Mergers & Acquisitions / Antitrust/Competition / Banking / Regulatory & Compliance

Russian Legislation Update

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Corporate

On 29 December 2015 the President signed Federal Law No. 391-FZ amending the Basic Principles of Notary Activities, the LLC Law and a number of other laws.

The amendments provide, among others, the following:

i. when an LLC share is sold the purchaser will be deemed to acquire it once the relevant record is made in the Unified State Register of Legal Entities (**USRLE**) (rather than once the relevant purchase contract is notarized, as was previously the case);

ii. the purchase of an LLC share pursuant to an option to conclude a contract can be made by way of separate notarization of an irrevocable offer (including by way of notarization of an agreement on providing an option to conclude a contract) and further notarization of an acceptance;

iii. notaries are not allowed to certify the authenticity of signatures on a document that constitutes the deal terms (other than in cases specified by law);

iv. notaries are allowed to notarize documents in electronic form, certified with an enhanced electronic signature;

v. the notary fee for granting the notary's executive endorsement is set at 0.5% of the value of the property or sum being recovered, but no less than RUB 1,500 no more than RUB 300,000;

vi. if a notice of pledge is sent in electronic (and not paper) form, it should be sent to the Federal Notary Chamber (**FNC**) rather than a particular notary and the FNC will send it to the notary who first expresses his/her readiness to register the notice immediately (as of 1 January 2017);

vii. in commercial (*arbitrazh*) proceedings the circumstances confirmed by the notary by way of notarization do not need to be proved unless the authenticity of a notarized document is challenged or a notarial act is voided (a similar rule has already been introduced with respect to civil proceedings);

viii. in other cases of transfer of share pledge or its part in the LLC charter capital, when the transaction (agreement) is not subject to mandatory notarization, applicants may also be: mortgagee; a person who is entitled to do so by a court decision which is the basis for making changes in the USRLE due to transfer of share pledge or its part in the LLC charter capital; other person who in accordance with the law can be an applicant when changes are made on the same basis;

ix. when an independent appraisal is made as required by the JSC Law, the LLC Law and other laws, the customer is obliged to submit certain data on the appraisal report to the Unified Federal Register of Data on Certain Facts of Activity of Legal Entities (“**Register**”) within 10 business days after the appraisal report is accepted (as of 1 July 2016);

x. company officers will be subject to administrative liability for any delay in the submission (non-submission) of the required data regarding a Russian company to the Register;

xi. the registers of securities' owners of strategic companies (pursuant to Federal Law No. 213-FZ) can be maintained only by eligible registrars; in particular, a registrar should not be directly or indirectly controlled by a non-resident (as of 1 July 2016);

xii. preferred shares acquired at the expense of the National Welfare Fund on the basis of individual decisions of the Russian Government, shall not be included in the settlement of shares held by legal entities in accordance with Federal Law No. 223-FZ;

xiii. strategic companies are obliged to notify Rosfinmonitoring upon entering into and terminating an agreement with a registrar on maintaining a register of securities' owners (as of 1 July 2016).

The amendments also relate to the bankruptcy of individuals and developers.

The Law entered into force on 29 December 2015, save for certain provisions entering into force at a later stage.

On 25 November 2015 the Central Bank issued Letter No. 06-52/10054 on certain aspects of the application of the legislative provisions regulating public and non-public status of a JSC.

On 1 July 2015 certain provisions of Federal Law No. 210-FZ dated 29 June 2015 entered into force and gave effect to some amendments introduced, among other things, to the JSC Law.[1] The Central bank has clarified certain aspects of the application of new legislative provisions in regard of public and non-public JSCs.

The traits of a public and non-public JSC.

As of 1 July 2015, JSCs whose charters and names had not been brought in compliance with the Civil Code are considered non-public, if such JSCs, as at 1 September 2014, were:

(i) closed JSCs though had the traits of public JSCs under the Civil Code, or

(ii) open JSCs but had been relieved by the Central Bank from the duty to disclose the information in accordance with the Securities Market Law or had paid off all publicly placed or traded shares (securities convertible into shares) by 1 September 2014.

Obtaining of a public status by a JSC.

The Central Bank has singled out the following conditions for a JSC to obtain a public status:

(i) the registration of a JSC’s shares prospectus which gives rise to a JSC’s duty to disclose the information as established under the Securities Market Law, and

(ii) the conclusion of the contract for the listing of shares with the trade institutor.

A JSC that had been established before 1 September 2014 is considered public if it meets the described above indicia of public JSCs (the “**PJSC**”) irrespective of the corresponding indication in its name.

However, as of 1 July 2015, newly established (founded) JSCs may not immediately obtain the public status. A JSC may only be founded as non-public and then obtain the public status following the procedure established under JSC Law (Article 7.1).

PJSCs established before 1 September 2014 whose charters and names refer to the company’s public status but the companies themselves do not meet the indicia of publicity, by 1 July 2020 must either (i) apply to the

[1] Refer to our Legal Update for 20 July – 16 August 2015.

Central Bank to register the shares prospectus and conclude the contract for the listing of shares with the trade institutor, or (ii) exclude from the charters and names the reference to their public status.

Termination of a public status of a JSC.

The termination of a public status is possible only if:

(i) a JSC does not have shares (securities convertible into shares) placed by open subscription or admitted to organized trades, and

(ii) the Central Bank has relieved a JSC from the duty to disclose the information.

The procedure and the rules for the termination of a public status differ depending on whether the charter of a JSC has been brought in compliance with the Civil Code. In this regard the Central Bank has singled out the following alternatives:

- a PJSC established before 1 September 2014 whose charter does not refer to the public status may give up the public status under the *simplified procedure* if, as at 1 September 2014, its shares (securities convertible into shares) had not been admitted to organized trades and the number of shareholders had not exceeded 500;
- in other cases a PJSC must at first bring its charter in accordance with the Civil Code and include in its name the reference to its public status and then give up the public status as established under the JSC Law (Article 7.2), in particular, to apply to the Central Bank to be relieved from the duty to disclose the information;
- however, a PJSC established before 1 September 2014 whose charter and name do not refer to the public status but which had been relieved by the Central Bank from the duty to disclose the information after 1 September 2014 and before 1 July 2015 may give up the public status without applying to the Central Bank to be relieved from the duty to disclose the information for the second time.

The disclosure of information by a JSC.

The Central Bank has clarified that the information that a PJSC and a non-public JSC if it publicly places bonds or other securities, must disclose is specified, in particular, in division VII of the CBR Regulation No. 454-P “On the Disclosure of Information by Issuers of Securities” dated 30 December 2014. The Central Bank has also pointed out that the duty to disclose information that had arisen with a non-public JSC before 1 July 2015 remains irrespective of whether a JSC has a public status or not until such duty is terminated under the relevant legal procedure.

The acquisition of more than 30% of shares of a PJSC.

According to the Central Bank’s clarifications, the procedures established under the JSC Law with respect to the acquisition of more than 30% of shares of a PJSC do not apply to a JSC that, as at 1 September 2014, was a closed JSC, and has given up its public status as established under the JSC Law (Article 7.2). This means that it is not possible to make a voluntary or mandatory offer to acquire such JSC’s shares, to notify about the right to begin a squeeze-out procedure and to begin a squeeze-out procedure. However, if these procedures have been started before the termination of a JSC’s public status has been registered, the relevant procedure must be continued and securities – acquired as established under the JSC Law.

Moreover, a non-public JSC that, as at 1 September 2014, was an open JSC may establish in its charter that the acquisition of its shares (securities convertible into shares) is carried out without following the procedures established under JSC Law for the acquisition of more than 30% of a PJSC’s shares.

The certification of the adoption of a decision at the general shareholders’ meeting.

Pursuant to the clarifications, a JSC’s registrar, if it simultaneously performs the functions of a JSC’s counting committee, certifies the adoption of a decision at the general shareholders’ meeting and the list of the shareholders there present by performing the relevant duties of the counting committee. In this case the additional certification is not required. The certification of the adoption of a decision is not required if all JSC’s

voting shares belong to the one shareholder and such shareholder solely adopts decisions under the competence of the general meeting in a written form.

The Letter was published in the Central Bank Herald on 2 December 2015. From that date the CBR Letter on the same issue No. 06-52/6680 dated 18 August 2014[2] *has ceased to apply.*

Antimonopoly

On 30 January 2016 the Russian Government adopted Resolution No. 46 "On amendment of Section 9 of the Regulation on the Governmental Commission on Control over Foreign Investments in the Russian Federation", as approved by Government Resolution No. 510 dated 6 July 2008.

Pursuant to the Resolution No. 46, decisions of the Governmental Commission on Control over Foreign Investments in the Russian Federation ("**Commission**") adopted pursuant to Federal Law № 57-FZ of 29 April 2008 regulating foreign investments into strategic sectors ("**Strategic Investments Law**") may now be adopted through absentee voting.

The decision on conducting the absentee voting must be taken by the Commission's Chairman. The number of members of the Commission participating in such voting must comprise no less than 50% of the total number of the Commission's members and must include members representing Federal Security Service and Ministry of Defence.

If the decision of the Commission is to be adopted through the absentee voting, members of the Commission participating in such voting must adopt it unanimously. If there is no unanimity, the decision is to be adopted according to the regular procedure at the Commission's meeting.

The decision adopted through the absentee voting is formalized by the protocol signed by the Commission's Chairman or, at his instruction, the Deputy Chairman.

The introduced amendment will allow reducing the amount of time required to obtain the Commission's decision under the Strategic Investments Law, and thereby will result in expediting the process of review of applications filed pursuant to the requirements of said Law.

As a reference: Pursuant to the Decree of the Russian Government No. 888-r of 4 June 2012, the Commission currently consists of 21 members. The Chairman of the Commission is D.A. Medvedev, the Chairman of the the Russian Government; the Deputy Chairman of the Commission is I.I. Shuvalov, the First Deputy Chairman of the the Russian Government.

The Resolution entered into force on 10 February 2016.

Currency control

On 15 February 2016 the President signed Federal Law No. 30-FZ amending the Administrative Offences Code with respect to liability for violation of the repatriation rule in relation to import.

The amendments aim to provide for more adequate sanctions for violation of the repatriation rule in relation to import (by analogy with the amendments regarding repatriation of export proceeds made in 2011).

Before the amendments, Russian importers' failure to timely return into Russia funds paid to non-residents for the goods, services or works that have not been supplied to, rendered or performed for them could result in a severe administrative fine of up to the entire amount of non-repatriated funds. The amendments differentiate liability depending on whether the funds were not repatriated when due or were not repatriated at all. In the former case the fine will be 1/150 of the Central Bank refinancing rate of the amount of funds not repatriated when due per day of delay; in the latter case the liability will be the same as before.

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[2] Refer to our Legal Update for 18 August – 7 September 2015.

The Law entered into force on 26 February 2016.

On 2 February 2016 the President signed Decree No. 41.

According to the Decree, the Federal Service for Fiscal and Budgetary Supervision was abolished. Its functions of a currency control body are taken over by the Federal Customs Service and the Federal Tax Service.

The Decree entered into force on 2 February 2016.

Investments

On 15 February 2016 the President signed Federal Law № 23-FZ on amendments to the Budget Code of the Russian Federation prohibiting the provision of state support to foreign companies.

The Law prohibits the provision of state support in the form of subsidies and budget investments from the state budget to (i) foreign companies, including offshore entities and (ii) Russian companies in the charter capital of which the share of offshore companies in aggregate exceeds 50%.

Besides, foreign companies cannot be principals and (or) the beneficiaries of state (municipal) guarantees and Russian legal entities, whose share of offshore companies in the authorized capital in the aggregate exceeds 50%, cannot be principals of such guarantees. However, state (municipal) guarantees may still be provided to support export of industrial products (goods, works and services).

In addition, the Law prohibits the use of budget subsidies and budget investments to purchase foreign currency, except for transactions carried out in accordance with the Russian currency legislation in relation to the procurement (delivery) of high-tech imported equipment, raw materials and components.

The Law entered into force on 15 February 2016.

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