

New Mechanisms of Protection of Minority Shareholders' Rights upon Issuance and Redemption of Shares

April 12, 2019

On April 10, 2019, the Federation Council approved a law amending the Federal Law on Joint Stock Companies (the "JSC Law") that is aimed towards securing shareholders' rights in relation to the issuance of shares and issuable securities convertible into shares,¹ and updating the rules in relation to determining the redemption price of shares upon shareholders' demand (the "Law").² The Law was drafted in fulfilment of the

Improvement of Corporate Governance Roadmap of the Russian Government and will become effective upon being signed by the Russian President and upon its official publication. Below we provide a brief overview of the principal amendments made by the Law.

**Debevoise
& Plimpton**

SECURING SHAREHOLDERS' RIGHTS UPON ISSUANCE OF ADDITIONAL SHARES

Open Subscription. The Law expands the pre-emptive rights of shareholders of public companies arising upon the issuance of additional shares by open subscription:

- the shareholders will continue to have pre-emptive rights to acquire additional shares of the same class/type as those already held by such shareholders in proportion to the number of their shareholding in this class;
- in addition to the above pre-emptive right, shareholders will also have a pre-emptive right to acquire newly issued additional shares of new class/type or additional preferred shares carrying priority for the receipt of dividends. In this case, the shareholder will be able to exercise its pre-emptive right to acquire shares in proportion to the number of all of the shares that it holds, regardless of class, in such public company.

For instance, once the Law takes effect, holders of ordinary shares will be able to exercise their pre-emptive rights to acquire first issued preferred shares. The current version of the JSC Law does not provide for such shareholder right.

¹ In this overview, the shares will mean shares and issuable securities convertible into shares.

² The record form and the text of bill No. 229418-7 on Amendments to Articles 40 and 75 of the Federal Law on Joint Stock Companies are available [here](#).

Private Subscription. Similar to the current version of the JSC Law, once the Law becomes effective, only shareholders who vote against or did not take part in voting on issuance of additional shares will have a pre-emptive right in relation to the issuance by the company of additional shares by private subscription. However, the Law provides for a different scope of pre-emptive rights for shareholders of public and non-public companies.

- Shareholders of both *public* and *non-public companies* will have pre-emptive rights upon a private issuance of shares to acquire (i) additional shares in proportion to the number of shares of the same class held by them, *i.e.*, the same type of shares already held by shareholders, and (ii) additional preferred shares carrying priority for the receipt of dividends in proportion to the number of shares held by them carrying the right to vote on the issuance of such securities.
- In addition to the above, shareholders of *public companies* will also have pre-emptive rights upon a private placement of newly issued additional shares of a new class/type in proportion to the number of shares already held by them carrying the right to vote on the issuance of such securities.

Other Provisions. Preferred shares carrying priority for the receipt of dividends will not provide pre-emptive rights to acquire shares.

MODIFICATION OF THE RULES FOR THE DETERMINATION OF REDEMPTION PRICE OF SHARES

The Law modifies the rules for determining the price to redeem shares of a public company, upon shareholders' demand, where a general meeting passes a resolution on certain issues as specified in the JSC Law, and such shareholders vote against the relevant resolutions or do not participate in voting.

Currently, the redemption price of shares cannot be lower than the price determined by an appraiser and, where a resolution is passed at a general meeting in relation to the cessation of the company's status as a public company or the delisting of its shares, the average weighted price based on the organized trading price over the six months preceding the date of the resolution to hold a general meeting which agenda includes the respective issues.

Once the Law becomes effective, the prohibition against setting the redemption price lower than the average weighted price based on the preceding six months, will be applicable in all cases of redemption of shares in public companies upon shareholders' demand, including where the general meeting passes resolutions on: (i) corporate reorganization, (ii) approval of a major transaction valued at more than 50 percent of the balance sheet value of the company's assets, or (iii) amendments to the charter limiting shareholders' rights.

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Please do not hesitate to contact us with any questions.

MOSCOW



Natalia A. Drebezgina
nadrebezgina@debevoise.com



Alan Kartashkin
akartashkin@debevoise.com



Maxim A. Kuleshov
makuleshov@debevoise.com



Svetlana Panfilova
svpanfilova@debevoise.com