

Important Developments in Corporate Governance of Russian Joint Stock Companies

July 25, 2018

On July 19, 2018, Federal Law No. 209-FZ on Amendments to the Federal Law on Joint Stock Companies, dated July 19, 2018 (the “Law”) came into force. The Law was adopted in furtherance of the Action Plan (Road Map) on Improvement of Corporate Governance initially approved by the Russian Government in June 2016, and provides for a number of important amendments to the system of corporate governance of Russian joint stock companies. Below is a summary of the key changes introduced by the Law.

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AMENDMENTS EFFECTIVE ON JULY 19, 2018

- **Quorum for approving interested party transactions.** The approach towards determining quorum for a general shareholders’ meeting (“GSM”) approving an interested party transaction has been changed. Pursuant to the Law, a GSM approving an interested party transaction will be quorate independent of the number of disinterested shareholders participating in the meeting. Under the Joint Stock Companies Law, interested party transactions are approved at a GSM by a majority of votes of disinterested shareholders participating in the GSM, and there may have been different interpretations as to what number of shareholders was required to constitute a quorum for a GSM approving an interested party transaction. The law now directly responds to this question.
- **Audit commission.** Mandatory establishment of an audit commission in joint stock companies is no longer required: (i) in public joint stock companies, an audit commission is not required, unless its establishment is set forth in the company’s charter; and (ii) in private companies, an audit commission is required, unless the company’s charter provides otherwise. The Law also prohibits joint stock companies from having a sole auditor, save for those companies in which the sole auditor was appointed prior to July 19, 2018, and, as discussed in more detail below, starting from September 1, 2018, requires public companies to establish risk management and internal control systems.

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- **Committees of the board of directors.** The Law explicitly provides for the right of the board of directors of a joint stock company to establish special committees for the purposes of preliminary consideration of issues falling within the board's competence.
 - **Right to require redemption of shares.** The Law clarifies that shareholders do not have the right to require redemption of their shares by the company if, in accordance with the Joint Stock Companies Law, items falling within the competence of the GSM are transferred to the competence of the board of directors.
 - **Dividends on preferred shares.** The Law clarifies when the amount of dividends on preferred shares is considered to be determined in the company's charter. The amount of dividends is considered to be determined, among other things, if the charter sets forth the minimum amount of dividends, including by reference to a percentage of the net profit of the company. By contrast, the amount of dividends is not considered to be determined if the charter provides only for the maximum amount of dividends.
 - **Voting rights of holders of preferred shares.** The Law provides that holders of preferred shares have voting rights at the GSM in respect of questions which require the unanimous vote of all shareholders in accordance with applicable law. In addition, holders of a certain type of preferred shares now have voting rights on charter amendments introducing provisions on authorized preferred shares of the same or another type if their issuance may reduce the amount of dividends and/or liquidation value to be paid on preferred shares of the relevant type.
 - **Notice of the GSM.** The Law changed the general notice requirement for a GSM from 20 days' prior notice to 21 days, leaving other terms unchanged.

AMENDMENTS COMING IN EFFECT LATER

- **Right of the board of directors to propose candidates to governing bodies of the company for election at a GSM.** Starting on September 1, 2018, the board of directors of a joint stock company will be entitled, in its own discretion, to propose candidates to the governing bodies of the company, including its board of directors, for election at the GSM. This right was previously limited to cases where shareholders had not provided, or had provided an insufficient number of, candidates.
- **Risk management, internal controls, internal audit.** Starting on September 1, 2018, public joint stock companies will be required to introduce risk management and

internal control systems. From July 1, 2020, public companies will also be obliged to arrange for an internal audit to assess their risk management and internal controls, and the boards of directors of such companies will be required by law to establish a special audit committee for preliminary consideration of issues relating to the company's business controls, including assessment of the independence of the company's auditor and the absence of a conflict of interest, as well as assessment of the quality of the audit. These amendments are aimed at making decisions and internal control systems of public companies more effective.

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Please do not hesitate to contact us with any questions.

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