
Russian M&A trends | BY ANTON KLYACHIN

The Russian M&A transactional landscape has changed dramatically in 2009. This is primarily due to the deteriorating economic trends, which are widely discussed in professional circles. But beyond that, Russian law relating to M&A has also been amended quite extensively, and certain bills are on their way through the Russian legislature.

In this article we analyse the main legal trends that have influenced M&A activity in Russia this year.

Foreign investments into strategic sectors

On 7 May 2008, a new law regulating foreign investments into Russian strategic sectors came into force. The law covers such sectors as defence, nuclear energy, space activities, federal TV and radio broadcasting, telecommunications and natural resources. Some transactions have been significantly delayed due to new restrictions. A foreign investor willing to acquire control, or sometimes a stake, in companies operating in these sectors needs to seek preliminary approval from Russian authorities, in addition to antimonopoly clearance. The problem with the implementation of the law was that not all procedural and technical issues were decided before it entered into force. Therefore, during the early months of its implementation, the mechanism of

state approval of such transactions has not functioned effectively, and parties were made to wait. Now the situation is improving, although the statutory terms of deciding on approvals for such transactions are quite long, which can still delay the transaction process.

New legislation on limited liability companies

As of 1 July 2009 a new law regulating Russian limited liability companies (LLCs) will enter into force. In Russia, LLCs are the most common type of company and many private businesses choose this structure due to its flexibility. The new law is intended to provide even more flexible regulation, but also more protection to LLC members. Among many other things, the law changes the order of transfer of a participatory interest in an LLC. With a few exceptions, any transactions on disposal or pledge of participatory interest in an LLC shall be notarised. All LLCs will be obliged to maintain an internal register of participants. These formalities are designed to protect against corporate raids. An important concept is that of a participants' agreement (or shareholders' agreement), which can now govern relations between members of an LLC. The rules on pre-emption rights are refined. Many new possibilities to pre-agree exit from an LLC are introduced.

The law is yet to enter into force and so the new rules are not yet tested in Russian courts. However, many of them were introduced after long discussions in the legal and business community, and should substantially improve LLC regulation.

New bankruptcy rules

In today's turbulent times, many M&A transactions are structured through bankruptcy of a target company. Considering this, a new bankruptcy law was passed in December 2008 and came into force on 5 June 2009. The new law helps creditors to trace the assets of an insolvent company and to get into the pockets of those connected with the company. Concepts of 'wrongful trading' and 'shadow director' have been introduced; a broad range of people can now be liable for the debts of the bankrupt company without proof of dishonesty and without requiring a criminal standard of proof.

Competition law in progress

On 22 December 2008, the Russian Government submitted draft laws contemplating changes to the competition regulations to the State Duma. The amendments are aimed at increasing thresholds relevant for clearances of qualified transactions and simplifying the applicable procedure for proving monopolistically high level prices.

Relations with Cyprus

Cyprus maintains its role as a main investment route into Russia. Due ►►

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to the favourable double tax treaty between Russia and Cyprus, this country is a domicile for the vast majority of holding companies for Russian assets. On 19 November 2008, the Federal Service for Financial Markets announced a mutual agreement signed between Russia and Cyprus for exchange of information on companies incorporated in both countries. Further, on 16 April 2009, officials representing Cyprus and Russia concluded a final draft Protocol amending the 1998 double tax treaty between the two countries, effective from 1 January 2010 (except minor parts). Under the new rules, Russian authorities can in certain instances access information about ultimate beneficia-

ries of companies registered in Cyprus. The definition of dividends distributable between Russian and Cyprus companies has been widened to include distributions from mutual funds and depository receipts. The new treaties ensure that Cyprus will be removed from the Russian black list of 'offshore jurisdictions' that created or could have created material problems in the future. ■

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