

# Insight

28 January – 17 March 2013

## Russian Legislation Update

### Corporate/Securities

**On 29 December 2012 the President signed Federal Law No. 282-FZ amending certain legislative acts of the Russian Federation.**

Aiming to improve the procedure for the issuance of securities and the protection of shareholders' rights, the Law amends several federal laws such as: "On the Joint Stock Companies," "On the Securities Market," "On Banking and Banking Activities," the Tax Code and certain other legislative acts.

The amendments to the Securities Market Law mainly touch upon the procedure for the issuance of securities. In particular, they specify the exhaustive list of circumstances in which no state registration of a securities prospectus is required (in all other cases state registration is required). Also, the amendments concern the disclosure of information, the terms and procedures for payments on the securities, and the registration and exercise of the rights thereto. It is expected that the amendments will allow issuers to reduce the time and costs associated with the issuance and circulation of securities, and will lower administrative barriers for Russian issuers and build up the confidence of Russian and foreign investors in the Russian stock market.

The JSC Law has been amended to, among other things, include the following:

#### *Charter capital increase*

The JSC Law previously provided that the decision to increase charter capital by placing additional shares must include, among other things, an indication of the placement price of additional shares or the method for the determination thereof. According to the amendments, instead of an indication of price, the relevant decision may provide that the company's board of directors set a placement price (or a method for its determination) before the company starts placing additional shares.



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### *General shareholders' meeting competency*

The competency of a general shareholders' meeting has been supplemented to include the power to decide on an application for the listing or delisting of the company's shares and/or securities convertible into shares. The decision to apply for delisting requires a  $\frac{3}{4}$  majority of the votes of shareholders owning the voting shares and participating in the general shareholders' meeting, and is grounds for the shareholders who have voted against such decision or have not participated in the voting to request that the company buy out their shares. Such decision shall enter into force if the total amount of funds which is to be used to buy out the shares from the shareholders does not exceed ten percent of the value of the company's net assets as at the date of such decision.

### *The rights of the shareholders owning preferred shares*

The amendments establish an additional circumstance in which shareholders owning preferred shares of a particular type may acquire the right to vote at a general shareholders' meeting. It occurs when the meeting is to decide whether or not to apply for the listing or delisting of shares of this type. Such decision is to be made by no less than  $\frac{3}{4}$  of the votes of the shareholders owning the voting shares and participating in such general shareholders' meeting, except for the votes of shareholders owning preferred shares of such type, and by  $\frac{3}{4}$  of the votes of all shareholders owning preferred shares of such type (if the company's charter does not provide for a higher threshold for making such decision).

### *Conversion of preferred shares*

According to the amendments, if a company's charter allows the conversion of preferred shares of a particular type into ordinary or preferred shares of another type, it also must provide for the procedures and conditions for their conversion before state registration of their issue has been started (and not upon the making of the relevant decision as was provided by the JSC Law before the amendments). No amendments can be made to such procedures and conditions of the conversion after the placement of the first share of the relevant issue.

The board of directors is to decide on the placement of such additional shares into which the preferred shares of a particular type, convertible into ordinary shares or preferred shares of other types, may be converted (provided that such placement is not related to the charter capital increase).

### *Dividends*

The amendments clarify the procedure for the payment of dividends, including, in particular: (i) the procedure for setting up the date by which the persons entitled to dividends are defined; (ii) the terms for the payment of dividends to the nominal holders of the shares; (iii) the procedure for the cash payment of dividends; and (iv) the terms for requesting the payment of dividends.

### *Bonds*

The amendments remove limitations on the placement of bonds by a joint stock company, except for the requirement that the bonds may be placed only after the company's charter capital has been paid in full (the amendments to the LLC Law remove all similar limitations on the issuance of bonds by a limited liability company without exceptions). The amendments also clarify that the bonds of a joint stock company may be paid off, among other means, with the company's placed shares according to the decision on their issuance.

*The Law entered into force on 2 January 2013, except for a number of provisions (in particular, provisions on the procedure for the payment of dividends and decisions regarding the listing of the company's shares) which will enter into force on later dates.*

## Banking

### *Branches of foreign banks*

**On 14 March 2013 the President signed Federal Law No. 29-FZ imposing a ban on the opening of branches of foreign banks in Russia.**

The Law excludes branches of foreign banks from the list of entities that form part of the Russian banking system and, thus, effectively bans the opening of branches in Russia (it formalizes the existing situation: now there are no branches of foreign banks in Russia).

*The Law entered into force on 26 March 2013.*

### *Subsidiaries abroad*

**On 27 December 2012 the Central Bank issued Directive No. 2955-U amending its Regulation No. 290-P "On the Issuance by the Central Bank to Lending Organizations of a Permit to Have Subsidiaries Abroad," dated 4 July 2006.**

*The Directive was registered with the Ministry of Justice on 6 February 2013.*

The Directive sets forth the peculiarities of obtaining a permit in cases where a Russian bank becomes a parent with respect to an existing non-resident company which has its own non-resident subsidiaries. The Directive also requires a bank to describe in detail its proposed investments in a foreign subsidiary when applying to the Bank of Russia for a permit. It also extends the terms for the sending of documents by a bank to the Bank of Russia confirming its rights with respect to such subsidiary and a notice of changes in its participation in the subsidiary's charter capital.

*The Directive entered into force on 3 March 2013.*

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### Basel III

**On 28 December 2012 the Central Bank issued Regulation No. 395-P “On the Method of Calculation of the Amount and Assessment of Adequacy of the Net Worth (Capital) of Lending Organizations (Basel III).”**

*The Regulation was registered by the Ministry of Justice on 22 February 2013.*

The Regulation establishes the method for the calculation of the amount and assessment of the capital adequacy of Russian banks in accordance with the international banking standards envisaged in Basel III.

The Regulation defines the net worth (capital) as the sum of the core capital (consisting of common equity Tier 1 and additional Tier 1 capital) and additional capital (Tier 2 capital). Respectively, it introduces the following ratios (although without specifying the minimum thresholds): the common equity ratio (N 1.1), the core capital ratio (N 1.2) and the net worth (capital) ratio (N 1.0). Banks are required to submit to the Central Bank reports reflecting the calculation of such ratios starting from reports as of 1 April 2013.

Subordinated instruments (subordinated loans, bonds, deposits) attracted after 1 March 2013 can make up part of the bank’s capital if they meet certain eligibility criteria. Generally, to be eligible subordinated instruments must provide for the conversion of a bank’s subordinated debt into its ordinary shares and/or debt write-off in cases where the bank’s common equity ratio falls below a certain level (6.4 percent – for inclusion in Tier 1 capital, 2 percent – for inclusion in Tier 2 capital). The instruments attracted earlier are to be gradually excluded from the bank’s capital (10 percent of the instrument’s value each year—starting 1 April 2013 for ‘ordinary’ instruments, and starting 1 January 2018 for subordinated instruments attracted as part of the state support).

*The Regulation entered into force on 1 March 2013 (save for a few provisions that will enter into force on a later date).*

**On 5 March 2013 the Central Bank issued Directive No. 2977-U amending its Directive No. 2332-U regarding reporting forms of lending organizations.**

*The Directive was registered with the Ministry of Justice on 29 March 2013.*

The Directive introduces new reporting forms: a report on the calculation of net worth (capital) and a report on the calculation of capital adequacy ratios. The forms were developed following Central Bank Regulation No. 395-P “On the Method of Calculation of the Amount and Assessment of Adequacy of the Net Worth (Capital) of Lending Organizations (Basel III).”

*The Directive entered into force on 1 April 2013.*

### REPO transactions

**On 13 December 2012 the Central Bank issued Directive No. 2936-U “On Requirements to Lending Organizations Making Repurchase Transactions with the Central Bank.”**

*The Directive was registered with the Ministry of Justice on 7 February 2013.*

The Directive lists the eligibility criteria to be met by banks willing to make repo transactions (repurchase transactions with securities) with the Central Bank. To be eligible, among other things, they must enter into a master agreement with the Central Bank on the general conditions of making repo deals on a stock exchange or over the counter (as of 1 May 2013 the repo deals will be made only with banks that concluded relevant master agreements as per the forms envisaged in Central Bank Letters Nos. 29-T and 30-T of 27 February 2013).

*The Directive entered into force on 27 February 2013 and invalidated Central Bank Regulation No. 329-P of 28 November 2008 on the same matter.*

### Mandatory reserves

**On 12 February 2013 the Central Bank issued Directive No. 2970-U regarding mandatory reserves required for various obligations of lending organizations.**

Starting 1 March 2013, mandatory reserves for a lending organization’s obligations (in rubles or foreign currencies) to non-resident legal entities, to individuals and other obligations will be 4.25 percent.

*The Directive entered into force on 12 February 2013.*

### Civil Law/Security

#### Enforcement of security

**On 30 January 2013 the Government issued Resolution No. 66 approving the rules for publishing information on the sale of pledged and mortgaged property on the Internet.**

Information on the public sale of pledged and mortgaged property is to be published on [www.torgi.gov.ru](http://www.torgi.gov.ru) (this is not relevant for mortgaged property being sold in the course of an out-of-court enforcement procedure).

*The Resolution entered into force on 14 February 2013.*

## National Payment System

**In February 2013 the Central Bank placed on its website the Central Bank's answers to questions regarding the application of the Law on the National Payment System.**

The clarifications concern, among other things, the application of the Law operations made with cards of international payment systems, notifying clients of operations made with cards, reimbursing clients for card operations made without their consent, payment of commission fees for bank transfers and the time when a transfer is considered irrevocable.

*The answers are available in Russian at: [www.cbr.ru](http://www.cbr.ru) (go to the Section "Bank of Russia Today" on top of the screen, then click on "Payment System of the Russian Federation" on the left-hand side of the screen, then choose the Section "Regulation in the Payment System of the Russian Federation").*

## Procurement

**On 24 December 2012 the Federal Antimonopoly Service issued Letter No. IA/44025/12 regarding application of Federal Law No. 223-FZ "On Procurement of Goods, Works, Services for Certain Types of Legal Entities."**

According to Federal Law No. 223-FZ, Russian companies specified therein (in particular, state companies, natural monopolies, unitary enterprises, companies performing regulated types of activities in the areas of power, gas, heating and water supply, water disposal, sewage treatment and waste disposal) are required to procure goods, works and services in accordance with their internal procurement regulations and to comply with some other requirements related to such procurement.

The Letter clarifies, among other things, which procurements fall under the Law, which activities are considered as regulated, which methods of procurement may be indicated in procurement regulations, which data on procurement needs to be placed at [www.zakupki.gov.ru](http://www.zakupki.gov.ru), which requirements may apply to bidders, as well as a tentative action plan for companies making any such procurement.

*The Letter is available at [www.garant.ru](http://www.garant.ru).*