

Clearing Activities

The Federal Law “On Clearing and Clearing Activities” of February 7, 2011, No. 7-FZ, was published. It sets forth in particular the key requirements applicable to clearing activities and clearing organizations and the fundamentals of national legal regulation of clearing.

The Law defines the term “clearing” – this is identification of obligations due which arise from contacts, including but not limited to those resulting from obligation netting (i.e. full or partial termination of obligations admitted to netting via offset and/or in another way provided for by the clearing rules), and preparation of documents (information) providing the grounds for termination and/or performance of such obligations.

The Law establishes requirements for the organizational structure, management bodies of a clearing organization, competencies of its employees and the “clearing rules” approved by it – the key document governing relations of the clearing participants. A clearing agreement is entered into by joining on the contractual terms and conditions provided for by the clearing rules.

The Law sets forth a restriction on carrying on clearing activities in conjunction with manufacturing, trade or insurance business. Clearing companies are not allowed either to maintain registers of securities holders or act as trustees for joint stock or unit investment funds or non-government pension funds, and may not delegate powers of the single-person executive body to a manager or a managing company. The Law also sets a number of restrictions on types of activities of clearing organizations and specific requirements for them (in particular obligation to file consolidated financial statements, to maintain internal control and to disclose and protect information, etc.). The Law sets requirements for performance of functions of a central counterparty and for organizations performing such functions, as well as equity funds requirements and statutory requirements for clearing companies.

The Law defines the consequences of invalidity of a contract under which an obligation is held eligible for clearing and governs the procedures for opening and use of a trading account and a clearing account. It also regulates issues relating to guarantees of completion of settlement of obligations held eligible for clearing and issues relating to management of risks associated with clearing.

Government regulation of clearing activities and control thereof are performed by a federal financial markets authority. The Law will go into force on January 1, 2012.

Bankruptcy

The Resolution of the Plenum of the RF Supreme Arbitration Court “On Certain Issues Connected with Application of Chapter III of the Federal Law “On Insolvency (Bankruptcy)”, dated December 23, 2010, No. 63, was published. Chapter III allows for challenging some transactions and, in particular, actions aimed at the performance of obligations and duties arising under civil, employment, family, tax, customs or procedural laws, as well as actions performed in pursuance of court acts or legal acts of other government authorities. In particular, the Resolution sets a provisional list of transactions and actions of a debtor (other persons’ actions for the debtor’s account), which may be challenged under the said procedure. The resolution defines the bankruptcy procedure stages (i.e. outside management and competitive procedure) during which a request for challenging debtor’s transaction may be filed, and clarifies the possibility of taking into account the signs of grounds for invalidation of transactions, established by the said Chapter of the Law, at other stages of the bankruptcy procedure.

The Resolution provides explanations on the following procedural issues: procedure for identification of a competent court for consideration of a request for challenging debtor’s transactions; content and form of such request; possibility of initiation of the request by the creditors’ meeting or committee; possibility of third parties’ participation in the legal proceedings; fact to be proven, procedure for reimbursement of legal costs.

It also explains in detail the consequences of invalidation of a transaction: the Resolution determines the moment of restoration of the debtor’s obligation to respective creditor and the creditor’s claim with respect to the debtor (restored claim); procedure for return of respective property to the bankruptcy assets; obligation to include the restored claim in the register of creditors’ claims.

Corporate Relations. Court and Law Enforcement Practices

1. The Information Letter of the Presidium of the RF Supreme Arbitration Court “On Some Issues Relating to the Practice of Consideration of Disputes over Provision of Information to Participants of Business Entities by Arbitration Courts” dated January 18, 2011, No. 144, was published. It clarifies issues relating to provision of information on request of participants of LLC or shareholders of JSC.

In particular, it is explained that participants/shareholders of a company are not required to disclose purposes and reasons of their request for information on the company or otherwise substantiate their interest in obtainment of relevant information.

However, a court may dismiss a shareholder’s claim should it be proved that the company has not infringed upon the shareholder’s right to receive information (e.g. in case of multiple requests for provision of the same documents, if the first request was duly satisfied; in case of a request for documents that “obviously are not valuable from the point of view of their review”; if it is proved that the requesting party abuses the right to claim information (Article 10 of the RF Civil Code), e.g. if the requesting party is an actual competitor of the company (or its affiliate), and the requested information is confidential, relates to the competitive sphere

and its distribution may be detrimental to commercial interests of the company. Examples of “lawful interest” in obtainment of information are: anticipated sale of shares, anticipated legal action, preparation for a shareholders meeting.

Explanations are provided with regard to procedural issues relating, in particular, to the fulfillment of a shareholder’s request by the company after initiation of legal proceedings, and distribution of legal costs among the parties to such disputes. Provision of the company’s charter that are more restrictive (as compared to provisions of the Russian applicable laws) with respect to obtainment of information may not be applied.

The Letter gives explanations on the following: how much detail should be contained in a participant’s request to the company, period of time to which the request may be extended; difference between provision of copies (in particular, certified ones) and review of documents; compensation of costs relating to making of copies, coordination of the date for review of documents, confirmation of rights of a shareholder (participant) requesting information. It also clarifies issues relating to access to accounting books and records and the obligation to keep secret any confidential information received.

2. The Ruling of the RF Constitutional Court “On the Complaint of Oil Company “Rosneft”, a Public Joint Stock Company, against Violation of Rights and Freedoms by Paragraph One, Section 1 of Article 91 of the Federal Law “On Joint Stock Companies”, dated January 18, 2011, No. 8-O-П, was published.

The Ruling sets forth in detail the legal position of the RF Constitutional Court regarding the provision of information to shareholders by joint stock companies (in particular, taking into account the previously expressed positions of the RF Constitutional Court); describes approaches to assessment of shareholder’s right to receive information in conjunction with honoring of the joint stock company’s rights (parity of interests); discusses provisions of the Russian law concerning the obtainment of information on resolutions of the board of directors (supervisory board) of a joint stock company, taking into account its functions and purpose of “management transparency” of the company. It is noted that a joint stock company is entitled to establish an “adequate regime of accessibility of information” concerning issues referred to by law and corporate regulations to the competence of the board of directors and the executive body of the joint stock company (from the point of view of containing therein any confidential information regarding current business operations).

The RF Constitutional Court admits that management bodies of a joint stock company may object to the fulfillment of a shareholder’s request for information if, in view of the joint stock company, the nature and scope of the requested information show the signs of abuse by the shareholder of his right to have access to information of the joint stock company, in particular due to his lack of legal interest in obtainment of applicable information, or if there are other facts evidencing that the shareholder acts unfairly. Such objections may not be arbitrary or biased, and a dispute between the requesting shareholder and the objecting management bodies should in any event be resolved in a court.

Privatization

The Resolution of the RF Government “On Amendment and Repeal of Certain Acts of the RF Government Relating to Privatization of Government and Municipal Property”, dated February 12, 2011, No. 71, was published. In connection with introduction of amendments to the Federal Law “On Privatization of Government and Municipal Property” dated December 21, 2001, No. 178-FZ, some acts of the RF Government issued prior to the amendments have been reviewed.

In particular, the Rules of Preparation and Adoption of Decisions on the Terms of Privatization of Federal Property, approved by the Resolution of the RF Government of July 9, 2002, No. 512, have been amended to the effect that decisions on the terms of privatization of federal property are taken by the RF Government, the Federal Agency for Management of Government Property or on behalf of the Agency – by its territorial bodies in accordance with a forecast plan (program) for privatization of federal property or, where provided by law, in accordance with resolutions of the RF President or the RF Government on contribution of shares held by federal agencies in public joint stock companies, resulting from transformation of federal state unitary enterprises, to the charter capital of the public joint stock companies.

The Regulations of Organization of Sale of Government or Municipal Property by Public Offering (approved by the Resolution of the RF Government of July 22, 2002, No. 549) were restated. It is stated that by resolution of the RF Government the sale of privatized federal property and/or functions of the seller are performed on behalf of the Russian Federation and in accordance with applicable procedure by legal entities acting pursuant to an agency agreement (agents). The Resolution defines the functions performed by the seller, terms and conditions of participating in the sale of property (in particular, terms of a deposit to be paid by the bidder), procedure for submission of applications, procedures for sales and formalization of results thereof, payment for property acquired, and information support.

The price of an initial offer is defined and it is equal to the starting price set forth in an informational notice of sale of the property.

The Resolution of the RF Government “On Approval of the Rules of Determination of a Normative Price of Privatized Government or Municipal Property” dated February 14, 2006, No. 87, has been repealed.

Commodities Exchanges

The Resolution of the RF Government “On Approval of the Regulations of Registration by a Commodities Exchange of Off-Exchange Transactions with Exchange Commodities, including Long-Term Delivery Contracts, and of Maintenance of a Register of the Said Transactions and Provision of Information from the Register” dated February 10, 2011, No. 65, was published.

It is established that the registration of such transactions and maintenance of a register thereof are performed by commodities exchanges, a list of which is published by a federal financial markets authority on its website. The Resolution sets the procedure for such registration, a list, timelines and a form for disclosure of required information, procedure, timelines and form for giving notice of registration. It also determines the procedure for

provision of information from the register. In particular, it is established that a commodities exchange may provide information from the register upon a substantiated request of government authorities and on a confidential basis. A commodities exchange also ensure free access to generalized (anonymized) information from the register on its official website. The Resolution provides for possible issuance of extracts from the register.

The obligation of commodities exchanges to register off-exchange transactions with exchange commodities and the list of such exchange commodities are established by the RF Law of February 20, 1992, No. 2383-I "On Commodities Exchanges and Exchange Trade" (as amended by the Federal Law of July 27, 2011) and the Order of the RF Government of February 10, 2011, No. 167-p.

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