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## **New in the reorganization of legal entities**

New regulations on the reorganization of legal entities in terms of the Federal Law of 31.12.2008 № 315-FZ "On Amending the Federal Law "On Banks and Banking", and some other legislative acts of the Russian Federation» of 31.12.2008 entered into force. These rules settle the reorganization procedure more detailed in so far to the notification of controlling authorities and creditors. The reorganization in the sense of Russian registration is the procedure, under which the legal entity changes its form, incorporates several legal entities in one or otherwise divides one organization into few, or extracts a new organization from the old one. Following the reorganization initial legal entities can be dissolved and new ones can be created, as well as both of them can continue their activities depending on the form of reorganization. One should distinguish reorganization as a corporative procedure and a restructuring as an insolvency procedure, which is not the subject of this press release.

The Act amends the article 60 of the Civil Code, article 15 of the Federal Law of 26.12.1995 № 208-FZ "On joint-stock companies", as well as inserts a new Article 13.1 to the Federal Law of 08.08.2001 № 129-FZ "On state registration of legal entities and individual entrepreneurs".

In our press release, you can find information on the major principal changes introduced by law in the order of the reorganization.

## **Launch of the reorganization procedure in respect to Joint-Stock Companies and Limited Liability Companies**

The head of the permanent executive body of the organization (Director, CEO) should send a notice on the beginning of reorganization to the tax authority, handling the registration of legal entities at the location of the organization (registering authority), within 3 working days of the decision on reorganization is made (in the form of merger, accession, division/ separation, extraction (spin-off), transformation). The notice should be made under the form recommended in the letter of the Federal Tax Service of Russia of 23.01.2009 № MN-22-6/64@ “Regards to records in to the Uniform State Register of Legal Entities (EGRYL - in Russian version) about a legal entity being under the reorganization» ([www.nalog.ru/index.php?topic=reorg](http://www.nalog.ru/index.php?topic=reorg)). If the reorganization involves two or more organizations (merger, accession), a notification should be sent on behalf and at the location of the organization, latest adopted a certain decision.

The notice in writing should include the following information on:

- The full name, the Principle State Registration Number (OGRN – in Russian version), Individual Taxpayer Number (INN – in Russian version), statutory seat (address) of the permanent executive body of the organization under the reorganization and organization, which continues activity after the reorganization (in case of accession and division/separation);
- The full name, address of organizations, established following the reorganization (merger, extraction, transformation);
- The form of reorganization (merger, accession, division/ separation, extraction, transformation).

The notification should be supplied with decision on the reorganization of legal entity (each of participants). Several legal entities, participating in the procedure, may authorize in the decision on reorganization one of them to make the respect notification.

The notification should be submitted to the registering authority in person or be sent via post to the declared value and the list of contents, which is certified by the post-office representative.

The registering authority makes a record into the EGRYL that the entity is under reorganization (in respect to each of the participants) within 3 working days of receipt the notice. The registering body issues to the hands of a person authorized by power of attorney or sends via post at the statutory seat address a Certificate, proving the fact of record, the recording sheet and statement (extract) from the EGRYL.

## **The new responsibilities of Joint-Stock Companies and Limited Liability Companies, entered into a reorganization procedure**

After making a record into EGRYL on the beginning of the reorganization procedure a reorganized Company (the latest adopted a decision or was authorized by the decision on the reorganization) twice after a month period should announce in the magazine “Bulletin of State Registration” message on its reorganization, stating:

- Full and abbreviated name, address of location of each company involved in the reorganization, each company, created and (or) continuing activities after the reorganization of the legal entity;
- The form of reorganization;
- Description of the order and conditions of the assertion of creditors’ claims (including the address of permanent executive bodies of companies, involved into a reorganization, additional addresses for the submitting of the claims, contact methods for communication with the company);
- Information about the persons performing the functions of individual executive body reorganizing companies and organizations, created following the reorganization;
- Information on the security of creditors’ claims, if any;
- In addition can be provided: the information on credit ratings, financial results - in the case if the company’s period of activity is less than 3 years and other.

The second announcement is due no earlier than one month after the first one.

The reorganized company should notify in writing all known creditors about the beginning of the reorganization within 5 working days after the date of notification of the registering authority. Creditor of LLC or Closed JSC, which claims have arisen prior to the announcement on the

reorganization, has the right to demand earlier performance of the obligations under the contract, but when it is impossible - the termination of the obligation and indemnification of related damages. The creditor of Open JSC, reorganizing in the form of a merger, accession or transformation, which claim has arisen prior to the announcement on the reorganization, is entitled to demand **in a court case** earlier performance of the obligation, or termination of the obligation and the indemnification of related damages, if OJSC's shareholders or third parties are not given sufficient security to cover the claim. Such claim to OJSC should be made not later than 30 days from the date of the last announcement on reorganization.

One should know that tax authorities apply this deadline for all organizations.

If the claims for acceleration or termination of obligations and indemnification of damages satisfied after the end of the reorganization, created following the reorganization (continuing activities) legal entities are jointly and severally liable for the obligations of the reorganized legal entity.

### **Order of registration of Joint-Stock Companies and Limited Liability Companies established following the reorganization**

This order has not been changed in connection with the above said law. However, it has changed several times since the adoption of the Federal Law of 08.08.2001 № 129-FZ "On state registration of legal entities and individual entrepreneurs". For a complete understanding of the existing procedure of reorganization and to avoid possible violations, we briefly recall the key steps that the company under reorganization should make in order to complete the reorganization.

The documents required for the state registration of organizations, created through the reorganization, which should be submitted to the registering authority within expiration of 30 days from the date of the last announcement on the reorganization of legal entity, but not before the second announcement, as follows:

- A statement on the state registration of each newly establishing legal entity, signed by the applicant and composed in a form №R12001, approved by Decree of the Government of the Russian Federation of 13.12.2005 № 760;
- The statutory documents of each newly establishing legal entity following the reorganization (originals or notarized copies);
- A decision on the reorganization of the legal entity;
- The agreement on merger, in case the LLC participating;
- Transfer Act or dividing balance;
- Document of payment of state duty;
- A document confirming the submission to the local subsidiary of Pension Fund of RF the personalized information, records and registers of insured persons in the statutory pension insurance system;
- Proof of notification to creditors of reorganized legal entity.

In the reorganization the following persons should be recognized by registering authorities as applicants (Decree of the Federal Tax Service of Russia of 01.11.2004 №SAE-3-09/16@):

- In the form of a merger - one of the heads of the permanent executive bodies (hereinafter - the director) of companies, terminating their activity following the reorganization;
- In the form of extraction - the director of the reorganized company;
- In the form of transformation / division – the director of the dissolving company.

The state registration of a newly created legal entity following the reorganization should be made no later than 5 working days from the date of submitting of sufficient package of documents. For this purpose in the EGRYL is made a record on the dissolving of a transformed legal entity, as well as companies, reorganized in the form of a merger; organization, reorganized in the form of division, and accessed legal entities.

### ***How we can help***

To comply with all requirements of applicable law, to avoid delaying the reorganization procedures due to refusal of registering authorities on the ground of non-compliance, one should have extensive knowledge in the field of corporate law and have solid experience in the implementation

of corporate procedures.

We are glad to offer you a unique opportunity of international company Hedman Partners represent your interests on the Russian market, using advantages of our two offices in Russia, St. Petersburg and Ekaterinburg - and partnership in Moscow.

Our highly skilled and experienced lawyers, speaking both Russian and English, are ready to help you to solve your business challenges, including:

- Conduct due diligence of corporate documents of your company, compliance of corporate procedures and related documentation to identify and eliminate conflict with the current legislation;
- Advice on the effective changes in corporate structure of your company;
- Prepare all corporate and commercial documents, the necessary statements and notifications to the various regulatory bodies;
- Prepare and help to hold shareholders' meeting, prepare all necessary documentation;
- To advice on any legal and commercial issues in accordance with applicable corporate, civil, administrative, tax laws;
- To mediate in resolving disputes between the shareholders (participants) as well as between the company and its shareholders (participants);
- Represent your interests in local and European courts, arbitrations and controlling bodies.

We hope that this information will be useful to you. For further information, please contact us. Contact information is given on the first page.