



Presidium of Supreme Arbitration Court of Russian Federation has considered Review of court rulings upon disputes concerning execution of preemptive rights of stock acquisition by closed joint stock companies and has formulated recommendations set forth in Information letter № 131 as of June 25, 2009.

The following conclusions were presented by the Presidium of SAC RF on the base of court rulings of arbitration courts of merits, courts of appeal and courts of cassation given in the Information letter mentioned above:

1. Federal law "On joint-stock companies" provides for preemptive right for acquisition of closed joint-stock companies stocks by sale and purchase agreement, not by any other agreement.
2. Closed joint-stock company's Charter can not spread preemptive stocks' acquisition rights for cases when such stocks were disposed by other than sale and purchase agreements.
3. Whereas concluded agreement of stocks' sale and purchase or concluded agreement of gift of stocks is fraudulent and shields one single agreement of sale and purchase of stocks the stockholder is empowered to demand transfer of rights and duties of buyer under single agreement of sale and purchase of stocks actually meant.
4. Closed joint-stock company's Charter can not spread preemptive stocks' acquisition rights for cases of stock's purchase between stockholders.
5. Preemptive stocks' acquisition right can not be exercised in cases of acquisition by CJSC of its own stocks.
6. In the event of voluntary sale of stocks by the stockholder of CJSC to the third party with violation of preemptive right of stocks' acquisition another stockholder may demand transfer of rights and duties of buyer won the tender regardless to participation in this tender.
7. In case of CJSC stocks' sale in tender within the frame of enforcement or bankruptcy proceedings preemptive stocks' acquisition right may be exercised by CJSC stockholder by the way of participation in tender or making a statement on admission to acquire stocks at a price formed in tender.
8. After receiving notification of stockholder upon his or her intention to sell stocks CJSC shall send it to the other stockholders. Unless the Charter stated obligation of stockholder to send such notification not only to the company, but also to the stockholders, breach of this duty by CJSC shall not lead to entitlement of stockholders with right to demand transfer of rights and duties of buyer.
9. Closed joint-stock company's Charter may contain provisions stating that notification of stockholder upon his or her intention to sell stocks to the third party shall be send not only via company but also directly to the other stockholders. In this respect whereas the seller sends the notification to the company only and the company transfers it to the other stockholders in violation of the Charter procedure of notification can not be regarded as observed.
10. Notification of stockholder upon his or her intention to sell stocks to the third party may not be regarded as offer.
11. Within the frame of execution of preemptive right of its own stocks' acquisition stated in the Charter provisions of Article 72 of Federal law "On joint-stock companies" shall not be applied. However, persons and entities shall comply with limitations, stipulated in Article 73 of Federal law "On joint-stock companies" in favor of creditors of joint-stock company and its stockholders.
12. The holder of stock register may not refuse to enter an abstract of transfer of rights to CJSC stocks to buyer on the basis of violation

- of preemptive right for acquisition of closed joint-stock companies stocks.
13. Violation of preemptive right for acquisition of closed joint-stock companies stocks within entering into CJSC stocks' sale and purchase agreement does not lead to invalidity of this agreement.
14. Claim on transfer of rights and duties of buyer under single agreement of sale and purchase of CJSC stocks can not be sustained in the event that the claimant who previously was a stockholder sold all his or her stocks to another person or entity thereafter.
15. Participation of a person or entity acquired stocks of CJSC with violation of preemptive right in general meeting of stockholders can not be regarded as an infringement of law and as a ground for recognition of general meetings' resolution as invalid.
16. The term for submission of a claim on transfer of rights and duties of buyer under single agreement of sale and purchase of CJSC stocks provided for in paragraph 7 of Article 3 of Federal law on joint-stock companies is nothing else but limitation period.
17. Buyer and seller under a CJSC stock's sale and purchase agreement are regarded as proper respondents under the claim on transfer of rights and duties of buyer under single agreement of sale and purchase of CJSC stocks.

In order to solve the issues arising within courts' activity concerning entering into force amendments to Article 28 of Federal law "On state registration of real property rights and transactions therewith" Presidium of Supreme Arbitration Court of Russian Federation has formulated recommendations set forth in Information letter № 132 as of July 21, 2009.

Key statements of Information letter "On certain issues related to the application of articles 20 and 28 of Federal law "On state registration of real property rights and transactions" by arbitration courts" may be summarized as follows:

1. According to Article 28 of Federal law "On state registration of real property rights and transactions therewith" court resolutions, containing in its dispositions conclusion upon belonging of property to a certain person or entity under the right in personam or belonging of the property to certain person or entity as a beneficial owner (existence of encumbrances or limitations) subject to state registration shall be regarded as one of the grounds for state registration of the rights. Among such acts of court there is court ruling upon confirmation of amicable agreement providing for accrual and termination of right to real property (encumbrance or limitation of right) subject to state registration.
2. Registrar may not give legal opinion upon court ruling in force as well as re-estimation of circumstances of the case and evidence, on the base of which ruling was taken. In this case refusal to register is illegal.
3. Within consideration of the claims challenging refusal to register a right on the grounds that person issued entitling document was not empowered to dispose a right to this property, courts shall take into account that rendering of court ruling recognizing right to real property can not be regarded as issuance of entitling document containing disposal in respect of such property. Thus, in the event that registrar refuses to register the right confirmed by effective act of court on the grounds that the court violated some proceeding rules referring to such facts does not comply with law.
4. According to paragraph 1 Article 20 of mentioned Federal law registering body may refuse to register a limited right has drawn up a document without specifying of conditions under which the right is



- limited. In these circumstances refusal of registrar is illegal in the event that there are registered by third parties encumbrances and limitations in respect of real property ownership to which is recognized by effective court ruling with regard for absence of the relevant indication in this act. In such case right to real property shall be registered with keeping previously entered abstracts of encumbrances and limitations, unless otherwise stated by law.
5. Effective court ruling recognizing a right to certain item of real property can be regarded as reasonable ground for state registration of right also when this right accrued before effective date of mentioned Federal law and was confirmed by relevant act of the court. In this case submission by applicant of any other entitling documents is not required.
 6. Except for act of court recognizing a right to real property applicant shall present identity certificate of person or documents confirming legal entities' registration, cadastral certificate of real property (excluding the cases when the document containing description of real property was presented earlier and was kept in the relevant folder of entitling document), document confirming the payment of state duty. Request of registering body for any other entitling documents does not comply with law.
 7. Whereas someone's right to real property was duly registered act of court recognizing such property as property belonging to another person or entity is effective solely in the event of participation of the first person or entity as a respondent in the case. Provided that act of court was taken in respect of any other person, refusal to register complies with law. Taken into account the above given, while filing a complaint upon recognition of right to real property the claimant shall present an excerpt from Unified State Register of rights to real property and transactions therewith issued pursuant to Article 7 of mentioned Federal law or statement of registrar upon absence of registered right to the disputable item of real property.
 8. Within consideration of such a case the court may arrange provisional measures (seizure, prohibition for registrar to change abstract of title to this property in the register, sequestration of property on court order) upon the petition. In the event the claim for a title to real property is sustained in accordance with section 7 of Article 182 of APC of Russian Federation the court may arrange similar measures for enforcement of a court resolution upon the petition of person participating in case.

August, 6, 2009

This review was prepared by the Litigation Team 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