

SPECIAL ISSUE

Comments on Federal law as of 19.07.2009 №205-FZ «On introduction of amendments to several laws of Russian Federation»

Federal law as of 19.07.2009 №205-FZ changed dramatically legal acts on companies and securities market regulation.

Important amendments were introduced by act above into Federal law as of 26.12.1995 № 208-ФЗ "On joint-stock companies" (hereinafter– FZ "On joint-stock companies"), Federal law as of 08.02.1998 №14-FZ "On limited liability companies" (hereinafter– FZ "On limited liability companies"), Federal law as of 22.04.1996 № 39-FZ "On securities market" (hereinafter– FZ "On securities market") and into Arbitration Procedure Code of Russian Federation (hereinafter – APC of Russian Federation).

Among all the amendments the following are worth mentioning:

- The procedure and terms for appeal of major transactions and affiliated party transactions, made by a company in violation of law. Also grounds for dismissal of a claim for recognition of a transaction made by the limited liability company or joint-stock company as invalid.
- The law determined the cases when decisions taken by managing bodies of company in violation of law are always void.
- The procedure for appeal of some decisions taken by managing bodies of company was changed. In particular appeal of such decisions separately from relevant transactions of company made on the base of those decisions does not involved recognition of the transactions as invalid.
- The term for submission of a claim for recognition of a resolution of the general meeting of the company as invalid was reduced. According to the new edition of FZ "On joint-stock companies" this term was reduced from 6 months to 3 from the moment the stockholder has learnt or should have learnt about violation of his (her) rights. Mentioned term is impossible to reestablish unless the stockholder has not submitted a claim affected by violence of threat.
- The list of documents that companies must keep was supplemented with new documents, specifically judicial acts on controversies concerning creation of the company, its management and participation in it.
- Furthermore, the list of substantial corporate facts stated in FZ "On securities market" was extended. Information about controversies concerning creation of the company, its management and participation in it should be revealed in the form of message on substantial corporate fact.
- Legislator set out joint and several liability of joint-stock company and registrar of company for damages caused to the stockholder by improper conducting and filing of register as a the result of loss of stocks or impossibility to carry out rights of stockholder.
- FZ "On limited liability companies" stated duty to get authenticity of signature by notary on shareholder's statement of refusal to preemptive right to be a share or a part of a share in the authorized capital or on the such statement of refusal of the company itself.
- Notarial authenticity of transaction with a share or a part of a share in authorized capital of company is not necessary in case of transfer of a share provided that preemptive right was exercised by sending offer upon share sale or sale of a part of a share and its accept in accordance with paragraphs 5 – 7 Art. 21 of FZ "On limited liability companies".
- More powers were given to general meeting of LLC shareholders. Participants may determine in charter possibility to resolve the other issues except those directly mentioned in charter. Besides there was ascertained the list of issues of exclusive powers of general meeting.
- Procedure of reorganization notification of company's creditors was changed.
- Definition of "unfair issue" was excluded from FZ "On securities market". Article 26 was amended and supplemented with provisions concerning grounds for suspension of issuance, recognition of issue as failed, invalid on the basis of court resolution..
- Procedure of recognition of issue as invalid was also changed. Thus, submission to the court of claims upon recognition of securities allocation decision, decision authorizing decision on issue (additional issue) and the other relevant decisions of issuer, decision of registering body on state registration of issue (additional issue) as invalid is possible solely conditional upon simultaneous submitting of a claim upon recognition of relevant issue (additional issue) as invalid.
- There is 3-months limitation term for recognition of issue as invalid starting from the date of state registration of placement report.
- Pursuant to amendments introduced to APC of Russian Federation jurisdiction of arbitration court was significantly extended due to new attitude to the essence of corporate disputes. Nevertheless existing disputes are not submitting to arbitration court, these disputes are being considered by court of general jurisdiction.
- New provisions regulate possibilities of case conjunction and disjunction, joinder of parties. The main purpose of such amendments lies in exclusion of possibility for participants mala fide to initiate litigation in respect of the same circumstance.
- Rules for participation of a several plaintiffs and respondents were clarified. For instance, legislator provided for possibility of entering co-plaintiffs into proceedings before taking resolution in the end of consideration of the case on its merits.
- Range of terms determined in APC of Russian Federation was changed, e. g.:
 - Term of preparation of a pre-trial preparation is determined now by the judge with regard to circumstances of the case (previously such a term could not be more than 2 months). Meanwhile pre-trial preparation shall be completed and a resolution shall be taken within no longer than 3 months from the date of receipt of the claim in the court (term of consideration in the trial court). Previously this term was equal to 1 month from the date of rendering of court ruling on assigning a case for proceedings;
 - Term for consideration of petition for appeal was increased from 1 to 2 months;
- New chapter of APC of Russian Federation is now dealing with consideration of disputes concerning creation of the commercial organizations, its management and participation in it, as far as concerning non-commercial organizations. Consideration of corporate disputes is conducted according to general rules of ordinary proceeding taking into account particularities described above.
- Particular chapter of APC of Russian Federation defines possibility of submission of so-called collateral actions that are actions of privies in defense of rights and interests of other persons and entities that are also privies (interest group).

Enactment:

Federal law enters into force (except particular provisions) on October, 21, 2009.

Particular provisions on limited liability companies (for example concerning notary activity) enter into force from the date of official publication (was published in "SZ RF" - 20.07.2009, in "Rossiiskaya gazeta"- 22.07.2009).

This review was prepared by the lawyers of the Law Firm Liniya Prava
For more information please contact Law Firm Liniya Prava:
123100, Moscow, Presnenskaya Naberezhnaya 8, Bldg. 1, 7th floor
Capital City Complex, Moscow City International Business Center
Phone: (495) 664-28-90
Fax: (495) 664-28-91
review@lp.ru