amendments have been made in the Federal Law on Insolvency (Bankruptcy) of Credit Organizations. Now, the head of a credit organization, upon discovery of the signs of bankruptcy, must notify the Bank of Russia to this effect and call an extraordinary meeting of founders (participants) of the credit organization for consideration of the issue of liquidation and application to the Bank of Russia with a request to annul or revoke the credit organization's license for banking operations. The extent of liability of the administration and founders (participants) of the credit organization is determined by a court with regard for the damage caused through the fault of corresponding persons.

Federal Law No. 73-FZ enters into force on June 4, 2009.

Pursuant to Governmental Decree on Amendment of the Regulations on the Ministry of Economic Development of the Russian Federation, dated April 30, 2009, No. 387, the functions of regulation of the activity of court receivers and their self-regulating organizations are assigned to the Ministry of Economic Development of Russia. The Ministry's competence includes approval of the procedure for maintaining the register of court receivers being members of self-regulating organizations, procedure for maintaining the Consolidated State Register of Self-Regulating Organizations of Court Receivers, procedure for formation and maintaining the Consolidated Federal Register of Data on Bankruptcy.

The Governmental Decree entered into force on May 19, 2009.

Bankruptcy – Court and Law Application Practice

The Presidium of the RF Supreme Arbitration Court has developed recommendations regarding consideration of disputes arising out of bankruptcy.

In the Informative Letter on Certain Issues of the Practice of Application by Arbitration Courts [state commercial courts] of the Provisions of the Second Paragraph of Article 66(1) of the Federal Law on Insolvency (Bankruptcy), dated

April 14, 2009, No. 129, the Supreme Arbitration Court elucidates the issues connected with the claims of court receivers for application of the consequences, as determined by law, of the invalidity of void transactions and gives recommendations regarding characterization of invalid transactions as voidable or void in the consideration of claims of court receivers. Voidable transactions include, i.a.: transactions aimed at performance/termination of pecuniary obligations that are prohibited upon appointment of a court receiver; transactions aimed at setting off of similar counter-claims, if it entails a change in the order of satisfaction of the creditors' claims; transactions made without consent of the court receiver; other transactions violating the prohibition imposed by the Bankruptcy Law. Recognized as void are, i.a., transactions satisfying the founder's (participant's) claim to be given his share in connection with his withdrawal; transactions satisfying claims based on the resolutions on payment of dividends or distribution of profits passed after the appointment of the court receiver; special partnership agreements entered into after the appointment of the court receiver.

Informative Letter of RF Supreme Arbitration Court, dated April 14, 2009, No. 128, gives recommendations regarding consideration of disputes connected with contestation of the debtor's transactions on the ground of Article 103 of the Bankruptcy Law and elucidates the issues of invalidation of: transactions made by the debtor with an interested person; transactions aimed to change the deadlines for performance by the debtor of its creditors' claims, in particular, shift a creditor's claim to the category of current claims. The Informative Letter further gives recommendations on the issues of contestation of the debtor's claims set off against the earlier counter-claim of a creditor, which entailed a preferential satisfaction of the creditor's counter-claim; contestation of agreements for pledge of the debtor's property; performance by the debtor of surety agreements entailing preferential satisfaction of the creditors' claims. The Informative Letter indicates that the right to contest the debtor's transactions entailing preferential satisfaction of the claims of certain creditors before other creditors belongs, in particular, to the person that became the debtor's creditor after the contested transaction has been made. For invalidation of a transaction on this ground, performance of obligations to other creditors should not necessarily be due by the time of making of the contested transaction.

Elucidations and recommendations regarding contestation of the debtor's transactions in bankruptcy proceedings are also contained in Ruling of the Plenum of the RF Supreme Arbitration Court on Certain Issues Connected with Contestation of Transactions on the Grounds Stipulated by the Federal Law on Insolvency (Bankruptcy), dated April 30, 2009, No. 32.

Refinancing Rate

On May 13, 2009, the Central Bank of Russia informed that as of May 14, 2009 the refinancing rate of the Bank of Russia would be 12% per annum. The previous refinancing rate 12.5% per annum had been effective as of April 24, 2009. In this connection the rates of interest on the 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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