

Insight

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Russian Legislation Update

Corporate

Mandatory Offer

On 14 June 2012 the President signed Federal Law No. 77-FZ “On Amending Article 84.2 of the Federal Law On Joint Stock Companies.”

According to Article 84.2 of the JSC Law, if a person together with its affiliated persons owns more than 30 percent of a company’s shares, this person must make a mandatory offer to the other shareholders of the company to buy out their shares. Para 8 of the Article provides for the exceptions from to rule. This rule has now been supplemented with the below provision.

A mandatory offer doesn’t have to be made if the title to shares is transferred (i) from the Russian Federation to its constituent entity or municipality; (ii) from the constituent entity to the Russian Federation or municipality; and (iii) from the municipality to the Russian Federation or its constituent entity.

The Law entered into force on 26 June 2012.

General Shareholders’ Meeting

On 2 February 2012 the Federal Service for Financial Markets (“FSFM”) issued Order No. 12-6/pz-n approving the Regulation on additional requirements for the procedure of preparing, convening and conduct general shareholders meetings.

The Order was registered with the Ministry of Justice on 28 May 2012.

The Regulation applies to annual and extraordinary shareholders meetings in all closed and open joint stock companies in Russia, conducted either in the form of a meeting or absentee voting. It does not apply to companies where all voting shares belong to a single shareholder.



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In particular, the Order (i) specifies the procedure for defining the dates when the offer to the agenda of the general meeting have been sent and received, and the date when the demand to conduct an extraordinary general meeting has been received; (ii) provides that the offer nominating a candidate, in particular, to the company's board of directors and its executive body is to include information on such candidate's consent (if the company's charter or other internal regulations require such consent); and (iii) regulates the requirements on voting by shares which are circulated outside the Russian Federation as depository securities.

The Order envisages that, among other things, when the shareholders are to vote on the reorganization of the company, they are to be provided with (i) the draft decision on division, spin-off or reorganization, or the agreement (its draft) on merger or accession, and (ii) the draft transfer deed (divided balance sheet).

Further, when defining the quorum of the general meeting, the shares are not taken into account if they, among other things, (i) had been redeemed after the list of participants of the meeting was approved and before the general meeting was conducted, and (ii) belong to the same person and exceed limitations set out by the company's charter.

The Order further stipulates that the minutes of the general meeting and the minutes of the voting results are to be compiled after the general meeting. If the general meeting's decisions and the voting results had not been announced, the report on the voting results is to be compiled. The Order defines the information that needs to be included.

The Order will enter into force six months after the date of its official publication and replace FCFM Resolutions No. 17/ps of 31 May 2002 and No. 03-8/ps of 7 February 2003 on the same matter.

Economic Partnership

On 19 April 2012 the Federal Service for Financial Markets ("FSFM") issued Order No. 12-26/pz-n on bonds which may be contributed to the joint capital of economic partnership.

The Order was registered with the Ministry of Justice on 9 June 2012.

According to the Federal Law "On Economic Partnerships" which entered into force on 1 July 2012 (check our update for 28 November – 11 December 2011), certain bonds, among other things, may be contributed to the partnership's joint capital. Now the Order sets out the requirements for such bonds.

Thus the bonds may be contributed to the economic partnership's joint capital if they (i) have not matured yet and (ii) satisfy at least one of the following requirements:

- They are included in the list of securities which are admitted to trades at the stock exchange or any other organizer of trades at the securities market;

- Their nominal value together with the nominal value of other bonds of the same company does not exceed the company's charter capital; and
- They secure obligations which are guaranteed by the pledge, suretyship, or bank, state or municipal guarantee.

The Order entered into force on 1 July 2012.

National Payment System

Following the entry into force on 29 September 2011 of the Law on the National Payment System (check our update for 20 June – 10 July 2011 for details), a number of regulations discussed below was adopted and came into force on 1 July 2012.

On 2 May 2012 the Central Bank issued Directive No. 2814-U regarding the threshold for registration of operators of payment systems.

The Directive was registered with the Ministry of Justice on 18 May 2012.

The Law on the National Payment System requires operators for the transfer of funds (i.e. lending organizations) to register in their capacity as operators of payment systems if: i) they hold bank accounts of at least three other operators for the transfer of funds and ii) the transfers are made between those accounts within three months in a row in an amount exceeding a threshold to be established by the Central Bank. The Directive now sets forth this threshold to be RUB 1,500 million (about USD 50 million).

On 2 May 2012 the Central Bank issued Regulation No. 378-P regarding the procedure for registration of operators of payment systems.

The Directive was registered with the Ministry of Justice on 5 June 2012.

The Law on the National Payment System requires that lending and non-lending organizations that intend to act as operators of payment systems must register as such with the Central Bank (lending organizations are also specifically required to apply for the registration as described above re Directive No. 2814-U).

The Regulation now sets forth the registration application form, the requirements to documents accompanying the application, and the form of certificate confirming the registration. The register of operators of payment systems will be placed on the Central Bank's website, www.cbr.ru.

On 2 May 2012 the Central Bank issued Directive No. 2815- U establishing the criteria of payment systems of "significant importance."

The Directive was registered with the Ministry of Justice on 5 June 2012.

According to the Law on the National Payment System, the so-called payment systems “of significant importance” shall comply with some specific requirements. A payment system will be recognized as having “significant system importance” or “significant social importance” if the money transfers within the payment system within a certain period are not less than the thresholds (by sum or by quantity) to be established by the Central Bank.

The Directive now sets forth these thresholds. For example, a payment system will be deemed to have “significant social importance” if there are no less than 100 million transfers with the use of payment cards within a year.

On 2 May 2012 the Central Bank issued Directive No. 2824-U regarding reporting by operators of payment systems.

The Directive was registered with the Ministry of Justice on 7 June 2012.

Following the Law on the National Payment System, the Directive establishes the reporting form to be submitted by the operators of payment systems to the Central Bank with respect to the payment systems that they operate. The report shall contain certain data on the sum and quantity of transfers within the system and shall be prepared on a quarterly basis.

On 31 May 2012 the Central Bank issued Regulation No. 379-P on the uninterrupted functioning of payment systems.

The Regulation was registered with the Ministry of Justice on 13 June 2012.

The operators of payment systems are obliged to establish the requirements to activity of entities working within the payment system needed to ensure its uninterrupted functioning and the procedure for their cooperation, and to establish the criteria of such uninterrupted functioning and methods for analyzing risks in the payment system in accordance with the requirements of the Regulation until 1 January 2013.

On 31 May 2012 the Central Bank issued Regulation No. 380-P regarding observation in the national payment system.

The Regulation was registered with the Ministry of Justice on 15 June 2012.

According to the Law on the National Payment System, the Central Bank shall perform observation in the national payment system to ensure its stability and development.

The Regulation specifies the procedures used by the Central Bank to i) monitor various entities working within all the payment systems, and ii) evaluate and suggest improvements—specifically for entities working within the payment systems “of significant importance.” In particular, the Central Bank is entitled to request the relevant entities to provide various data on the services they provide, ranging from data on the quantity and volume of their

services and tariffs applied to data on technologies used and the innovations introduced. With respect to payment systems “of significant importance” the Central Bank will check whether they comply with its recommendations addressed to such systems and suggest improvements, as needed.

The Central Bank will then publish, no less than biyearly, an overview on the results of observation of payment systems “of significant importance,” as well as a general overview on the results of observation in the national payment system (describing, in particular, the tendencies and innovations in the market, and the development of cashless payments).

On 9 June 2012 the Central Bank issued Regulation No. 381-P regarding the procedure for supervision over non-lending organizations.

The Regulation was registered with the Ministry of Justice on 15 June 2012.

According to the Law on the National Payment System, the Central Bank shall perform supervision in the national payment system to ensure its stability and development. The Central Bank will check whether operators for transfer of funds (lending organizations), operators of payment systems, and operators of services for the payment system infrastructure (both lending and non-lending organizations) comply with the Law and the relevant Central Bank regulations.

The Regulation sets out the procedural aspects of supervision over non-lending organizations acting as operators of payment systems and operators of services for the payment system infrastructure, including the procedures for remote supervision, onsite inspections and application of sanctions for detected violations.

On 7 June 2012 the Central Bank issued Directive No. 2829-U on sending the notice to the Central Bank to perform cross-border transfers.

The Directive was registered with the Ministry of Justice on 15 June 2012.

According to the Law on the National Payment System, operators for the transfer of funds (i.e. lending organizations) may participate in a payment system to perform cross-border transfers, provided they send a relevant notice to the Central Bank no later than ten days upon commencement of such participation.

The Directive contains the recommended form of such notice and specifies that operators who already participate in a payment system to perform cross-border transfers as of the day when the Directive enters into force must send such notice no later than ten days from such date (i.e. not later than 10 July 2012).

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On 9 June 2012 the Central Bank issued Directive No. 2832-U regarding Rules of a payment system in which transfers related to organized trades are made.

The Directive was registered with the Ministry of Justice on 14 June 2012.

The Directive establishes specific requirements for the Rules of a payment system which processes transfers under transactions concluded in the organized trades. In particular, such Rules should address specifics of transfers made on instructions of clearing organizations. Operators of such payment systems must bring their Rules in compliance with the Directive by 1 January 2013.

On 13 June 2012 the Government adopted Resolution No. 584 regarding protection of information within the payment systems.

According to the Law on the National Payment System, operators for transfer of funds, banking payment agents (sub-agents), operators of payment systems and operators of services for the payment system infrastructure must ensure protection of information relating to the information security tools, personal data and other information subject to the mandatory protection.

The Resolution lists the requirements for information protection that must be covered by the Rules of the relevant payment system and provides that the operators and agents must develop internal rules setting forth the procedures for implementing the requirements for information protection.

On 9 June 2012 the Central Bank adopted Regulation No. 382-P regarding protection of information related to money transfers.

The Regulation was registered with the Ministry of Justice on 14 June 2012.

According to the Law on the National Payment System, operators for transfer of funds, banking payment agents (sub-agents), operators of payment systems and operators of services for the payment system infrastructure must ensure protection of information related to money transfers.

The Regulation sets forth a detailed list of duties to be performed by the operators and agents to ensure protection of that information. The operators must assess compliance with the established requirements no less than biyearly and upon the Central Bank's request. The Central Bank, in turn, will conduct inspections of those operators and request relevant documents and information (including that relating to control by operators for transfer of funds over the agents' compliance with the requirements for information protection).

On 9 June 2012 the Central Bank adopted Directive No. 2831-U regarding reporting on protection of information related to money transfers.

The Directive was registered with the Ministry of Justice on 14 June 2012.

The Directive establishes reporting forms to be submitted by operators for transfer of funds, operators of payment systems and operators of services for the payment system infrastructure to the Central Bank: a report on compliance with the requirements for information protection is to be submitted upon completion of compliance assessment (as described above re Central Bank Regulation No. 382-P) and a report on detected incidents caused by the breach of the requirements to information protection is to be submitted monthly and upon request of the Central Bank.