

RUSSIA ALERT

AMENDMENTS TO FEDERAL LAWS GOVERNING JOINT-STOCK COMPANIES AND SECURITIES MARKET

On June 10, 2009, the Federal Law No. 115-FZ *On Amendments to the Federal Law On Joint-Stock Companies and Article 30 of the Federal Law On Securities Market* (the “Law”) came into force.

Shareholder Agreements

The Law introduces new provisions that define and govern the concept of a shareholder agreement.

- Pursuant to the new Article 32¹ of the Federal Law *On Joint-Stock Companies* enacted by the Law, a shareholder agreement may set out the procedure and terms for the exercise of (i) rights attaching to the shares and/or (ii) rights to the shares by the shareholders entering into said agreement. A shareholder agreement may provide for the following—
 - an obligation to vote in a certain manner at the general shareholders meeting or to agree upon the voting options with other shareholders
 - an obligation to acquire or dispose of the company shares at a predetermined price and/or upon the occurrence of certain events
 - a lock-up provision prohibiting a sale of shares prior to the occurrence of certain events
 - other coordinated actions by the parties relating to the management, reorganization and liquidation of the company.
- A shareholder agreement is binding only upon the parties thereto. A shareholder agreement may be entered into only with respect to all the shares held by the relevant party to such agreement.
- The Law sets forth the following qualifications with regard to the consequences of a breach of a shareholder agreement—
 - a breach of the shareholder agreement (e.g., with regard to the obligation to vote in a certain manner) may not trigger the invalidation of a resolution of the company’s relevant bodies
 - a transaction consummated by a party to the shareholder agreement in breach of such agreement may be invalidated by the court pursuant to a claim filed by an interested party to the shareholder agreement (i.e., it is voidable) only if it is proven that the other party to the transaction was aware or should have been aware of the restrictions imposed by the shareholder agreement.
- The parties to a shareholder agreement may provide for certain forms of security for the obligations arising out of the shareholder agreement and the relevant

remedies in the event of a breach thereof. The Law provides for remedies with respect to the rights arising out of the shareholder agreement, including the right to—

- reimbursement for damages resulting from a breach of the shareholder agreement
 - recovery of liquidated damages
 - indemnification in a fixed amount or an amount to be determined pursuant to the shareholder agreement
 - other remedies available in the event of a breach of the shareholder agreement.
- If, as the result of the execution of the shareholder agreement, a person receives control over 5, 10, 15, 20, 25, 30, 50 or 75 percent of votes at the company’s general shareholders meeting, such person is required to notify the company accordingly within five days following receipt of such control.

Formation and Termination of Authority of the Sole Executive Body

The Law introduces provisions governing the deadlock resolution procedure in the event that the board is unable to resolve on the formation or early termination of authority of the sole executive body.

- If—
 - the formation or early termination of authority of the sole executive body falls within the board’s competence
 - the charter sets forth a quorum threshold for a board meeting higher than 50 percent of its members
 - the charter requires a higher number of votes for the adoption of a relevant resolution than a simple majority of the participants in the board meeting; **and**
 - a resolution on such matter cannot be adopted a) at two consecutive meetings or b) within two months following the termination of authority of the sole executive body,then the board must inform the shareholders of the existing deadlock, and such matter may be referred to the general shareholders meeting convened upon demand of the shareholders.
- Upon notification of shareholders of the failure to form the sole executive body, the chairman of the board shall act on behalf of the company.
- Apart from the convocation of the general meeting, the company’s charter may also provide for other consequences of the board’s failure to resolve on the issue of the sole executive body.

Disclosure

In connection with the amendments to the joint-stock companies laws described above, the Law also expands the scope of information set forth in Article 30 of the Federal Law *On Securities Market* to be disclosed in the statements of material facts. Such additional information includes—

- information regarding the board’s failure to reach resolution on the formation of the sole executive body at two consecutive meetings of the board
- information regarding the acquisition by a person of control over 5, 10, 15, 20, 25, 30, 50 or 75 percent of votes at the general shareholders meeting pursuant to the shareholder agreement.

CONTACT INFORMATION

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