

# ANDREY GORODISSKY & PARTNERS

## NEWSLETTER

### REVIEW OF THE RECENT NOTABLE CHANGES IN LEGISLATION

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#### **Changes in Bankruptcy Law**

There has been adopted the Federal Law on Introduction of Changes into the Federal Law on Insolvency (Bankruptcy), dated December 30, 2008, No. 296-FZ.

The said Law defines more exactly the applicable bankruptcy procedures, the status, rights, obligations and liability of a trustee in bankruptcy; introduces changes in the procedures for establishment and activity of self-regulated organizations of bankruptcy trustees, and sets forth procedures for governmental supervision over the activities of bankruptcy trustees and self-regulated organizations of bankruptcy trustees.

The Federal Law on Introduction of Changes into the Federal Law on Insolvency (Bankruptcy), dated December 30, 2008, No. 296-FZ, was published and took effect on December 31, 2008.

#### **Changes in the Procedure for Reorganization of Legal Entities**

Essential changes in the procedure for reorganization of legal entities came into force on December 31, 2008. Article 60 of the RF Civil Code, providing for guaranties of the rights of creditors of a legal entity being reorganized, has been restated; the Federal Law on State Registration of Legal Entities has been supplemented with new Article 13.1 on the procedure for giving notice of reorganization of a legal entity. Relevant amendments have been made in the Federal Law on Joint Stock Companies and the Federal Law on Banks and Banking.

A legal entity being reorganized is obligated to give the registering authority a notice of its reorganization, accompanied with the resolution on reorganization, within three days after the date of such resolution. Based on the notice, the registering authority makes in the Consolidated State Register of Legal Entities (EGRUL) an entry to the effect that the legal entity is under reorganization. Once the entry is made, the legal entity being reorganized is obligated to give two announcements (one in a month) about its reorganization in periodicals that publish information about registration of legal entities.

Of importance are changes in the provisions concerning impact of the decision about reorganization on creditors. A creditor of the legal entity under reorganization is entitled, where its right of claim arose prior to the publication of the announcement about reorganization, to demand early performance of the relevant obligation by the debtor, and only in case such early performance is impossible may the creditor claim termination of the obligation and compensation of relevant losses. Moreover, where an open joint stock company is reorganized (by way of merger or otherwise), special rules have been set: a creditor may seek in court early performance of the obligation unperformed by the legal entity being reorganized or termination of the obligation and compensation of losses in the event the legal entity being reorganized, its shareholders or third parties failed to provide a sufficient security of performance of relevant obligations. Creditors may make the above-referenced claims within 30 days following publication of the last announcement about the legal entity's reorganization.

Also introduced is a provision imposing on the entities that emerged as a result of reorganization (continue to exist) joint and several liability for the obligations of the reorganized legal entity, if claims of early performance or termination of obligations and compensation of losses have not been satisfied by the time of completion of the reorganization.

Established are specific procedures for reorganization of credit institutions by way of merger or otherwise. A credit institution being reorganized must give its creditors a notice and publish an announcement about its decision to undergo reorganization. State registration of credit institutions emerging as a result of reorganization will not be possible unless the giving of such a notice is confirmed.

Federal Law on Introduction of Changes into the Federal Law on Banks and Banking and Certain Other Legislative Acts of the Russian Federation, dated December 30, 2008, No.315-FZ, which introduces the above-referenced amendments, was published in *Rossiyskaya Gazeta*, No. 267 of December 31, 2008, and took effect as of the date of its publication.

## **Changes in the Laws on Limited Liability Company**

On December 30, 2008, the President of the RF signed the Federal Law on Introduction of Amendments into the First Part of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation, N 312-FZ, which significantly amends the provisions on the limited liability company ("LLC"). The said Federal Law will come into force on July 01, 2009. Constitutive documents of LLCs established before that date must be brought into compliance with the changes by January 01, 2010.

The Founders Agreement is no longer a constitutive document. Thus the Charter is now the only constitutive document of LLC. The legislators assign to the Founders Agreement the role of an agreement determining the procedure for establishment of the company.

LLC participants are afforded an opportunity to enter into an agreement as to how they will exercise their rights, which is a separate type of agreement standing aside from the founders' agreement. In such agreement founders may assume obligations to exercise their rights in a certain fashion or to abstain from exercising them, including voting in a certain manner at the general meeting, selling of their participatory shares at a certain price and (or) upon occurrence of certain events, or abstaining from sale of a share until occurrence of certain events, and to take other steps in connection with the management of the company and with the establishment, activities, reorganization, and liquidation of LLC.

As of the effective date of the Law, the powers to establish and terminate LLC's executive body before expiry of its term may be delegated to the board of directors of the company. Such delegation of powers by the general meeting must be expressly stipulated in the charter of LLC.

The possibility for a participant to withdraw from the company must be provided for by the charter, otherwise the right to withdraw will not be exercisable and the participant will be entitled to demand that the company buy out its share in instances provided for by law. The term within which the actual value of the withdrawing participant's share must be assessed has been changed, and a special three-month term for payment of the actual share value has been set.

Where a share is intended to be sold to a third party, the preemptive right may be exercised at the price predetermined in the charter. Participants may also exercise their preemptive right with respect to a part of and not necessarily the entire share offered for sale.

Transactions for alienation of a share (or part thereof) or pledge of a share require certification by a notary. Failure to comply with the notarization requirement entails invalidity of the transaction. It is established that the share will pass to the buyer as of the time of notarization of the transaction or as of the time of recordation of corresponding changes in the EGRUL, where no notarization is required. Under the general rule, an application for recordation of changes in the EGRUL is to be filed by the notary, who has notarized the transaction, within three days of such notarization. Thus, the procedure for alienation of shares in the charter capital of LLC and recordation of relevant changes has undergone a considerable alteration.

### **New Law on Patent Attorneys**

Pursuant to the provisions of Part 4 of the Russian Civil Code, the Federal Law on Patent Attorneys, N 316-FZ, was adopted on December 30, 2008.

The Law governs the activity of patent attorneys in Russia, defines their rights and duties, establishes requirements which patent attorneys should meet and the procedure for attestation of patent attorneys and their registration with the federal authority for intellectual property.

As of the effective date of the Law, the term "patent attorney" or a word combination containing such term may only be used by patent attorneys, their employers, public associations or self-regulated organizations of patent attorneys.

Based on the Law, patent attorneys carry out activities relating to legal protection of intellectual property (such as inventions, useful models and industrial designs, etc.) and means of individualization (trade name, trademarks, service marks, etc.), protection of intellectual property rights, acquisition or disposition of exclusive rights to intellectual property. The Law determines the forms of patent attorneys' activity and the forms of control over it, including creation and competence of an appellate commission at the federal authority for intellectual property, and sets sanctions that may be imposed on patent attorneys.

The Federal Law on Patent Attorneys, dated December 30, 2008, N 316-FZ, was published in *Rossiyskaya Gazeta*, No. 267 of December 31, 2008, and will take effect upon expiration of ninety days after the date of its official publication.

## **Use of the Residential Address of CEO of an Organization as its Legal (Registered) Address**

By its Letter of December 3, 2008, N 03-01-11/5-159, the Russian Ministry of Finance has notified that for the purpose of state registration of a legal entity its standing executive body may be located at the residential address of CEO or other officer authorized to act on behalf of the legal entity without a power of attorney.

According to the Russian Ministry of Finance, legislation of the Russian Federation contains no prohibition against location of a legal entity's standing executive body at the address of its CEO.

In particular, the Letter states, with reference to applicable laws and court practice, that decisions of registering authorities refusing registration of legal entities at the permanent residential address of individuals being their standing executive bodies do not correspond with law.

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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 notable 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 phone number +7 (495) 933 75 67 or e-mail [office@agp.ru](mailto:office@agp.ru)