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RECENT UPDATES IN RUSSIAN LAW (2 QUARTER 2016)



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1. CORPORATE LAW

1.1. General meetings of shareholders in joint stock companies (JSC)

On 1 July 2016 Federal law amending [the Federal law “On Joint Stock Companies” \(the “Law on JSC”\)](#) [in part of preparation, convocation and holding of general meetings of shareholders \(the “GM”\)](#) and notifying shareholders came into force (the “Law”) [1].

1) The Law reduced terms between determination of persons entitled to participate in GM and the date of GM:

- from 50 to 25 days – general term;
- from 50 to 35 days – if the agenda provides for reorganization issue;
- from 80 to 55 days – if the agenda provides for election or early termination of powers of board of directors` members or company`s CEO;

2) The Law reduced terms between submission of request to conduct GM by a shareholder and the date of GM:

- from 50 to 40 days – general term;
- from 95 to 75 days – if the agenda provides for election of members of the board of the directors.

3) The Law introduced new methods of notifying shareholders via e-mail and text message and remote participation in GM via information and communication technologies (e.g. web-site, Skype, etc.).

4) The Law reduced term for payment for shares by company from 30 to 15 days from expiration of term for submission or cancellation of shareholders` applications, which shall be made within 30 days. In absence of a shareholder`s bank account details or in case of impossibility to transfer funds to the bank account for acquired shares the payment shall be deposited with notary public.

1.2. Joint and several liability of issuer and registrar

Amendments to the Federal law “On Securities Market” provide for joint and several liability of issuer and registrar for damages caused by violation of procedure of maintaining register, performing of account transactions, loss of records or provision of incomplete or inaccurate information from the register [2].

Amendments came into force on 1 July 2016.

[1], [2] Federal law dated 29 June 2015 No. 210-FZ “On amending certain legal acts of the Russian Federation”

1.3. New regulation of major and interested party transactions

On 3 July 2016 President of the Russian Federation signed [the Federal law amending Law on JSC and Federal law “On Limited Liability Companies” \(the “Law on LLC”\) in terms of regulation of major \(value equals or exceeds 25% of balance sheet value\) transactions and interested party \(e.g. involving affiliates, or cross-management\) transactions](#) (the “Law”) [1].

The Law specified criteria of major and interested party transactions, procedure of approval and challenging such transactions.

Major transactions:

- The Law excluded transactions connected with the transfer of property rights in the process of the reorganization from obligatory approval.
- The Law codified case law approaches in relation to approval of preliminary agreement and challenging the transactions. So, court shall refuse to recognize transaction as void if: (a) at the moment of judicial procedure the transaction was approved, (b) claimant has not proven that counterparty knew or had to know that transaction is major or necessary approval is absent.
- The Law provided for opportunity of conclusion of a transaction under the condition of obtaining the subsequent approval.
- The Law introduced requirement for opinion of the board of directors on the major transaction containing information on expected consequences and advisability of the settlement of a transaction.

Interested party transactions:

- The Law introduced new terms “controlling person” and “controlled person” for determination of interested persons. Term “affiliated persons” (specified in the Law of Russia “On competition” dated 22 March 1993 No. 948-1) reference to which was contained in previous wordings of the laws on JSC and LLC is no longer applicable.
- The Law increased threshold whereby a transaction shall be approved by the general shareholders` meeting from 2 to 10 percent of net book value of company`s assets.
- The Law established presumption of damage to the company`s interests if: (1) the transaction shall be settled in the absence of company`s approval, (2) a person who filed a lawsuit seeking recognition of the transaction as void was not provided with relevant information on this transaction.
- The Law provides for right of non-public companies to exclude or stipulate their own procedure for approval of transactions by the charter adopted by unanimous resolution of shareholders.

The Law comes into force on 1 January 2017.

[1] Federal law dated 3 July 2016 No. 343-FZ “On amending Federal law “On Joint Stock Companies” and Federal law “On Limited Liability Companies” in part of regulation of major transactions and interested party transactions”

1.4. New instrument of financing JSC

On 3 July 2016 President of the Russian Federation signed [the Federal law introducing a possibility for shareholders of joint stock companies to make contributions to the JSC's assets](#) [1].

In accordance with the law shareholders are entitled to make contributions to the company's assets at any time to finance the company and support its business activity. Such contributions do not increase the company's charter capital or effect the nominal value of shares.

Contributions to the company's assets can be made:

- at shareholder's own initiative – in public and non-public JSCs;
- on the basis of mandatory decision of general shareholders' meeting – in non-public JSCs if possibility of such decision adoption is stipulated by the company's charter.

Contribution is made on the basis of an agreement between the shareholder and the company, which is subject to preliminary approval by the board of directors of JSC. In case the contribution is stipulated by a resolution of general shareholders' meeting, its additional approval by the board of directors of JSC is not required. The law specifically stipulates that the rule on prohibition of gratuitous transfers (gifts) between commercial organizations set by the Civil Code of the Russian Federation (the "Civil Code"), as well as the regulation on related party transactions shall not apply to such agreements.

Assets that may constitute a contribution to JSC are listed in the Art. 66.1 of the Civil Code. The charter of non-public JSC may set a maximum value of contributions and other limitations related to their transfer.

Therefore, the law introduces an additional investing instrument permitting shareholders to contribute at any moment necessary resources to the company in order to improve its financial state. It is worth noting that similar mechanism has been effectively used by participants of limited liability companies for many years. The main advantage of this financing instrument is its relative simplicity and low realization costs compared with the procedure of charter capital increase, loans and etc.

The law came into force on 14 July 2016.

[1] Federal law dated 3 July 2016 No. 339-FZ "On amending Federal law "On Joint Stock Companies"

1.5. Bringing laws on JSC and LLC in compliance with the Civil Code

The Ministry for Economic Development has been working on [draft Federal law aiming at bringing laws on JSC and LLC in compliance with the Civil Code](#) (the "Draft law") for a while for now. The Draft law elaborates and develops new legal institutions and mechanisms brought to the Civil Code by Federal law dated 5 May 2014 No. 99-FZ.

The Draft law provides for detailed regulation of:

- shareholders agreements in part of possible terms and conditions of such agreements, special regime for the agreements entered by all shareholders;
- exercising powers of company's CEO by several persons, separation of powers between them and terms of representation of the company.

The first wording of the Draft law has been revealed at the official web-site of the Ministry in late 2014 and amended in 2015 but has not been yet introduced at the State Duma. Some of rules stipulated by the Draft law have already been adopted by separate legal acts (e.g. contributions to JSC's assets). Nevertheless we will check for status updates and wording of the Draft law.

1.6. Roadmap for development of Russian corporate legislation for 2016-2017

On 25 June 2016 Russian Government adopted [the decree providing for the roadmap for corporate governance reforms](#) (the – "Roadmap") [1]. The anticipated changes will improve the quality of corporate governance in Russian JSCs, moving it closer to the best world practices regarding protection of interests of minority shareholders indicated in Doing Business rating.

Corporate governance:

- requirement to establish committees of the board of directors on audit and internal control;
- ban on cross-holding ownership structures of joint stock companies through prohibition to vote shares of a JSC owned by companies controlled by such JSC.

Disclosure of additional information:

- information on remuneration paid to the company's management and the board of directors;
- information on transactions settled by a group of persons, including information on inter-related transactions (e.g. controlling shareholder or members of a governing bodies are interested).

New rules on access to information:

- access to information and documents of subsidiaries upon the request of members of the board of directors of parent company;
- decrease of share ownership threshold from 25% to 10 % to give a shareholder access to company's documents participating in a civil procedure if it is necessary for proving of certain facts.

However all provisions introduced by the Roadmap provide for general framework of anticipated reform of the legislation. We will keep you informed on progress through participation in a working group on development of particular legal acts putting the Roadmap into effect.

[1] Decree of the Government of the Russian Federation dated 25 June 2016 No. 1315-r

2. CAPITAL MARKETS

2.1. New rules of listing on Moscow Exchange

Moscow Exchange ("MOEX", "Exchange") adopted new [Listing Rules](#) that were brought in compliance with requirements of the Provision No. 534-P "On the admission of securities to organized trading" adopted by the Bank of Russia on 24 February 2016 (the "Rules").

1) Additional requirements to securities included in quotation lists:

- early redemption of bonds at the initiative of an investor or its buyout by an issuer are possible only in Exchange trading session which shall be stipulated in a decision to issue bonds excluding bond issues listed before this rule came into force;
- net asset value of the unit investment fund - 250 mln Rubles for inclusion and maintenance in the List. Former requirements to net asset value will be effective for maintenance in the List of unit investment funds listed before coming into force of the Rules until 1 October 2017;

In relation to mortgage participation certificates, the Exchange has a right, by a separate decision, to establish a list of self-regulated appraisers' organizations, wherein membership shall not constitute compliance with the applicable requirement to appraisal.

2) Introduction of additional grounds for lifting limitations on the permitted trading modes in relation to a defaulting issuer's bonds, including if the Exchange finds that a default occurred in accordance with the Rules:

- if the general meeting of the holders of securities of the issue in relation to which the issuer is in default, makes a decision to approve amendments to issue-related documents, including those modifying the securities circulation time, number of coupon periods, interest rates and other terms and conditions;
- an agreement providing for the restructuring of debt is made between the issuer and the holders of bonds or a representative of the holders of the bonds in the issue in relation to which the issuer is in default.

3) List of issuers exempted from obligatory appointment of representative of holder of bonds issued without collateral is extended:

- issuers and/or bonds with credit ratings above the level set by the Board of Directors of Bank of Russia according to classifications of the rating agencies included in the list of rating agencies set by the Bank of Russia;
- issuers in which the Russian Federation directly controls over 50 percent of the issuer's charter capital or voting shares;
- upon a listing level downgrade (exclusion from Level One or Two of the List).

4) Additional grounds for delisting of foreign bonds:

- a procedure applicable in a bankruptcy case (other than the receivership proceedings) is initiated in relation to the legal entity that is the beneficiary of the income from the placement of foreign bonds (organization – joint debtor under foreign bonds);
- the abovementioned legal entity is recognized as bankrupt.

5) New criteria of independence of board of directors` member:

- possibility to acknowledge independence of a member of (or nominee to) the board of directors, notwithstanding that it qualifies under the formal criteria of relationship to the issuer, a material shareholder of the issuer, a material counterparty and/or competitor of the issuer, the state and/or a municipality.

6) Amendments to regulation of including bonds to the List:

- Procedure for indexing of each exchange-regulated bond par value shall be set out in the decision to effect issue of exchange-regulated bonds and the program, depending on certain indicators that are beyond the issuer's control (exchange rate of a certain foreign currency, inflation growth pace, etc.).
- Compulsory agreement of a draft securities prospectus with the Exchange is cancelled. Now an issuer has a right to request the services of preliminary review of documents necessary for assignment of an ID number to the program from the Exchange. In case of application, the term for decision-making on the part of the Exchange in relation to assignment of an ID number to an exchange-regulated bonds program is reduced to 5 business days.
- An equivalent of the aggregate par value of each issue of exchange-regulated bonds denominated in a foreign currency (or in Russian Rubles) shall be calculated at the official exchange rate as of the date of the issuer's decision to approve the respective terms and conditions of the exchange-regulated bonds issue within the exchange-regulated bonds program.

The Rules came into force on 7 June 2016.

3. COMMERCIAL LAW

3.1. New regulation of interest on monetary obligations

On 3 July 2016 President of the Russian Federation signed the [Federal law amending Art. 317.1 and Art. 395 of the Civil Code](#) stipulating accrual of interest for use of money under monetary obligations (legal interest) and liability for failure to perform monetary obligations (legal penalty) [1].

- Legal interest (Art. 317.1 of the Civil Code) is calculated from the moment of legitimate use of money on the basis of key rate of the Bank of Russia only if expressly stated in agreement (instead of calculation by default).
- Legal penalty (Art. 395 of the Civil Code) is calculated from the moment of failure to perform monetary obligations on the basis of key rate of the Bank of Russia (instead of average rate of bank interest payable on deposits made by individuals) by default unless otherwise is stipulated by an agreement.

Therefore, calculation of interest seems more convenient establishing clear rules for participants of the commercial turnover, leaving the accrual of interest at their own discretion. The law comes into force on 1 August 2016.

[1] Federal law dated 3 July 2016 No. 315-FZ “On amending Part One of the Civil Code of the Russian Federation and certain legal acts of the Russian Federation”

4. TAX LAW

4.1. Improvement of tax administration

On 2 May 2016 President of the Russian Federation signed [the Federal law amending the Part One of the Tax Code of the Russian Federation](#)” (the “Law”) aimed at improving tax administration [1].

Development of electronic document flow:

- persons who must submit returns electronically shall obtain documents from tax authorities in electronic form within 10 days from the occurrence of liability to submit returns in such form since 1 July 2016;
- persons who must submit VAT returns electronically shall submit explanations requested by the tax authority also in the electronic form since 1 January 2017;
- appeals to the higher tax authority may be sent in electronic form via telecommunication channels or through taxpayer’s user account; judgement in relation to appeal could be awarded in a similar way.

Tax control measures:

- materials of tax audit and additional tax control measures may be reviewed at the office of the tax authority at any time during the term for submitting appeals to tax authorities act (e.g. visual examination, preparation of extracts and making of copies).
- appeals to the results of additional tax control measures may be submitted within 10 days after its conduction.

Appeal of the tax authorities’ actions:

- execution of the tax authority decision may be suspended until the consideration of the appeal by higher tax authority. Such application for suspension (submitted alongside with appeal against decision) shall be accompanied by a bank guarantee.
- higher tax authority considers appeals without participation of a person who filed the appeal, for the exclusion of cases when discrepancies are found in information presented by the lower tax authority and taxpayer (in this case the participation of a person who filed the appeal is possible).

Tax monitoring:

- Receipt of a reasoned opinion is possible also in relation to the prospective transactions (not only on transactions that have already been completed).
- additional requirements to structure of a request for a reasoned opinion (i.e. description of business objective and the basic terms of the transaction, functional analysis of counterparties’ activities, tax residence of counterparties).
- The reasoned opinion is binding on tax authorities and the taxpayer.
- If the taxpayer does not apply for renunciation of tax monitoring, then during two periods following the period of tax monitoring conducted at the request of the entity, tax monitoring is performed by the decision of the tax authority.

Other issues:

- Regulatory legal acts which adopt new forms of tax returns or introduce amendments into the effective forms, come into effect not earlier than upon expiration of two months from the date of its official publication (at present – 10 days).

- The law introduces obligation to number and bind copies of documents submitted with the tax authorities in accordance with the form approved by the Federal Tax Service. Moreover, it will be possible to submit documents in the form of scans of documents via telecommunication channels or through user account in accordance with the set form.

The law came into force on 2 June 2016 with certain exceptions mentioned above.

[1] Federal law dated 1 May 2016 No. 130-FZ “On amending Part One of the Tax Code of the Russian Federation”

4.2. Double Tax Treaty between Russia and Hong Kong

On 3 July 2016 President of the Russian Federation signed the Federal Law on ratification of Treaty on avoidance of double taxation between the Russian Federation and the Hong Kong Special Administrative District of the People's Republic of China dated 18 January 2016 (the “Treaty”) [1].

The Treaty sets forth the following tax rates on the income source with regard to payments made to the resident of another contracting state:

- Dividends - 5% if a recipient is a company, having de facto right to dividends, and directly owning not less than 15% share in the dividends' paying company. In other cases – 10% rate shall apply.
- Interest is exempted from taxation for the payer in the country of its residence. For example, interest payable by a Russian borrower to a Hong Kong bank is exempted from taxation in Russia.
- Royalty income – 3% if the receiving party has de facto right to such royalty.

The Treaty also establishes a special regulation on limitation of benefits and procedure of information exchange between competent authorities of Russia and Hong Kong.

Entering of the Treaty into force will certainly open new possibilities for structuring of international holdings and cross-border transactions between Russia and Hong Kong that may further increase the volume of mutual foreign direct investments.

The Treaty will come into force after the accomplishment of ratification procedures by Hong Kong and receiving of relevant notification by the Russian Federation, which is expected in the near months.

[1] Federal law dated 3 July 2016 No. 234-FZ “On ratification of Treaty for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol hereto between the Government of the Russian Federation and the Government of the Hong Kong Special Administrative Region of the People's Republic of China”