



Reorganisation of legal entities

RECENT CHANGES TO RUSSIAN LAW AND THEIR APPLICATION TO CREDIT ORGANISATIONS

Recent changes in Russian law are designed to clarify the rules on reorganisation of legal entities in Russia. The amendments set out new notification procedures for reorganising entities as well as providing greater protection for creditors of such entities.

In this briefing we look at recent changes in Russian law designed to fill in the statutory gaps of, and to further clarify, the rules on reorganisation of legal entities in Russia. These amendments have been introduced by Federal Law No 315-FZ, dated 30 December 2008 (the Amendments). This affects:

- the Civil Code of the Russian Federation (the Civil Code);
- Federal Law No 395-1 'On Banks and Banking Activity', dated 2 December 1990 (the Banking Act);
- Federal Law No 208-FZ 'On Joint Stock Companies', dated 26 December 1995 (the Joint Stock Companies Act); and
- Federal Law No 129-FZ 'On State Registration of Legal Entities and Individual Entrepreneurs', dated 8 August 2001 (the State Registration Act).

General requirement

The Amendments have introduced into the State Registration Act a new key requirement to record the information that a legal entity (whether a credit organisation or other legal entity) is under reorganisation in the Unified State Register of Legal Entities (the State Register).

New rules applicable to legal entities other than credit organisations

Notification requirements

To ensure that the State Register adequately reflects the status of legal entities under reorganisation, the

Amendments to the Civil Code and the Joint Stock Companies Act require that a legal entity:

- notifies in writing the registration (ie tax) authorities on its reorganisation no later than three business days after such decision; and
- once notification of its 'under reorganisation' status has been added to the State Register, it must make a public announcement of its reorganisation, giving the prescribed details, in printed publications where information on legal entities' state registration is published. This announcement must be repeated twice but not more than once a month.

Creditors' rights

The Amendments have also enhanced the protection of creditors' rights upon a debtor's reorganisation. The Civil Code now provides that, not later than 30 days after the last published announcement of a debtor's reorganisation, a creditor under an unmatured obligation that arose before the announcement may:

- accelerate the performance of this obligation, and if such accelerated performance is impossible, demand its early termination and a compensation of resulting losses, unless otherwise provided for by law; and
- (if the debtor is an open joint stock company being reorganised in the form of merger (*sliyaniye*), consolidation (*prisoyedineniye*) or transformation (*preobrazovaniye*)), apply to a court asking the court to order an acceleration or early termination of such obligation and compensation of resulting losses, unless sufficient security is provided by the debtor, its participants or third parties.

Under the Amendments, if the accelerated obligations are discharged after completion of the reorganisation, the newly incorporated entities are jointly and severally liable for the obligations of the reorganised institution. The practical meaning of this new rule is yet to be ascertained.

New rules applicable to credit organisations

The Banking Act has also been amended to provide for specific rules concerning restructurings of credit organisations.

Notification procedure

A credit organisation must send a written notice on its intended reorganisation to the Central Bank, which will publish this information on its website and notify the registration authorities accordingly so that they include a corresponding notation into the State Register.

Not later than 30 days after the date that a decision on reorganisation is taken, the credit organisation must publish relevant data on its website and inform its creditors by mail and/or announcing such information with all the requisite details in the prescribed printed publications. State registration of a newly formed credit organisation and the termination of reorganised institutions are subject to compliance with this requirement.

Disclosure requirement

From the date of the decision on its reorganisation, and until completion of its reorganisation, a credit organisation must disclose all material information relating to its business activity, as listed in the Banking Act. This includes:

- anything that results in the increase or reduction in the value of assets, or an increase in net profit or net losses, by more than 10 per cent;
- any transactions, the amount of which is more than 10 per cent of the assets' value; or
- any decision taken by the general shareholders' meeting.

Creditors' rights

The Amendments provide certain additional protections regarding creditors' rights if a credit organisation is to be reorganised. Not later than 30 days after the receipt

of a notification or published announcement of a credit organisation's reorganisation, its creditor under an unmatured obligation may:

- (if the creditor is an individual), accelerate the performance of this obligation and, if such accelerated performance is impossible, demand its early termination and a compensation of resulting losses, if such obligation arose before the announcement; and
- (if the creditor is a legal entity), accelerate the performance of this obligation or ask for its early termination and compensation of resulting losses if such a right is provided for under a corresponding agreement with the debtor.

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