

Lomonosov Moscow State University Faculty of Law
Research and Educational Centre “Law and Business MSU”

RUSSIAN COMPANY LAW: THE ESSENTIALS

Edited by Dmitry Dedov and Alexander Molotnikov



Moscow 2017

УДК: 346.26:347.19=111
ББК: 67.404.9+81.2 Англ.
R95

Editors-in-Chief — *Dmitry Dedov and Alexander Molotnikov*

Associate Editors — *Irina Babirenko and Levon Garslian*

Book Edition Manager — *Levon Garslian*

This publication is intended to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication is not a substitute for the advice of an attorney. If you require a legal or other expert advice, you should seek the services of a competent attorney or other professional.

Russian company law: the essentials / editors D. I. Dedov, A. E. Molotnikov.
Moscow, STARTUP, 2017. — 326 p.

ISBN 978–5–9909751–2-5

Cover Design — *Rodion Arsenyev*

Copyright © 2017 by ANO Startup

All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law.



Acknowledgements

We would like to express our deepest appreciation to the Lomonosov Moscow State University Faculty of Law, especially to Dean Alexander Golichenkov and Evgeny Gubin, Chairman of the Business Law Department and to all professors of the Business Law Department for their help and support during the preparation of this book.

We are grateful to Dr. Hayk Kupelyants for preparing a great foreword to our book and to Professor John Armour, Professor Tang Xin, Professor Tang Chen Han, Denis Spirin for their endorsements.

We are also greatly appreciate the support, input and inspiration to our book provided by:

Anne Davies, the Dean of the Oxford Law Faculty and Professor of Law and Public Policy

Luca Enriques, Allen & Overy Professor of Corporate Law, Law Faculty, University of Oxford

Paul Davies, Senior Research Fellow at Harris Manchester College, Law faculty, University of Oxford

John Cartwright, Director of the Oxford Law Faculty's Institute of European and Comparative Law

Simon Chesterman, Dean of the National University of Singapore Faculty of Law

Dan Puchniak, Director of the National University of Singapore Centre for Asian Legal Studies, Faculty of Law

Brian Cheffins, Professor of Corporate Law, University of Cambridge Faculty of Law

Simon Deakin, Professor of Law at the University of Cambridge

Nikolai Mikhailov, Deputy Director of the State and Law Institute of the Russian Science Academy

Alexey Khokhlov, Deputy Principal for innovation policy management and international academic cooperation at the Lomonosov Moscow State University

Irina Shitkina, professor of Business Law department, Law faculty, Lomonosov Moscow State University

Dmitry Lomakin, professor of Civil Law department, Lomonosov Moscow State University

Elena Borisenko, President of the Advisory Board, the Saint Petersburg International Legal Forum

MONASTYRSKY
ZYUBA
STEPANOV
& PARTNERS
MZS
www.mzs.ru

We are thankful to MZS & PARTNERS and, especially, to Anton Aleksandrov for acting as the book's general sponsor and providing financial support along with sharing their expertise during the book edition.

CILICIA CAPITAL 
Asset Management & Advisory

We are thankful to CILICIA CAPITAL team for their invaluable help in reviewing the chapters of this book and continued collaboration.

UKey
consulting company

We are also grateful to UKey Consulting Company and, especially to its managing partner Nadezhda Pronina, for sharing their experience.

We are thankful to Nicholas Grecco and for reviewing the text in English language.

We are very grateful to the Law faculty members of the University of Oxford and especially Institute of European and Comparative Law for their help and assistance.

Finally, we thank our students of the Lomonosov Moscow State University Faculty of Law for their help in materials processing for this book and its editing.

Table of Contents

Acknowledgements.....	3
Introduction by <i>Anton Aleksandrov</i>	14
Foreword by <i>Hayk Kupelyants</i>	15
Preface by <i>Evgeny Gubin</i>	18
Glossary.....	12
History of the Russian Company Law by <i>Alexander Molotnikov and Andrei Gabov</i>	20
CHAPTER 1 General Provisions on Commercial Organizations by <i>Jemma Panoyan</i>	53
CHAPTER 2 Sphere of LLC and JSC (public and non-public) usage by <i>Marina Rakinceva</i>	65
CHAPTER 3 Establishment, Reorganization and Liquidation of Companies by <i>Anna Fufurina and Kirill Lelchitskiy</i>	94
CHAPTER 4 Legal Regime of the Charter Capital of Companies by <i>Kirill Grigoriev and Ekaterina Galkova</i>	112
CHAPTER 5 Regulation of Share (Participatory Interest) Transfers by <i>Petr Khokhlov and Alexandra Idrisova</i>	124
CHAPTER 6 Rights and Obligations of the Participants (Shareholders) by <i>Mergen Doraev</i>	152
CHAPTER 7 Shareholders' Agreements by <i>Valentin Petrov</i>	184
CHAPTER 8 Company's Management and Control Bodies by <i>Dmitry Kopylov and Levon Garslian</i>	213
CHAPTER 9 Significant Transactions and Interested-Party Transactions by <i>Mikhail Krasilnikov</i>	232
CHAPTER 10 Liability Issues in Companies by <i>Alexander Molotnikov and Dmitry Tekutiev</i>	268
CHAPTER 11 Corporate Control Enhancing Mechanisms in the Russian Federation by <i>Sergey Tsygankov</i>	284
CHAPTER 12 Key Issues of Protecting Rights of Minority Shareholders in Russian Companies by <i>Denis Ananiev</i>	311

Detailed Table of Contents

Acknowledgements.....	3
Introduction from MZS & PARTNERS	14
Foreword.....	15
Preface	18
Glossary.....	20
History of the Russian Company Law	23
1. Corporate Legislation of the Russian Empire	23
2. Corporate Legislation in Soviet Russia	36
3. Revival of Corporate Legislation in the USSR and New Russia.....	46
4. Summary	48
CHAPTER 1.	
General Provisions on Commercial Organizations.....	53
1. General Information	53
2. Classification of Legal Entities	53
3. Commercial Corporate Organizations	55
3.1. Partnerships	55
3.2. Companies	59
3.3. Production Cooperatives	62
3.4. Unitary Enterprises	63
4. Conclusion	64

CHAPTER 2.	
Sphere of LLC and JSC (public and non-public) usage	65
1. Preconditions for New Classification of Legal Entities	65
2. Joint-Stock Companies and Limited Liability Companies	66
3. Public and Non-Public Companies	76

CHAPTER 3.	
Establishment, Reorganization and Liquidation of Companies	94
1. Establishment of a company by one person or a group of persons	94
2. Limitation of the number of LLC participants	96
3. Constituent documents and agreement on the establishment of a company	96
4. State registration of companies	99
5. Definition and concepts of reorganization. Types of reorganization: voluntary and forced. Forms of reorganization (merger, acquisition, division, spin-off and transformation).	101
6. Liquidation and its distinction from reorganization. Stages of liquidation. Protection of creditors' rights during the liquidation of a company	108

CHAPTER 4.	
Legal Regime of the Charter Capital of Companies	112
1. LLC charter capital	112
2. JSC Charter Capital	114
3. Issue of Securities	118

CHAPTER 5.	
Regulation of Share (Participatory Interest) Transfers	124
1. Transfer of a participation interest	124
1.1. General provisions	124
1.2. Transfer of participation interest	125

1.3.	Offer to buy a participation interest.....	126
1.4.	Consent for transfer of participation interest	126
1.5.	Additional obligations.....	126
1.6.	Transfer of participation interest upon succession of title	127
1.7.	Pre-emptive rights	127
1.8.	Transfer agreements	130
1.9.	Transfer of ownership	133
1.10.	Transfer of participation interest to the LLC.....	135
2.	Share Transfers	137
2.1.	Share Acquisition	137
2.2.	Preemptive rights of Non-Public JSC Shareholders (“NPJSC”)	138
2.3.	Acquiring shares upon request of their owners	141
2.4.	Takeovers (voluntary and mandatory offers; squeeze-out)	145

CHAPTER 6.

Rights and Obligations of the Participants (Shareholders) 152

1.	Introduction.....	152
2.	Management Rights	155
2.1.	Voting Rights.....	157
2.2.	Miscellaneous Control Rights	162
3.	Rights to Information	163
3.1.	Right to Continuous Information	163
3.2.	The Right to Regular Information	170
3.3.	Right to Timely Information	171
4.	Economic Rights	175
4.1.	Right to Dividends.....	175
4.2.	Right to a Liquidation Quota	178
5.	Rights of Action	179
6.	Obligations of Participants (Shareholders)	180
6.1.	Contribution to Company’s Property	180

6.2. Obligation of Confidentiality	181
1.1. Obligations of Loyalty	181

CHAPTER 7.

Shareholders' Agreements 184

1. Introduction	184
2. Purposes of Shareholders' Agreements.....	185
3. Contracts between Shareholders and the Company	185
4. Enforceability of Shareholders' Agreements	187
5. Liaison with the Charter.....	187
6. Termination of Shareholders' Agreements.....	188
7. Advantages and Disadvantages of Shareholders' Agreements.....	188
8. Confidentiality/Public Disclosure	188
9. Changes of Shareholders/Parties	188
10. Alterability	189
11. Duration	189
12. Key Provisions of a Shareholders' Agreement	189
13. New Developments regarding Shareholders' Agreements	194
14. Parties to Shareholders' Agreement(s)	198
15. Management of a Russian Company	199
16. Procedural Matters.....	200
17. Rights of Observer.....	200
18. Disclosure Requirements	200
19. Dealing with Shares	201
19.1. Restriction on Transfer of Shares	202
19.2. Permitted Transfers	203
19.3. Right to Repurchase.....	203
19.4. Pre-Emptive Rights	204
19.5. Right of First Refusal	204
19.6. Co-sale or Piggy-Back Rights.....	205
19.7. Drag-Along Rights	205
20. Covenants of Company.....	206

21. Consequences of a Breach of a Shareholders' agreement: Liability	207
22. The Law Applicable to Russian Shareholders' Agreements	209
23. Dispute Resolution	210
24. Conclusion	212

CHAPTER 8.

Company's Management and Control Bodies 213

1. General Meetings of Members	213
1.1. The place of a general meeting of members within a system of management bodies	213
1.2. Types of general meetings of members	213
1.3. Forms of a general meeting of members	217
1.4. Competence of a general meeting of shareholders (LLC participants)	218
1.5. Procedure for preparing, calling and holding a general meeting of members.....	219
2. Collective governing body	225
3. Executive bodies.....	228
4. Internal auditor (internal audit commission).....	229

CHAPTER 9.

Significant Transactions

and Interested-Party Transactions 232

1. Significant transactions	232
1.1. Concept of a significant transaction.....	233
1.2. Approval Procedure	238
2. Interested party transactions	245
2.1. Persons recognized as interested in the transaction	246
2.2. Approval procedure for an interested party	248
3. Controlling and Affiliated Persons.....	255
4. Other limitations related to executing transactions by the sole executive body.....	263

CHAPTER 10.

Liability Issues in Companies 268

1. Liability of a company as a legal entity.....268
2. Liability of a company’s shareholders 270
3. Liability of members of corporate governance bodies272
 - 3.1. Civil liability of directors 273
 - 3.2. Administrative liability of directors 276
 - 3.3. Criminal liability of directors..... 278
 - 3.4. Disciplinary liability of directors.280

CHAPTER 11.

Corporate Control Enhancing Mechanisms

in the Russian Federation..... 284

1. Legal doctrine of corporate control.....286
2. Proportionality principle in the Russian corporate law288
3. Types of CEMs 289
4. Detailed review of CEMs in the Russian legislation
and court practice293
 - 4.1. Multiple voting right shares.....293
 - 4.2. Non-voting shares295
 - 4.3. Non-voting preference shares296
 - 4.4. Pyramid structures297
 - 4.5. Priority shares.....298
 - 4.6. Depository certificates.....298
 - 4.7. Voting right ceiling.....299
 - 4.8. Ownership ceiling300
 - 4.9. Supermajority300
 - 4.10. Partnership limited by shares.....301
 - 4.11. Golden shares.....303
 - 4.12. Cross-shareholding.....305
 - 4.13. Shareholders’ agreements.....305

4.14. Supermajority in the Boards of Directors	308
4.15. Special rights of the board members	308
4.16. Classified or staggered boards	309
5. Concluding Remarks	309

CHAPTER 12.

Key Issues of Protecting Rights of Minority Shareholders

in Russian Companies	311
1. Mandatory Offer	311
1.1. Purposes and objectives of instituting a mandatory offer	311
1.2. Means to avoid the obligation of sending a mandatory offer	312
1.3. Abuse related to determining the price of acquired securities	313
1.4. Abuse related to implementing the sent mandatory offer	314
1.5. Means of protecting minority shareholders from unjust actions of large equity stakes purchasers.....	314
1.6. Mechanism of limiting the voting rights	315
2. Related-party transactions, affiliation and control	316
2.1. Issues related to confirming presence of relation (interest) in implementing a transaction by the company.....	316
2.2. Issues related to determining the price of a related-party transaction	317
3. Right of Shareholders to receive information on the company's activities	318
3.1. Developing legislation in the sphere of shareholder access to information concerning the company.....	318
3.2. The problem of shareholders' access to business contracts	319
3.3. The problem of shareholders' access to documents of controlled companies	320
4. Additional Issue of Shares	321

4.1. Absence of preemptive rights to purchase of newly issued shares	322
4.2. Absence of a right to demand purchasing the shares.....	322
4.3. Understatement of price during additional issue of shares	323
5. Reorganization	324
5.1. Absence of requirements as to swap ratios.....	324
5.2. Impossibility for certain categories of shareholders to influence the decision on reorganization.....	325

Introduction from MZS & PARTNERS

In any jurisdiction shape and nature of business activities largely depend on the corporate relationships' framework, that in essence defines the accepted method by which investments turn into working capital. The way corporations operate, how investors are protected through them, and how the managers of corporations are accountable for their actions is one of the main factors a prudent businessman considers when making a decision to go with one jurisdiction for their project or another. Consequently, those jurisdictions that provide for the most acceptable equilibrium between the interests of minority and majority shareholders, or of investors and managers, or between private and public forms of corporations, win on the global market.

Russian corporate law has seen a good deal of transformations, often rather dramatic ones, and often mutually exclusive. The process is actually ongoing. The details of these changes are discussed further in various chapters of this book. The book itself is a good gateway for anyone wishing to familiarize themselves with the current Russian regulatory landscape in the area of corporate governance. Written by the practicing lawyers and legal academicians, with a simple enough yet precise language, covering all the major topics and issues, it will be helpful both to aspiring investors into Russian economy, and to foreign legal practitioners who may require to be in the know of such matters in order to communicate with their Russian counterparts in a more knowledgeable way. Even Russian audience may find this book of interest as it covers a number of the topical developments, trends and problematic issues.

We at MZS & PARTNERS have always relied on, and contributed in a major way to legal doctrine. Our established academic reputation allows us not only to practice, but to participate in the entire law-making process. We don't just advise on the law — we help make the law. We are therefore honored to have been invited to support this publication and contribute to it, by sharing our most recent practical research and findings in the sphere of corporate disputes, which may lay grounds for further advancements in Russian corporate law.

Anton Aleksandrov, Partner

Foreword

This volume for which I have the privilege of writing this foreword endeavours and indeed succeeds in providing an exhaustive and meticulous account of Russian company law. The examination of Russian company law in English has long been awaited. The authors are to be applauded for the clarity with which most convoluted concepts and doctrines of Russian company law are presented to a lawyer not trained in Russian law.

This book is the second in a series of publications on Russian law, Russian Law Essentials, with the first book in the series devoted to Russian business law. The editors-in-chief, Professors Dmitry Dedov and Alexander Molotnikov, gathered in one place the abundantly clear and comprehensive contributions on Russian company law, together with Levon Garslian whom I have met during his visiting fellowship at the University of Cambridge.

Readers will find many of the concepts in this book familiar. The reason undeniably lies in the fact that Russian company is in part, perhaps significant part, the fruit of a successful comparative analysis of leading legal systems. It is trite that Russian statutes on companies have to a great extent been influenced by civil and, notably, common law jurisdictions.

Having said that, Russian company law is distinctly unique and was adjusted over time to reflect the Russian social reality. And this volume goes to great lengths to explain concepts peculiar to Russian law. Traces of this are present in various chapters. Thus, Chapter 2 examines forms of legal entities unique to Russian law: unitary enterprises, economic partnerships, and investment partnerships. Further, Chapter 7 presents the almost unconstrained right of shareholders to bring derivative actions under Russian law. Such a power is unnaturally wide-ranging in the eyes of a common lawyer.

As a necessary introduction, Chapter 1 sets out the historical development of Russian company law. It is striking that many of the rights

of shareholders and internal structure of companies were clearly ahead of their time and could clearly have formed the skeleton of a modern company law statute. Chapters 2 and 3 set out the main forms of companies in Russia. The main building blocks and distinctions are familiar: commercial and non-commercial entities, partnerships and companies to name a few. The two main forms of commercial companies that Russian law recognises are joint-stock companies and limited liability companies.

Chapter 4 walks the reader through the labyrinth of procedures and formalities to establish and later on to reorganise a company, both an LLC and JSC, in Russia. Particularly interesting is the discussion of various forms of M&A, liquidation and combined reorganisation under Russian law and the mandatory provisions to ensure sufficient protection to the creditors of companies in the process of a reorganisation.

The contribution in Chapter 5 addresses two inter-woven topics: the charter capital of companies and the issuance of securities (principally bonds and shares) by a company. Chapter 6 looks at the transfers of shares/participation interests and the formalities to comply with, including the ubiquitous pre-emption rights. Chapter 7 presents to the reader the rights and obligations of shareholders in a company while Chapter 13 takes a more detailed look at the rights of minority shareholders. Relatedly, Chapter 12 presents the so-called 'control enhanced mechanisms' in Russian law (e.g., golden shares and non-voting shares) and their review in Russian judicial practice.

Chapter 8 examines the shareholders' agreements. What many foreign lawyers, both academic and practicing, will find extremely useful is the analysis of when, if at all, Russian shareholder agreements can be governed by a foreign legal system, notably English law. The discussion is most handy since the position is not well-settled and may give rise to legal battles before Russian courts (and possibly arbitral tribunals).

Chapter 9 examines the management and control bodies of companies, while Chapter 10 discusses when and how a company can enter into significant transactions and interested-party transactions. Chapter 11

examines the scope and extent of the liability of the company, its directors and parent companies. Special mention requires the issue of piercing of corporate veil.

All these topics are discussed in the present book in wide-ranging and stimulating terms. The scholarship is solid and comprehensive and the book will be valuable to foreign companies and their counsel seeking to trade or invest in Russia. It is my pleasure to recommend it both to academics and practising lawyers.

Dr. Hayk Kupelyants,

University Lecturer, University of Cambridge,
Fellow, Homerton College, Cambridge, April 10, 2017

Preface

The Research and Educational Centre “Law and Business MSU” is pleased to announce a new study book devoted to a relatively new but thriving body of the Russian law — the Russian company law. It is the second book of the *Russian Law Essential Series*.

In the times when Russian business is rapidly developing and the law becomes the most sought after instrument of structuring business relations, this book provides a fresh perspective and a broad legal overview of performance of Russian corporations. It describes business opportunities in the world of contemporary law. The authors sought to scrupulously follow all the recent conceptual innovations and to meticulously analyze the backlog of legal cases.

Russian Company Law: The Essentials was created mostly as a course book for foreign law students. However, it is addressed to a wide range of readers, including Russian and foreign researchers, law practitioners and businessmen.

Russian Company Law: The Essentials is a product of collaboration of academicians and practicing lawyers. While making it we tried to adhere to a functional approach. Therefore, it is going to become a comprehensive and easy practical guidance in the sphere of corporate law, a manual for businessmen and other specialists focused on development of their business skills.

Following the functional patterns we decided to devote each chapter to the most practically useful and disputable issues, including but not limited to rights and obligations of shareholders, functions of charter (share) capital, a role of corporate agreements in regulating relations between shareholders, liability issues, corporate control and dispute resolutions within corporations. In the light of the significant changes in the Russian company law over the last three years the book covers a new legislative approach to public and private corporations. Furthermore, it gives thorough insight into the history of the Russian company law which is essential for profound understanding of the subject.

Preface

The co-authors of *Russian Company Law: The Essentials* are representatives of the leading law firms in Russia as well as recognized specialists who share their expertise in the company law. The chief editors of the book are Alexander Molotnikov, associate professor of the Business Law Department, Lomonosov Moscow State University Faculty of Law, and Dmitry Dedov, Judge of the European Court of Human Rights, former professor of the Business Law Department, Lomonosov Moscow State University Faculty of Law. We are also delighted to have endorsements from eminent legal experts in international corporate law.

Evgeny Gubin,

Professor,

Chairman of the Business Law Department,

Lomonosov Moscow State University Faculty of Law

Glossary

Anti-Money Laundering Law	Federal Law No. 115-FZ “On Combating Money Laundering and the Financing of Terrorism” dated August 07, 2001
Arbitrazh Courts of Subjects	Arbitrazh (commercial) courts of first instance in the Republics, in the regions, in the districts, in the cities of federal significance, in autonomous regions, autonomous districts
Arbitrazh Procedural Code of the RF	Arbitrazh Procedural Code of RF No. 95-FZ dated July 24, 2002
Banking Law	Federal Law No. 395–1 “On Banks and Banking Activities”, dated December 2, 1990
Bankruptcy Law	Federal Law No. 127-FZ “On the Insolvency (Bankruptcy)”, dated October 26, 2002
CBR Law	Federal Law No. 86-FZ “On the Central Bank of the Russian Federation (Bank of Russia)”, dated July 10, 2002
CBR or Bank of Russia	The Central Bank of the Russian Federation
Civil Code of the RF	Civil Code of the Russian Federation (First Part) No. 51-FZ dated November 30, 1994 Civil Code of the Russian Federation (Second Part) No. 14-FZ dated January 26, 1996 Civil Code of the Russian Federation (Third Part) No. 146-FZ dated November 26, 2001 Civil Code of the Russian Federation (Fourth Part) No. 230-FZ dated December 18, 2006
Civil Procedure Code of the RF	Civil Procedure Code of the Russian Federation No. 138-FZ as of November 14, 2002
Code of Administrative Offences of the RF	Code of Administrative Offences of the Russian Federation No. 195-FZ dated December 30, 2001
Constitutional Court of the RF	Constitutional Court of the Russian Federation

Glossary

Criminal Code of the RF	Criminal Code of the Russian Federation No. 63-FZ dated June 13, 1996
FAS	The Federal Antimonopoly Service
FL on Advertising	Federal Law No. 38-FZ “On Advertising” dated March 13, 2006
FL on Joint Stock Companies	Federal Law No. 208-FZ “On Joint Stock Companies” dated December 26, 1995
FL on Licensing	Federal Law No. 99-FZ “On Licensing of Separate Types of Activities” dated May 04, 2011
FL on Limited Liability Companies	Federal Law No. 14-FZ “On Limited Liability Companies” dated February 08, 1998
FL on Natural Monopolies	Federal Law No. 147-FZ “On Natural Monopolies” dated August 17, 1995
FL on Non-Profit Organizations	Federal Law No. 7-FZ “On Non-Profit Organizations” dated January 12, 1996
FL on Protection of Competition	Federal Law No. 135-FZ “On the Protection of Competition” dated July 26, 2006
FL on Securities Market	Federal Law No. 39-FZ “On Securities Market” dated April 22, 1996
FL on State Registration of Legal Entities	Federal Law No. 129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs” dated August 08, 2001
Foreign Investment Law	Federal Law No. 160-FZ “On Foreign Investments in the Russian Federation” dated July 09, 1999
JSC	Joint-Stock Company
NPJSC	Non-Public Joint-Stock Company
PJSC	Public Joint-Stock Company
Labor Code of the RF	Labor Code of Russian Federation No. 197-FZ dated December 30, 2001
Law on Investment Funds	Federal Law No. 156-FZ “On Investment Funds” dated November 29, 2001
LLC	A limited liability company

Russian Company Law: The Essentials

MSU	Lomonosov Moscow State University
Standards of Issue of Securities	Rules on standards of issue of securities, on procedure for the state registration of issue (additional issue) of emissive securities, on the state registration of a report on the results of an issue (additional issue) of emissive securities and on the registration of a prospectus of securities (approved by the Bank of Russia under No. 428-P as of August 11, 2014)
Strategic Company	Company engaged in activities of “strategic significance” listed in the Strategic Investment Law *
Strategic Investment Law	Federal Law No. 57-FZ “On the Procedure for Foreign Investments into the Business Entities of Strategic Significance for Ensuring National Defense and State Security ” dated April 29, 2008
Supreme Arbitrazh Court of the RF	Supreme Arbitrazh Court of the Russian Federation
Supreme Court of the RF	Supreme Court of the Russian Federation
Tax Code of the RF	Tax Code of the Russian Federation (First Part) No. 146-FZ dated July 31, 1998 Tax Code of the Russian Federation (Second Part) No. 117-FZ dated August 05, 2000
The Competition Law	Law of the Russian Soviet Federative Socialist Republic No. 948-I “On Competition and Limitation of Monopolistic Activities on Trade Markets” dated March 22, 1991
USRLE	United State Register of Legal Entities

Alexander Molotnikov,
*PhD in Law, Associate Professor,
Business Law Department, Faculty of Law,
Lomonosov Moscow State University*

Andrei Gabov,
*Doctor in Law, Deputy Director of the Institute of Legislation and
Comparative Law under the Government of the Russian Federation,
Associate Member of the Russian Academy of Sciences*

History of the Russian Company Law

1. Corporate Legislation of the Russian Empire

The corporate form of enterprise activity in Russia appeared later than in Western/European countries. Although it should be noted that the rudiments of the so-called “company form of enterprises” are found by some researchers in artels. An artel can be defined as a cooperative association that existed in the Russian Empire and then in the Soviet Union during the years of the 1860s to the 1950s. First, these are the artels of the northern region (Kotlyana), where both labor efforts of the participants and their material resources were invested in the common cause, and the received income was equally shared between the members of the artel.¹

However, one must admit that Russia actually adopted the experience connected with introduction of the joint-stock companies from European countries. As G. F. Shershenevich remarked, “the joint-stock enterprises that appeared in Russia were created under the influence of Dutch, Danish and Swedish models.”²

¹ Lappo-Danilevskiy A. Russian industrial and trading companies in the first half of the XVIII century. Saint-Petersburg, 1899. P. 13–14.

² Shershenevich G. F. Course of the trading law. Vol. 1 Saint-Petersburg. Br. Bashmakovs Publishing. 1908. P. 401.

Another interesting point is that the government bodies sought to encourage Russian merchants to create corporations. In particular, in the 1660s, “the outstanding statesman Afanasiy Lavrentyevich Ordyn-Nashchokin tried to encourage Pskov merchants to unite by the model of the foreign companies, but this attempt was not crowned with success.”³

During the epoch of Peter’s transformations, the subject of enterprise activity organization in the new mode was raised again at the official level. It was during this period that the first regulatory legal act mentioning the sphere of corporate relations appeared. It is the Decree of Peter I issued on October 27, 1699, which encouraged the Russian merchant class to create trading companies. This decree had no significant consequences and, as a Dutch traveler wrote in one of his letters home, “the business obviously failed.”⁴

However, the need for private business development, for the strengthening of the Russia state, remained. In particular, L. N. Nisselovich remarked that Peter the Great argued that “the establishment and development of factories and plants necessary for the Russian economy by the state is not effective, decided to initiate the transfer of this sphere into private hands.”⁵

The most significant detail of Fyodor Saltykov's ideas is that the companies were to be created in an industrial branch, and not with respect to trading activities. However, the overwhelming majority of the Western companies that operated at that time were engaged first of all in trading operations; gaining profit from exercising the exclusive right on purchase and sale in some parts of the globe. Even if we look at the subsequent projects that appeared in Russia in the XVIII century, we will see that their main purpose was trading operations.

³ Lappo-Danilevskiy A. *Ibid.* P. 18.

⁴ Soloviev. *History of Russia*. vol. XV p. 91 quote according to Pavlov-Silvanskiy N. *Projects of reforms in the notes of Peter the Great's contemporaries*. Saint-Petersburg. 1897. P. 42.

⁵ Nisselovich L. N. *History of plant and factory legislation of the Russian Empire (part 1)*, Saint-Petersburg, 1883. P. 21.

During Peter's epoch there were two decrees which can be mentioned here: one devoted to the creation of a whaling company (November 8, 1723),⁶ and the other to the company established for trade with Spain (August 4, 1724).⁷ The text of the second decree is remarkable; in particular, item three stated that the East India Company should be the example of investing money in shares (forming the company's capital).

Later, up until the middle of XVIII century, one can hardly find any state initiatives on the establishment of companies. The individual projects submitted to the consideration of the country leaders should be mentioned here, for example, the 1739 project of Yakutia vice-governor Lorentz Lang on establishing the joint-stock company for trade with China.⁸

The official documents provide us with the information that by 1742 there were some companies (Persian, Bukharan, Khivan, Ukrainian, Polish, etc.) in Russia, which did not deserve to be called as such in the opinion of the Commission on Commerce.⁹ Probably, these companies were established by individual merchants without the sanction of the state.

In the opinion of many researchers,¹⁰ the Russian commercial company trading with Constantinople should be considered the first joint-stock company created in Russia;¹¹ the Decree on its establishment was

⁶ Complete collection of laws of the Russian Empire from 1649. Collection 1 (hereafter — "CCL-1"). Vol. VII edition of 1830. Art. 4350. P. 153.

⁷ CCL-1. Vol. 7. No. 4540. P. 332.

⁸ Lappo-Danilevskiy A. Ibid. P. 53; Mamai V. I. Federal law "On joint-stock companies". Scientific practical commentary. Article-by-article material. Court practice. /V. I. Mamai — Moscow: Publishing center "MarT."

⁹ Firsov N. N. Russian commercial and industrial companies in the first half of the XVIII century. Kazan. 1896. P. 33.

¹⁰ For example, Kaminka A. I. Joint-stock companies. Legal research. Vol. 1. Saint-Petersburg, 1902. P. 337; Lomakin D. V. Corporate legal relations: general theory and practice of its application in economic societies, 2008. Quoted according to the "Consultant Plus" information system.

¹¹ Also in non-official documents this company was named Temernik Company. Obviously, this was because of Temernik port, through which the commercial transactions with Turkey were carried out (For example, Yukht A. I. Trading companies in Russia in XVIII. // Historical notes of the head editor Acad. A. M. Samsonov. Moscow 1984. P. 239).

issued on February 24, 1757.¹² Unlike the previous documents on creating companies in Russia, this Decree described thoroughly and in detail all the aspects of the internal structure of the newly-created organization, including the structure of its management and business administration. In spite of the fact that the term “trading partnership” appears in the name of the Decree, the newly-created company was not a partnership in its essence.

Later on, more companies appeared in Russia. In particular, the Persian trading company in 1758, and the Central Asian company (the company trading with Khiva and Bukhara) in 1760. As a side note, the model of the Persian company shows us how the joint-stock form began to be used by unconscious founders, for the purpose of solving their own financial problems at the cost of shareholders.¹³

By the beginning of the XIX century, several joint-stock companies were operating in Russia, and new companies were being created on a regular basis: from 1799–1806, three companies were established, from 1807–1829, 19, and from 1830–1836, 30.¹⁴ The most famous company that seriously influenced the national economy was the Russian American company (the Decree issued July 8, 1799)¹⁵ that carried out trade in the Pacific region. Note that this company was not newly-established; it was formed on the basis of two private companies that already existed at that time.

Furthermore, the first legislative acts regarding joint-stock companies appeared during the period under consideration, which defined

¹² CCL-1. Vol. 14 No. 10.694 P. 726. It should be noted that the government officials tried to encourage the Russian merchants to establish the company for trading with Turkey for quite a long time. The Decree under consideration refers to two Decrees — of 1753 and of 1755, which were aimed at searching the founders for this company.

¹³ More in: “That state is rich, the citizens of which are rich:” “Proposition” of count R. I. Vorontsov to the Senate on revocation of monopoly of trade with Persia, Bukhara and Khiva. 1761 // Historical archive, No. 2. 1994 P. 192–193.

¹⁴ Shepelev L. E. Joint-stock companies in Russia of XIX — beginning of XX century. Saint-Petersburg, 2006. P. 30

¹⁵ CCL-1. Vol. 25. No. 19.030 P. 699.

the organization and activity of joint-stock companies in Russia for many years to come.

It is well-known that one of the cornerstones of the modern joint-stock structure is the principle of the limited liability of its participants. However, this facet was not obvious in these businesses during the 1700s to the early 1800s. In connection with this, K. Marx and F. Engels marked a significant fact in the history of the domestic joint-stock rights: the declaration of the general principle of shareholders' (and the joint-stock companies' as a whole) limited liability was carried out extremely early in Russia; half a century before this principle won its ultimate victory in Western Europe.¹⁶

This principle was formalized in the Senatorial Decree issued on September 6, 1805 (on the basis of the Emperor's decree of August 1, 1805) "On the liability of the joint-stock companies in collecting of joint capital."¹⁷ The insolvency of the St.-Petersburg joint-stock company, which was created for shipbuilding, was the reason for this decree. Creditors of the legal person of this company intended to collect from the available shareholders the amount that would have been collected from deceased and insolvent members. However, the intentions of the creditors could not be fulfilled, as the decree clearly stated the government position, which said that such attempts to collect debts from the shareholders were "absolutely contrary to the essence of this type of companies ... the joint-stock company is only liable with its joint capital and consequently in the case of failure none of the shareholders loses more than the invested capital."

Soon after the issuance of the aforementioned decree, the baseline document appeared, which for a long time thereafter was the basic normative legal act that coordinated the joint-stock legal relationships in Russia. This was the Manifest of January 1, 1807, "On granting the merchant class with new benefits, distinctions, advantages and new ways of advancement and strengthening of trade enterprises."¹⁸

¹⁶ Quoted according to Shepelev L. E. Ibid. P. 24.

¹⁷ CCL-1. Vol. 28 No. 21.900 P. 1211.

¹⁸ CCL-1. Vol. 29 No. 22.418 P. 972.

In this document, joint-stock companies are called partnership companies on sites, and they are listed in the section devoted to merchant partnership companies (general partnership and limited partnership).

This formalized the authorization system of creating joint-stock companies in Russia, which at that stage corresponded to global practices in general. The state sanctioned the establishment of companies by approval of their charters; the final formalization of this procedure occurred in the first decades of the 1900s.

The beginning of 1830s was marked by an increase of public interest in securities and, primarily, in state bonds and shares. Certainly, this had to be reflected in the legislation.¹⁹ The Emperor's decree "Regulation on the companies based on shares"²⁰ passed on December 6, 1836, and rendered significant influence on the development of joint-stock legislation. Many aspects of joint-stock companies' activities were described in detail in this normative legal act, and it remained in effect until the creation of the Soviet state.

The first article of the regulation provides the definition of a joint-stock company. This was defined as companies based on shares that are created by means of the joining of a certain number of private investments, of definite and uniform size, into one general joint capital, which limits the circle of activities and liabilities of each one.

It is important to note that, unlike in previous statutory acts, the legislator precisely expresses the nature of joint-stock companies as the joining of capitals, not persons.

Article 20 of the Regulation formalized the principle which became the primary foundation of this statutory acts' "durability." In particular, it stipulated that the order of the companies' activity is defined in their charters, which should correspond to the general restrictions and rules of this Regulation. This rule was used both by companies, which

¹⁹ For example, January 12, 1831, the Regulation on the stock exchange structure was approved (CCL-2 Vol. 6 sect. 1 No. 4255 P. 18).

²⁰ CCL-2. Vol. 11 No. 9763 P. 257.

received certain freedoms in charter projects, and the state authorities that, depending on the objectives, could correct the content of the charters' projects. Clearly, this situation suited everyone, which is why, as will be shown below, all attempts to accept new legislation on joint-stock companies invariably failed. This is in spite of the fact that the Regulation was hopelessly out-of-date.

The process of creating the company was completely controlled by its founders. They managed the company until the moment of shares' distribution among their owners (Art. 36), and they had an opportunity to establish control over a significant amount of shares, which allowed them to guarantee their election to the Board. As V. E. Belinskiy remarked, "rather often the goal of founders in establishing the company is to become its director and to manage the charter capital, having the opportunity to speculate on the stock exchange with the new valuables."²¹

The provisions of the charters of the created companies were also used for the purposes of personal mercenary; some of them provided automatic appointment of the founders as the company's directors, thus discharging the shareholders from the company's management.²²

Many of the so-called "joint-stock businessmen" spent the money and resources obtained from stock subscription for personal advantage. They used the gaps and contradictions of the applicable law of the time; as contemporaries remarked "the greatest number of deceits by various joint-stock businessmen happens at the time when the uncertainty of legal representation of the joint-stock company and the variety of claims that can arise at this time make it rather easy for the founders to avoid responsibility."²³

²¹ Belinskiy V. E. Administrative bodies of joint-stock companies. Comparative review of the legislation. Warsaw, 1891. P. 8.

²² On the goals of the coming reform of joint-stock legislation. The Speech written for the solemn assembly at the Emperor's Kharkov University on August 30, 1861 by full professor S. Pakhman. Kharkov. University printing house. 1861. P. 132.

²³ Collection of comments to the draft regulation on joint-stock companies. Saint-Petersburg. 1872. P. 4.

The right of the shareholders to freely manage shares was limited by only two guidelines (Art. 29), which provided obligatory alienation of shares, on the basis of the transfer deed and observance of interdiction to conduct the so-called urgent transactions with shares (the obligation to sell shares, at a price determined in advance and by the certain date).

Shareholders also had the right to participate in the meeting of general shareholders. The number of ballots given to them depended on the quantity of shares belonging to them (Art. 32). The definition of the threshold value for purchasing the right to vote was decided by each company individually in its charter.

For example, the Charter of the Company of Samsonievsky manufactory for spinning cotton and wool (1851) stated, that those who owned five shares got one vote, 10 shares — two votes, 20 and more — three votes (Article 26).²⁴ At the same time, the Charter of the St.-Petersburg joint-stock company under the “Arkhimed” firm (1872) gave one ballot to the owner of 10 shares, 30 — two ballots, to 100 — three (item 43).²⁵

Notably, not all contemporaries agreed with the situation when the vote of shareholders was limited on the basis of various criteria. For example, I. T. Tarasov remarked, that “the concept of the shareholder ... includes the concept of using the right; this right is called joint-stock, and its structure includes the voting right as its integrated part; therefore no shareholder, remaining such, can be deprived of using the voting right, because such deprivation absolutely violates his joint-stock right.”²⁶

After finishing the distribution of shares, according to Article 36, the general meeting of shareholders appointed either the members of

²⁴ CCL-2 Vol. 26, section 2 No. 25545 P. 652.

²⁵ Charter of the Saint-Petersburg joint-stock company under the firm “Arkhimed” Saint-Petersburg, 1872.

²⁶ Tarasov I. T. Teaching on joint-stock companies. Moscow, Statute, 2000. Quoted according to “Garant” legal data base.

the Board or the Directors (depending on the Charter). It is interesting that decisions were made in the Board by a majority of votes from the number of those present, and only under condition of quorum — at least half of the members must be present (Article 40).

Therefore, clearly, the appearance of the new regulation became one of the most significant events in the development of the joint-stock companies in Russia at that time. However, after several decades, which were marked by several market crashes, the Crimean war, and the change of economic conditions in the country in general, the regulation was more often perceived as a vestige of the past, which required serious change.

In characterizing the Regulation on the joint-stock companies, Pavel Pisemsky wrote that it suffers from the absence of a system; some articles, which by their essence had no connection with such legal entities, should have been placed in other sections. But, it was considered by Pisemsky that the absence of major decisions was the most important feature lacking in joint-stock legislation. In particular, the scholar emphasized that the brief rules concerning the relationships of the company's managers to the general meeting, their responsibility and powers are obviously insufficient for solving the most complicated issues here.²⁷

As it was noted by L. I. Petrazhitskiy²⁸ in the end of the 19th century, the legal status of joint-stock companies was no longer based on the Regulation, but on the “administrative norm” accepted by each joint-stock company individually. Thus the charters became separate laws. That is why this stage of legal regulation of joint-stock relationships remained in history as the period of separate legislation. The so-called individual laws actually expanded the operating joint-stock legislation. For example, Article 22 of the Regulation contained interdiction on the issue of shares warrants to the bearer

²⁷ Quoted according to: Tarasov I. T. Ibid. “Garant” legal data base.

²⁸ Petrazhitskiy L. Joint-stock company. Corporate abuse and the role of joint-stock companies in the national economy. Saint Petersburg. 1898. P. 3.

(unregistered). However, the charters of the companies allowed the issue of such shares.²⁹

Based on the analysis of the contents of the charters accepted in the middle-end of the XIX century, it is possible to define the standard structure of the joint-stock company's charter:

- The purpose of the Society establishment, its rights and duties;³⁰
- The capital of the Society, shares, bonds³¹ the rights and duties of shareholders;
- Board of the Society, its rights and duties;
- Reporting on the Society's activity, distribution of profit and payment of dividends;
- General Shareholders' meetings;
- Resolution of disputes on the Society's activity, its liability and termination.

According to G. F. Shershenevich's report, the main feature of the pre-revolutionary period of joint-stock companies' regulation was inconsistency of terminology. In particular, the following names were used: partnership (Trading Charter, Art. 55, vol. X, part 1 page 2128), society (Trading Charter, Art. 77), company (Trading Charter, Art. 58, vol. X, part 1 page 2139), adding the phrases "on shares" (vol. X part 1 page 2139), "on equities" (Trading Charter, Art. 55), "by units" (vol. X part 1 page 2131).³²

²⁹ For example, item. 7 of the Charter of Saint-Petersburg joint-stock company under the firm "Arkhimed," item 15 of the Charter of the joint-stock company of the metal goods factory H. Zukerwar and Son in Warsaw (Charter of the joint-stock company of the metal goods factory H. Zukerwar and Son in Warsaw, Saint-Petersburg, 1898).

³⁰ This section also contained the information on the founders.

³¹ Sometimes the information in brackets was added.

³² Shershenevich G. F. Ibid. P. 383.

Though there were differences in terminology in the legislation, in all cases these terms were treated as identical. However, in practice the founders gradually began to differentiate between “joint-stock societies” (or much less often, joint-stock companies) and “share partnerships.”³³ Share partnerships were characterized by a small number of participants, which very rarely left the society. These attributes make share partnerships similar to the modern structure of limited liability society.

The first serious attempt to reform joint-stock legislation was made by the Ministry of Finance in 1859, based on the decision of the cabinet. The development of the draft of the bill was entrusted to the director of manufactories and domestic trade department of this ministry, A. I. Butovskiy, and to the member of the Council of the Minister of Finance, G. P. Nebolsin.³⁴

Two years later in 1861, the “Draft of regulation on the partnerships by units or the joint-stock companies” was ready, and then for many years this regulation was going through approval process in the profile ministries; which ended in 1870.³⁵ However, contrary to expectations, the meeting of the State Council did not approve the draft. But as a result of the meeting, it was published and sent to all interested persons (to stock exchanges, large joint-stock companies, etc.) for the purpose of collecting their feedback, and incorporating that feedback into the final version of the Regulation.³⁶ Unfortunately, the analyzed responses had no practical effect — in March, 1874 the decision was made to leave the draft bill.

In later years, the state repeatedly showed interest in reforming joint-stock legislation. For example, in 1883, two departments of the State council, the Department of Laws and the State Economic Department,

³³ Shepelev L. E. Ibid. P. 29–30.

³⁴ Shepelev L. E. Ibid. P. 122.

³⁵ Tarasov I. T. Ibid. “Garant” legal data base.

³⁶ Vide Draft of regulation on the joint-stock companies with explanatory note. Saint-Petersburg, 1872.

recommended returning to the development of a general law on joint-stock companies, but this attempt also failed.³⁷ In 1894, at the suggestion of the Finance Minister, S. U. Vitte Nikolai II approved the revision of joint-stock legislation. As a result, by 1896 P. P. Tsitovich, as the official of the Ministry of Finance, presented a draft bill of the “Regulation on joint-stock enterprises.”³⁸ Notably, among other things, this draft envisaged the system of establishing joint-stock companies without registration. However, in the end of 1898, the bill was rejected, as well as all of the previous ones.³⁹ It is probable that this was connected with the end of work on the project of the Fifth Book of the Civil Code, prepared by the editorial commission affiliated with the Ministry of Justice in 1898, because this book had a chapter named “Joint-stock partnership.”⁴⁰

Despite the indecisiveness of the pre-revolutionary legislator with regards to significant revision of legal regulation of joint-stock relationships, isolated statutory acts appeared, which regulated certain facets of the companies’ activity. In particular, on December 21, 1901, the following regulation was accepted — “Regulation on amendment and addition of the applicable regulations concerning general meetings and auditorial part of the joint-stock companies as well as their boards.”⁴¹

Additionally, it is interesting to consider the so-called “administrative norming.” Due to the conditions of the outdated legislation, and the changing needs of the participants of economic relations, the officials sided with businessmen, for example by allowing in the charters of

³⁷ Shepelev L. E. *Ibid.* P. 147.

³⁸ Note to the preliminary draft of the Regulation on joint-stock enterprises. Saint-Petersburg, 1896. Draft Regulation on joint-stock enterprises// Gazette of finances, industry and trade. 1898. No. 24.

³⁹ Shepelev L. E. *Ibid.* P. 204.

⁴⁰ *Ibid.* P. 210.

⁴¹ Regulation on amendment and addition of the applicable regulations concerning general meetings and auditorial part of the joint-stock companies as well as their boards. Saint-Petersburg, 1902.

companies the purchase of shares of other joint-stock companies. Due to this fact, in 1910 this right was given to 10 companies, for the years 1913–1952.⁴²

World War I rendered a dramatic impact on the national economy, and the sphere of enterprise activity carried out in the corporate form was no exception. It was during the war years that the question was raised of the possession of shares and participation in the management of Russian joint-stock companies by citizens of the countries hostile to Russia (especially Germany). Considering the beginning of a long phase of military operations, when the economies of all the countries involved in the war worked at their full capacity, it was dangerous to potentially leave management positions of key domestic companies in the hands of citizens of such countries.

The long war in many respects triggered the February Revolution in 1917, as a result of which the authority in the country passed to the so-called Provisional government. Among the first statutory acts accepted by the new country leaders were the Decrees devoted to the problem of joint-stock companies. First of all, it was the Decree of the Provisional government issued on March 10, 1917, No. 388 “On immediate simplification of establishing joint-stock companies and elimination of national and religious restrictions from their charters.”⁴³

The most important innovations of this legislation can be divided into the following groups:

- 1) vesting the Minister of Trade and Industry with the right to approve and change charters of the joint-stock companies, and to increase the term of shares accommodation for the companies (item one of the Decree);
- 2) removing of restrictions connected with joint-stock companies referring to foreign and Russian citizens not professing

⁴² Shepelev L. E. *Ibid.* P. 339.

⁴³ Collection of statutes and decrees of the Government published by the ruling Senate. March 28, 1917. No. 69 sect.1 (p. 587–588).

Christian religious beliefs (items two and three of the Decree);⁴⁴

- 3) including in the charters of Russian companies the provision of non-admission of “citizens of countries at war with Russia” to administrative offices in societies and companies (item six of the Decree).

The aforementioned measures led to the growth of a number of joint-stock companies in Russia, which stopped only with the Bolsheviks coming to power.

Thus, despite the active development of joint-stock companies in Russia until 1917, a meaningful reform of the legislation in this area did not take place. The state preferred the way of the “separate legislation” development, without revising the general approach of legal regulation of the joint-stock companies, but periodically making minor amendments to the applicable laws.

2. Corporate Legislation in Soviet Russia

Essential changes in joint-stock legislation began only after the Revolution of October, 1917. Joint-stock companies in this period were actually removed from economic life by the legislation of 1918–1920, which was actively accepted by the new authorities. The first statutory act that mentioned the corporate sphere was the “Decree on the termination of coupon and dividend payments,” (Council of People’s

⁴⁴ For example, the cancelled note 3 to art. 262 of the Regulation on the government of Turkestan region, which limited the possibility of real estate purchase in this part of the Russian empire by the joint-stock companies, the shareholders of which did not profess Christian religion, etc.

The limitations were also lifted in the Regulation of the Provisional Government issued on March 20, 1917 No. 400 “On cancellation of confessional and national limitations.” Item 4 of art. 1 of this Regulation directly lifted the limitations of participation, government and holding other offices in the joint-stock and other commercial-industrial companies and partnerships for Russian citizens based on nationality, confession or religion.

Commissars on December 23 1917).⁴⁵ Item 2 of the Decree prohibited all transactions with securities. Then in April, 1918, the registration of all shares belonging to private individuals was initiated.⁴⁶ Subsequently, the nationalization of the industry started on the basis of various Decrees.⁴⁷

Later in 1921–1922, according to V. Y. Volf “... the private capital faced the alternative: to establish a joint-stock company meant to achieve limited liability, but it cost more money ... (the minimum was fixed by the resolution of Labor and Defense Council on August, 1st, 1922 as hundred thousand gold rubles) or to establish a simple company — it didn’t cost much money, but it led to unlimited liability of all participants for the partnership’s debts.”⁴⁸

New developments regarding the joint-stock form of enterprise activity began in Russia during the New Economic Policy period. It was a compulsory measure of the Soviet government. The initial purpose of joint-stock companies’ formation was the attraction of the private capital — both domestic and foreign — to help solve the problem of reviving the national economy.⁴⁹

Most likely, the economy’s need for joint-stock companies based on private investments was so high, that the first joint-stock company established in the RSFSR during the new economic policy operated only

⁴⁵ Decrees of the Soviet Government. Vol. 1. 1957 P.285.

⁴⁶ “Decree on the registration of shares, bonds and other securities” (passed by the Council of People’s Commissars on April, 18, 1918r). More details in: Decrees of the Soviet Government. Vol. 2 1959 P. 130–138.

⁴⁷ For example, “Decree on nationalization of industry” (passed by the Council of People’s Commissars on June, 28, 1918). More details in: Decrees of the Soviet Government. Vol. 2 1959 P. 498–503.

⁴⁸ Braude I. Joint-stock companies and partnerships in commerce and industry (collection of applicable statutes with brief commentaries, supplement model charter of a joint-stock company and agreement of full partnership). 1923. Petrograd. P. 5.

⁴⁹ Kasyanenko V.I. NEP and joint-stock entrepreneurship in the USSR. Subscription popular science series “Political history of the XX century” 5/1991. Moscow, “Znanie” Publishing house. P. 11.

on the basis of the charter approved by Labor and Defense Council of RSFSR in 1922.⁵⁰ This was the joint-stock company of internal and export trade in rawstock, named “Kozhsyryo.”⁵¹

The main normative legal acts that regulated joint-stock relationships in the beginning of the 1920s were the following:

- The Civil Code of RSFSR put into effect by the Decree of the All-Russia Central Executive Committee on November 11, 1922,⁵²
- “Temporary regulations on the order of approval and establishing the activity of joint-stock company and on the responsibility of founders and board members,” approved by the Decree of Labor and Defense Council of RSFSR on August 1, 1922,⁵³
- Decree of the All-Russian Central Executive Committee of RSFSR issued on May 22, 1922, “On the main private property rights recognized by RSFSR, protected by its laws and courts of RSFSR.”⁵⁴

In spite of the fact that the term “joint-stock company” appeared in the legislation again, there was a significant change in the legal regulation of the legal structure of this business. First of all, it was connected with strengthening the state’s role, and was expressed not only

⁵⁰ Some sources provide the information that long before 1922 People’s Commissariat of Export Trade in cooperation with foreign capitalists in Germany and England established foreign companies for storage of export goods and carrying out of export and import transactions (Vide: Venediktov A. Ibid. P. 29).

⁵¹ Joint-stock companies. Edited by E. N. Danilova All-Russian committee of aiding the war invalids publishing. Moscow. 1923. P. 3.

⁵² Collection of statutes and decrees of the Workers’ and Peasants’ Government, published by People’s Commissariat of Justice No. 71, P. 904.

⁵³ Collection of statutes and decrees of the Workers’ and Peasants’ Government, published by People’s Commissariat of Justice 1922. No. 55. P. 698. Section one.

⁵⁴ Collection of statutes and decrees of the Workers’ and Peasants’ Government, published by People’s Commissariat of Justice 1922. No. 36. P. 423. Section two.

in the intensified control over the joint-stock companies' activity, but also in the rise of the so-called "mixed societies."

Mixed societies essentially represented joint-stock companies and partnerships, the participants of which were both state (central or local) institutions and enterprises, and private businessmen (domestic or foreign). The mixed societies in the Soviet Russia were first introduced by the resolution of IX Congress of Soviets, and then the legal regulation of their status received further development in the Decree of All-Russian Central Executive Committee on foreign trade issued on March 13, 1922, in the aforementioned temporary regulations, in the practice of the Supreme Council of National Economy (joint-stock company Melstroj).⁵⁵ However, it would be erroneous to state that the idea of the special joint-stock companies with state participation appeared only after the October revolution of 1917. As was already mentioned above, the first systematic attempts to strengthen the state role in the management of joint-stock companies' were made in 1916–1917.

It is necessary to note that the relationships between state and private capital in the mixed society were not formalized in the legislation during that period, therefore in actual practice, in addition to the societies with prevailing state participation in the charter capital, there were also societies with equal shares of the state and other participants, and with minority state share.⁵⁶

As the analysts of the joint-stock form working during this period noted, "the state takes part in the mixed enterprises because they represent a transitive stage from individualist economy to socialist."⁵⁷ Therefore, joint-stock companies were viewed by authorities only as a temporary construction, which was used to provide a painless transition from one type of management to another.

⁵⁵ Braude I. *Ibid.* P. 9.

⁵⁶ Worms A. Mixed joint-stock companies // Soviet law No. 1 1922. P. 95.

⁵⁷ Landkof S.N. Partnerships and joint-stock companies. Theory and practice. Legal publishers of People's Commissariat of Justice of the Ukrainian SSR 1926. P. 20.

Due to the fact that the state became an active participant of the joint-stock movement, there was a necessity to maintain control over the activity of such companies, which led to the rise of state representatives being instituted in the councils, boards, and auditing bodies of joint-stock companies created with the participation of the state capital (clearly, such an institute was not the invention of the new authority either; one can recall the management features of companies with prevailing German capital). These functions were carried out by government employees, whose right of participation in the charter capital of joint-stock companies was limited.⁵⁸

Due to the special status of the republics as members of the USSR, which allowed them to issue their own statutory acts, some of them established special orders for the management of joint-stock companies with state participation. For example, in Ukrainian SSR, the charters of the companies with state participation could stipulate that the election of administration bodies is carried out separately at general meetings of the state shareholders (the state enterprises and institutions) and private shareholders (article 348 of the Civil Code of Ukrainian SSR).⁵⁹

If we turn to the Soviet legislator's first attempt to regulate the joint-stock form of business, we can see that this was found in Section X "Partnerships" of the Civil Code of the USSR of 1922, and it was called a joint-stock company (partnership on shares). In the Civil Code, the legislator kept the authorization system of establishing joint-stock companies that operated in the Russian empire. In particular, article 323 of the Civil Code provided, that in order to establish an organization, its founders must present the charter to the Main Committee on affairs of public-private partnerships and joint-stock companies; then the charter was approved by the Labor and Defense Council, and in the case of concession, by the Council of People's Commissars.

⁵⁸ Quoted according to the book: *Joint-stock companies*. Edited by E. N. Danilova. All-Russian committee of aiding the war invalids publishing. Moscow 1923. P. 7.

⁵⁹ Quoted according to Landkof S. N. *Ibid.* P. 181.

The new legislation also established the minimal size of nominal capital at 100,000 gold rubles, and the minimal number of the society's founders at five (article 324 of the Civil Code).

The novelty of the legislation was obligatory state registration of a joint-stock company, which became the basis of its formal legal capacity (articles 14 and 338 of the Civil Code). The registration of the society was carried out only after the distribution of its shares among the shareholders, on the basis of founding stockholders' meeting. After this meeting, the board of the legal body had to submit the application for registration immediately to the Main Committee on the affairs of public-private partnerships and joint-stock companies. The information on registration was published in the press (article 335 of the Civil Code).

Such a time gap between charter approval and registration of a society caused theoretical and practical problems. For example, there was a wide discussion about the interim period, when a joint-stock company was functioning from the moment of the founding shareholders' meeting until the state registration of the legal entity. As known, article 339 of the Civil Code envisaged that before the publication of the company's registration, the founders of the company had the right to make all necessary transactions and sign contracts on behalf of the joint-stock company. However, many authors strongly disagreed, stating that until the moment of entering into the register, the joint-stock company does not exist, and therefore the law cannot provide the right to carry out transactions on behalf of the entity that does not exist.⁶⁰

Just like before the revolution, the owners of the company's shares had the right to be present at the general meeting of shareholders. The legislator fixed the rule, which stipulated that each share came with a voting right. However, the company's charter could define some quantitative threshold for granting the voting right (article 347 of the Civil

⁶⁰ For example, Landkof S. N. *Ibid.* P. 164; Joint-stock companies. Edited by E. N. Danilova P. 8.

Code). Additionally, the quorum of a general meeting of shareholders was established at the rate of 1/3 of charter capital (article 352 of the Civil Code). This was most probably necessary due to low attendance at general shareholders' meetings.

Aside from the general shareholders' meeting, the company's management was also carried out by the board dealing with current affairs (articles 354 and 357 of the Civil Code). It is notable that the legislator envisaged only a collegial body that would deal with the company's current management. An individual body was not stipulated. As article 357 of the Civil Code stated, "the Board manages the company's affairs and represents it both in court and in the relations with government bodies and with all other persons in its affairs."

Furthermore, the charter could provide for the formation of a council for the general management of the company's affairs (article 361 of the Civil Code). Due to the fact that the council was not obligatory, the legislator did not describe this body in details, it only specified that the number of members, the order of their election, the duties assigned to the council, and the order of its activity are provided by the company's charter.

There also was a legal organizational form of the Limited Liability Company in the Civil Code of 1922. Seemingly, this was an analogue of the German GmbH. However, this was not the case. As many analysts noted in 1920, the similarity of Russian limited liability companies with similar bodies in the Western Europe is only in the name.⁶¹ Inherently, these companies were closer to an association of persons,⁶² as compared to an association of capital. Article 318 of the Civil Code stated that the participants of a Limited Liability Company were engaged

⁶¹ For example, prof. V. M. Gordon in his foreword to the book by Landkof S. N. "Limited Liability Company in the West and in the USSR". Kharkov, 1924 P. I-II; Shreter V. Soviet economic law. Moscow-Leningrad, 1928, P. 184; Goikhbarg A. G. Sketches of economic law Moscow, 1927. P. 50.

⁶² Some analysts even referred all types of cooperatives and artels of accountable labor to the companies with limited liability (Shreter V. Ibid. P. 185).

in enterprise activity (trade or craft) under the general firm name (firm). The same article specified that the company's members are liable not only in the invested contributions, but also in personal property in the definite proportion to the amount of contribution, which was identical to all participants.

It must be emphasized that the establishment of companies was also limited to certain industries where this was permitted by law (for example, electric companies), or had to be confirmed with special permission in each separate case (article 320 of the Civil Code).

At the final stage of the joint-stock companies' functioning in Russia in the first third of the 20th century, the developed regulation on joint-stock companies was accepted and approved by the Central Executive Committee and Council of People's Commissars of the USSR on August 17, 1927.⁶³

At first glance, accepting a statutory act regulating joint-stock companies on their decline seems strange, to say the least. However, after familiarizing oneself with the contents of the Regulation, one can assume that its basic purpose was the regulation of the activity of joint-stock companies with state participation.

Considering the ongoing process of the state's strengthening in the economic sphere, the Regulation paid close attention to regulating joint-stock companies with state capital participation. There also was the distinction of joint-stock companies by the degree of state participation into state⁶⁴ and mixed joint-stock companies.

In particular, the state joint-stock company could be considered as such when its charter directly specified that all shares should be in the hands of state institutions or state enterprises (article 3 of Regulation). Therefore, the fact of the shares being owned by the state structures was not enough, it was also necessary to have the corresponding statement

⁶³ Collection of laws and statutes of the Workers' and Peasants' Government of the USSR. 1927 No. 49. Art. 5000. Section one.

⁶⁴ The whole section VII (p-p. 126–141) was devoted to the state joint-stock companies.

in the charter. The same can be said of the mixed society; V. Shreter, in particular, noted that "...it is not the fact of state organs' participation in 50% of the joint-stock company that makes it a 'mixed' company; it becomes such only when this participation of state organs is directly stipulated by the charter."⁶⁵

The Regulation took into account all the defects of the previous statutory acts concerning establishment of the state and mixed societies. Thus, the list of state enterprises and institutions, which had the right to establish companies was included in article 7 of the Regulation. Articles 8 and 9 stated the conditions under which these bodies could become founders of joint-stock companies (for example, if the purpose of the company corresponds to the objectives of the enterprise/institution).

Aside from the numerous norms regulating the state participation in joint-stock companies, the Regulation also contained other innovations. In particular, bearer shares (article 47) were cancelled, and the concept 'charter capital' was used equivalently with the term "nominal capital" (art. 1). The order of management in joint-stock companies also underwent changes. The principle of individual management came to the fore more often. For example, the management of the company's current activity was now carried out either by the board, or by individual director (item 6 art. 72 of the Regulation). And even when the board was present, the company could appoint a managing director for immediate administration, who would act on the basis of the power of attorney issued by the board.

However, the provisions of this statutory act could not render serious influence on the process of joint-stock companies' legal status regulation; due to state policy,⁶⁶ joint-stock companies gradually began

⁶⁵ Shreter V. Soviet economic law (commercial and industrial law). Moscow state publishing, Leningrad 1928. P. 183.

⁶⁶ More details in Kasyanenko V. I. NEP and joint-stock entrepreneurship in the USSR. Subscription popular science series "Political history of the XX century" 5/1991. Moscow, "Znanie" Publishing house.

to disappear, though the Regulation continued operating for quite a long period (until 1962).⁶⁷

For the period from 1923–1928, only 185 private joint-stock companies were registered and operated, 105 of them in RSFSR, 50 in Ukrainian SSR, 20 in Belarus SSR, and 10 in Uzbek SSR.⁶⁸

Thus, the “joint-stock form became unacceptable for the state enterprises and was gradually forced out from the socialized sector, and then from the national economy as a whole.”⁶⁹

For a number of reasons, as a rule caused by partnership relations with the foreign companies, some joint-stock companies established in the 1920s operated in the USSR. In particular, the Bank for Foreign Trade of the USSR (Vneshtorgbank the USSR),⁷⁰ and the present state corporation, the “Bank of development and foreign trade activity (Vnesheconombank).”⁷¹ Also, the All-Union joint-stock company “Intourist” established on April 12, 1929.⁷² Additionally, in the beginning of the 1970s, the legal status of the Central administration of foreign insurance of the USSR (Ingosstrakh), established on November 16, 1947, was changed. It was transformed into the insurance joint-stock company “Ingosstrakh,” which presently continues to exist. However, the Soviet government took this step due to unwillingness of Western partners to deal with an insurance organization that does not have an organizational-legal status of an open joint-stock company, which was familiar to them.⁷³

⁶⁷ Vide: Gazette of the Supreme Soviet of the USSR. 1962. No. 22. P. 226.

⁶⁸ Kasyanenko V. I. *Ibid.* P. 33.

⁶⁹ Isaev I. A. Formation of the economic legal thought in the USSR (the 20-s). Moscow, Legal literature. 1986. P. 157.

⁷⁰ Initially created on August 18, 1922 as “Russian Commercial Bank.”

⁷¹ According to the information from the web-site of the state corporation Vnesheconombank (www.veb.ru).

⁷² According to the information from the web-site of All-Russian Joint-Stock Company “Intourist” (www.intourist.ru).

⁷³ Lukin S. V. Joint-stock entrepreneurship in Russia: history and present time. Moscow, 2001. P. 88–89.

3. Revival of Corporate Legislation in the USSR and New Russia

The gradual transition of the Soviet state to the market relations in the second half of the 1980s led to the need for legal regulation of various non-state forms of collective entrepreneurship.⁷⁴

Here we should mention the first attempts of state enterprises in the USSR to issue shares, despite the lack of a corresponding legislative base. In essence, the issued “shares” represented some financial tools that were placed mainly among the employees, in order to raise additional funds for the development of the enterprise. One of the first enterprises to issue such shares was the Lvov production association “Conveyor” in 1987.⁷⁵

Subsequently, this initiative was formalized in legislation: there was the Resolution of the Council of Ministers of the USSR, issued October 15, 1988 No. 1195, “On the issue of securities by enterprises and organizations.”

The basic purpose of this resolution was to increase employees’ interest in the results of their production, and also to attract additional financing to the state sector of economy. All of the issued shares were divided into shares of the labor collective and shares of enterprises (organizations).

The right to issue shares was given to state enterprises, which transitioned to the full commercial accountability and to cooperative societies that received the permission to issue shares in the State Bank of the USSR.

Later, the state government authorities accepted many regulatory legal acts that marked the revival of corporate forms of enterprise activity in our country. The primary legal acts include the following:

⁷⁴ Entrepreneurial law of the Russian Federation / Exec. editors E. P. Gubin, P. G. Lakhno. P. 189.

⁷⁵ Zenkin S. Joint-stock companies — new again // Socialist labor 1990. No. 6.

- Regulation on joint-stock companies and limited liability companies, approved by the Resolution of the Council of Ministers of the USSR issued June, 19, 1990 No. 590;
- Regulation on the joint-stock companies, approved by the Resolution of the Council of Ministers of the RSFSR issued December 25, 1990 No. 601;
- Fundamental principles of the civil legislation of the USSR and the republics issued May 31, 1991 No. 2211–1;
- The Law of the RSFSR issued December 25, 1990 No. 445–1 “On enterprises and entrepreneurial activity”;
- The Law of the RSFSR issued July 3, 1991 No. 1531–1 “On privatization of the state and municipal enterprises in the Russian Federation”;
- The Typical charter of open joint-stock company approved by the Decree of the President of the Russian Federation “On organizational measures on transformation of the state enterprises, voluntary associations of the state enterprises into joint-stock companies” issued on July 1, 1992 No. 721.

The first of the aforementioned statutory acts does not only introduce the concept of a joint-stock company, it also used the concept of the Limited Liability Company for the first time. Both of these legal bodies were defined as associations of capital (item 1 of the Regulation).

The period under consideration is characterized by a great number of statutory acts that carried out legal regulation of corporate relationships. Frequently, these statutory acts contradicted each other, creating complexities in the practical application of the new legislative provisions. A complicated situation was caused by the simultaneous existence of closed joint-stock companies (item 7 of Regulation on joint-stock companies of RSFSR 1990), limited liability partnerships (closed joint-stock company) — (article 11 of the Law on enterprises and entrepreneurial activity), and societies with limited liability

(item 1 of Regulation on joint-stock companies and societies with limited liability in the USSR), as an example.

Systematization of the legal regulation of corporate forms of business occurred only in the middle of 1990s, with the acceptance of the first part of the Civil Code of the RF in 1994, and the Federal Law on Joint-Stock Companies in 1995.

4. Summary

1. In Russia, the corporate form of enterprise activity appeared later, in comparison with the Western/European countries. However, it should be noted that the rudiments of the so-called “company form of enterprises” are found by some researchers in Artels, which appeared long before the first Russian corporations. However, Russia actually adopted the experience connected with introduction of the joint-stock companies from the European countries.
2. During the reign of Peter the Great, attempts were undertaken to encourage the Russian entrepreneurs to initiate corporate business dealings. These attempts were not crowned with success.
3. In the opinion of many researchers, the Russian commercial company trading with Constantinople should be considered the first joint-stock company created in Russia; the Decree on its establishment was issued on February 24, 1757.
4. The general principle of shareholders’ limited liability was formalized in Russia, long before this principle appeared in the legislation of other European countries. This happened due to the Senatorial decree issued on September 6, 1805 (on the basis of the Emperor’s decree of August 1, 1805), “On the liability of the joint-stock companies in collecting of joint capital.”

5. The Manifest of January 1, 1807, “On granting the merchant class with new benefits, distinctions, advantages and new ways of advancement and strengthening of trade enterprises,” formalized the authorization system of creating joint-stock companies in Russia, which at that stage corresponded to the global practice in general. The state sanctioned the creation of companies by approval of their charters; the final formalization of this procedure occurred in the first decades of the 19th century.
6. The beginning of the 1830s was marked by an increase of public interest in securities, and primarily, in the state bonds and shares. Certainly, this had to be reflected in the legislation. The Emperor’s decree “Regulation on the companies based on shares” passed on December 6, 1836, and rendered significant influence on the development of joint-stock legislation. Many aspects of joint-stock companies’ activity found detailed reflection in this normative legal act, which was destined to be in effect until the establishment of the Soviet state.
7. Since the middle of the 1850s, the country’s leaders periodically made attempts to change joint-stock legislation. Due to the fact that there was no essential reform of joint-stock relationships legal regulation, the modern researcher has to study drafts, rather than new legislation acts.
8. Essential changes of the joint-stock legislation started only after the Revolution of October, 1917. The joint-stock companies in this period were actually removed from economic life by the legislation of 1918–1920, which was actively accepted by the new authorities.
9. New development of the joint-stock form of enterprise activity in Russia begun during the New Economic Policy period. It was a compulsory measure of the Soviet government. The initial purpose of establishing joint-stock companies was the at-

traction of private capital, both domestic and foreign, in solving the problems of the revival of the national economy.

10. The primary normative legal acts that regulated joint-stock relationships in the beginning of the 1920s century were the following:
 - Civil Code of RSFSR, put into effect by the Decree of the All-Russian Central Executive Committee on November 11, 1922;
 - “Temporary regulations on the order of approval and establishing the activity of joint-stock company and on the responsibility of founders and board members,” approved by the Decree of Labor and Defense Council of RSFSR on August 1, 1922;
 - Decree of the All-Russian Central Executive Committee of RSFSR issued on May 22, 1922, “On the main private property rights recognized by RSFSR, protected by its laws and courts of RSFSR.”
11. In spite of the fact that the term “joint-stock company” reappeared in the legislation, there was a significant change in the legal regulation of this business legal structure. First of all, it was connected with strengthening the state’s role, and was expressed not only in the intensified control over the joint-stock companies’ activity, but also in the rise of the so-called mixed societies.
12. There was also a legal organizational form of limited liability partnership in the Civil Code of 1922. It was not an analogue of German GmbH. Inherently, these companies were closer to an association of persons, as opposed to an association of capital.
13. At the final stage of the joint-stock companies’ functioning in Russia in the first third of the 20th century, the developed Regulation on joint-stock companies was accepted and

approved by the Central Executive Committee and Council of People's Commissars of the USSR on August 17, 1927. One can assume that its basic purpose was regulation of the activity of joint-stock companies with state participation.

14. The gradual transition of the Soviet state to market relations in the second half of the 1980s led to the need for the legal regulation of various non-state forms of collective entrepreneurship.
15. Later, the state government authorities accepted many regulatory legal acts that marked the revival of corporate forms of enterprise activity in our country. The primary legal acts include the following:
 - Regulation on joint-stock companies and limited liability companies, approved by the Resolution of the Council of Ministers of the USSR issued June 19, 1990 No. 590;
 - Regulation on the joint-stock companies, approved by the Resolution of the Council of Ministers of the RSFSR issued December 25, 1990 No. 601;
 - Fundamental principles of the civil legislation of the USSR and the republics, issued May 31, 1991 No. 2211-1;
 - The Law of the RSFSR issued December 25, 1990 No. 445-1 "On enterprises and entrepreneurial activity";
 - The Law of the RSFSR issued July 3, 1991 No. 1531-1, "On privatization of the state and municipal enterprises in the Russian Federation";
 - The Typical charter of open joint-stock company approved by the Decree of the President of the Russian Federation "On organizational measures on transformation of the state enterprises, voluntary associations of the state enterprises into joint-stock companies," issued on July 1, 1992 No. 721.

The period under consideration is characterized by a great number of statutory acts that carried out the legal regulation of corporate relationships. Frequently, these statutory acts contradicted each other, creating complexities in the practical application of the new legislative provisions.

16. Systematization of legal regulation of corporate forms of business occurred only in the middle of the 1990s, with the acceptance of the first part of the Civil Code of the RF in 1994, and the Federal Law on joint-stock companies in 1995.