
LAW FIRM

ANDREY GORODISSKY & PARTNERS

NEWSLETTER

REVIEW OF THE NOTABLE CHANGES IN LEGISLATION

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Joint Stock Companies

Federal Law on Amendment of the Federal Law on Joint Stock Companies and Article 30 of the Federal Law on the Securities Market, No. 115-FZ, was adopted on June 3, 2009.

Shareholders agreements:

The Joint Stock Companies Law is supplemented with provisions establishing legal grounds for entering into shareholders agreements. The shareholders agreement ("SA") is defined as an agreement for the exercise of rights certified by shares and (or) for the specific exercise of rights attaching to shares. The SA may provide for the shareholders' obligation to vote specifically at the general meeting of shareholders, coordinate among themselves a certain voting, purchase or sell shares at a pre-determined price and (or) upon the occurrence of certain circumstances, abstain from selling shares until the occurrence of certain events, and perform in concert other actions connected with the management of the company, its activity, reorganization and liquidation.

The SA should be made with respect to all the shares owned by each party to the SA, in a written form as a single document which is signed by the parties thereto and is binding only on the parties thereto. A breach of the SA may not serve as the ground for recognizing corporate decisions as invalid. A contract entered into by a party to the SA in violation of the SA may be found by a court invalid upon a claim of the interested party to the SA, provided it has been proved that the other party to the SA was or should have been aware of the limitations set by the SA.

The SA may provide for the means of securing performance of obligations following from the SA and for the measures of civil-law liability for a failure to perform or improper performance of such obligations. The parties' rights based on the SA are subject to judicial protection.

Established are the grounds and procedure for a mandatory notification of the company by the person acquiring on the basis of the SA the right to determine the voting procedure at the general meeting of shareholders, and for notification about executed shareholders agreements.

Management bodies:

As amended, the Joint Stock Companies Law allows shareholders to set in their charter a longer term (as compared to the formerly prescribed 30-days term) for suggesting candidates to the board of directors and to the position of the individual executive body of the company.

For passing decisions at the board meetings, the company's internal documents may set a bigger number of votes than the simple majority of votes of directors present at the meeting.

Formerly, the Law allowed passing of the board decisions by a smaller number of votes set in the company's internal documents.

In respect of appointment or early termination of the powers of the individual executive body of the company by the board of directors the amended Joint Stock Companies Law provides for the consequences of the board's failure to pass a corresponding decision at two consecutive board meetings or during 2 months following the date of termination of the individual executive body's powers. Under certain circumstances defined by the law, resolutions on the said issues may be passed by the general meeting of shareholders in the manner prescribed by the Joint Stock Companies Law.

The Federal Law of June 3, 2009 came into force on June 8, 2009.

Bankruptcy – Court and Law Application Practice

The Presidium of the RF Supreme Arbitration Court, in its Informative Letter of June 4, 2009 (No. 130) on Certain Issues Connected with the Transitional Provisions of the Federal Law on Amendment of the Bankruptcy Law, dated December 30, 2008, No. 296-FZ, gives recommendations regarding application of the amended Bankruptcy Law.

It is noted, *inter alia*, that the amended Bankruptcy Law is to be applied by courts to bankruptcy cases in which rulings on acceptance of applications were issued after December 31, 2008. In bankruptcy proceedings instituted before December 31, 2008 the Law applies without regard for the amendments until completion of the procedure (financial rehabilitation, bankruptcy administration, etc.) introduced before that date. Upon completion of the corresponding procedure, further consideration of the case and introduction of a new procedure are governed by the amended Bankruptcy Law.

Approval of a trustee in bankruptcy after enactment of the amended Bankruptcy Law is to be effected with regard for the amendments. If at the time of approval the bankruptcy procedure is conducted without regard for the amendments, the terms and conditions of the trustee's remuneration will also be determined on the basis of the former law provisions until completion of the corresponding bankruptcy procedure.

The Bankruptcy Law (with or without amendments) applied in a bankruptcy case should be applied by state commercial courts in other cases as well with respect to claims made to the debtor beyond the bankruptcy case. The amendment of the Bankruptcy Law does not exclude the possibility of holding a trustee in bankruptcy administratively liable.

Antitrust Regulation – Court and Law Application Practice

On April 21, 2009, the Presidium of the RF Supreme Arbitration Court issued Ruling No. 15956/08 in the case involving the anti-monopoly agency and trade companies. The Ruling expresses the Presidium's view regarding the criteria for establishing that actions resulting in the imposition of disadvantageous contractual terms on the counterparts and the obstruction of access to the market have been coordinated.

As a matter of elaboration of the attitude of the Supreme Arbitration Court's Plenum, expressed earlier in the explanations regarding application of anti-monopoly laws, the Ruling notes that the anti-monopoly agency can establish the parties' early awareness of each other's coordinated actions not on the basis of the adduced evidence of receipt by them of specific information, but proceeding from the commodities market general situation which makes predictable their behavior as a group model allowing them to gain advantages without competition. Similarly, the fact of imposition may also be stated where the result of coordinated actions in the conditions of a specific market excludes the possibility of reaching an agreement with its participants about other terms of offer or demand.

For the actions of commercial entities to be recognized as coordinated, they should not

necessarily begin simultaneously. The fact of performance of such actions at the time of their discovery by the anti-monopoly authority would be enough. The Ruling clarifies that for regarding actions as coordinated, compared should be the actions of each party whose involvement has been recognized.

Arbitration Process – Court and Law Application Practice

The Plenum of the RF Supreme Arbitration Court, in its Ruling on the Application of the RF Code of Arbitration Procedure in the Consideration of Cases by the Arbitration Court of Appeal Instance, dated May 28, 2009, No. 36, elucidated certain issues connected with the procedure for consideration of cases by the appeal instance of state commercial courts. The Ruling, *inter alia*, gives explanations regarding persons that are not involved in the case, but have the right to file an appeal, if their rights and obligations are directly affected by a judicial deed (in particular, where such persons are not mentioned in the reasons or in the operative part of the judicial deed), including, *inter alia*, creation of obstacles for the exercise of their subjective right or proper performance of an obligation to one of the disputing parties. The ruling further elucidates which judicial deeds are subject to appeal in the appeal procedure, gives explanations regarding appeal of judicial deeds separately from appeal of a judicial deed by which consideration of the case on the merits is terminated; appeal of several judicial deeds rendered in one case; calculation of the limitation period for filing an appeal, consequences of it being missed and the procedure for reinstatement of the missed limitation period by a court; grounds and procedure for dismissal of the appeal paper; and procedure for a suspension of enforcement of the judicial deed being appealed.

The previous explanations regarding similar issues are recognized as having lost effect.

Enforcement Process

The RF Government adopted Decree on the Rules on Sending for Publication in Internet of Information About Public Auctions of Pledged Immovable Property Subject to Sale in Enforcement Process, dated June 23, 2009, No. 526.

When pledged immovable property is subject to sale at a public auction in the course of enforcement process, the official website of the Federal Service of Court Bailiffs and the websites of its territorial divisions should publish information about the immovable property (description, place and other characteristics); the amount of deposit, the deadline and manner of deposit payment; the deadline and manner of payment of the purchase price; and the auction organizers. The websites should also contain the details of the site administrator/operator.

Information about the forthcoming auction is to be sent by the auction organizer no later than 10 days and no earlier than 30 days before the day of the auction to the site operator who should place the information within 1 business day of its receipt. The information is to be easily accessible for users round-the-clock, free of charge and without any limitation.

The Federal Service of State Registration, Cadastre and Cartography

The RF Government's Decree of June 1, 2009, No. 457, approved the Regulations on the Federal Service of State Registration, Cadastre and Cartography. The Regulations determine the powers and activity of the said Federal Service (Rosreestr).

The functions of Rosreestr are: to register title to and transactions with real estate, keep the Consolidated State Register of Title to and Transactions with Real Estate, conduct cadastral appraisal of land, carry out land management and technical inventory of capital construction projects, keep the state cadastre of real estate, keep consolidated state registers of self-regulating organizations of appraisers and trustees in bankruptcy, and exercise other powers conferred on Rosreestr by the Regulations.

Rosreestr is under the authority of the RF Ministry of Economic Development.

Legal Status of Foreign Citizens

Federal Law on Recognition as Lapsed of Certain Provisions of Legislative Acts of the Russian Federation on the Legal Status of Foreign Citizens in the Russian Federation, dated June 3, 2009, No. 105-FZ, has excluded the provision of the Law on the Legal Status of Foreign Citizens in Russia, which provided for a possibility of non-granting or cancellation of permits for temporary residence of foreign citizens in the event that quotas set by the RF Government had been exhausted or reduced.

The Federal Law entered into force on June 18, 2009.

Provision of Data from the Consolidated State Register of Legal Entities and the Consolidated State Register of Individual Entrepreneurs in Electronic Form

The Federal Tax Service, by its Order of March 31, 2009 No. MM-7-6/148@, approved the Procedure for provision in electronic form of open and publicly available data contained in the Consolidated State Register of Legal Entities and the Consolidated State Register of Individual Entrepreneurs.

The said data are provided in electronic form by the Federal Tax Service and its territorial departments to individuals and legal entities with the use of web-technology by way of establishing access to the Federal Tax Service's site in Internet. Access is provided for a fee upon an application made out in the set form (attached to the Procedure) and payment of the fee (confirmed by the original receipt).

Refinancing Rate

As of June 5, 2009, the refinancing rate was established at 11.5% per annum, the previous refinancing rate 12% per annum being effective as of May 14, 2009. The rates of interest on the Central Bank's operations 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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