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Insight

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Russian Legislation Update

Currency Control/Securities

On 21 July 2014 the President signed Federal Law No. 218-FZ on amendments to a number of legislative acts, including the Currency Control Law and the Securities Market Law.

Currency Control Law amended

The amendments expand the list of allowed credit operations in respect of overseas accounts of Russian residents. It is now expressly permitted to credit overseas accounts of residents (individuals and legal entities) with, among other things, interest on the account balance.

With respect to overseas accounts of resident individuals: (i) such accounts can now be credited with salaries and other payments relating to the performance by such individuals of their employment duties abroad under contracts with non-residents; (ii) if the relevant account is opened in an OECD or FATF member state, such accounts can be credited with rental income received as a result of leasing overseas property to non-residents, as well as profits accrued in respect of external securities (dividends, bond interest, etc.).

Resident individuals will now need to file reports to the Russian tax authorities on the movement of funds on their overseas accounts (this rule will be effective as of 1 January 2015).

The amendments provide that the rules on the opening by residents of overseas accounts and making transactions involving such accounts shall not apply to accounts opened by residents in overseas branches of Russian banks.

Securities Market Law amended

The amendments relate to (i) the rights of nominee holders and foreign organizations acting as record-keepers; (ii) the placement and circulation of securities of foreign issuers in Russia; and (iii) the placement and circulation of exchange and commercial bonds.

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Participation of a nominee holder in general meetings of holders of securities

According to the amendments, a Russian or foreign nominee holder, or a foreign organization acting as a record-keeper, may participate and vote at a general meeting of holders of securities on behalf of and in accordance with its client's instructions **without the power of attorney** issued by the client – holder of securities[1].

The right of a nominee holder to participate in and vote at general meeting of holders of securities and to carry out related instructions is to be provided for in the agreement between **the nominee holder and its client**. The amendments impose no obligation on a nominee holder to provide such agreement to the issuer of the securities or to evidence the client's instructions.

The issuer must now ensure the participation of a nominee holder in the general meeting of holders of securities and send such nominee holder **a voting document**. The nominee holder must complete the voting document and disclose the information about, among other things, the holders of the securities and their voting results for each agenda item of the general meeting.

Securities of foreign issuers

The amendments have clarified the provisions regarding the placement and circulation of securities of foreign issuers. Such securities may be admitted to public circulation in Russia **upon the decision of an exchange or a trading system and without the execution of an agreement with a foreign issuer** subject to certain requirements, in particular:

- the securities must be admitted to organized trading without listing;
- the securities must be listed in a foreign exchange recognized by the Central Bank;
- the information about the securities and of the foreign issuer is disclosed in Russian language or in a language of the foreign exchange where the securities are listed; and
- a foreign law has no restrictions on the public placement of securities in Russia.

Under the new requirements, a Russian exchange or a trading system that has decided on the admission of foreign securities must notify the foreign issuer of its decision and disclose the information as prescribed by the Securities Market Law.

Offer of securities of foreign issuers to non-qualified investors

According to the amendments, securities of foreign issuers may be offered to a broker or a manager, whose clients have no "qualified investor" status only if such broker or manager is a **member of an SRO - a self-regulated organization of professional participants in the securities market that has approved and registered with the Central Bank the standards of client notification concerning the risks connected with acquiring securities of foreign issuers**[2].

However, it is unclear from the amendments whether persons with no "qualified investor" status can purchase securities that are not publicly traded. At present, persons with no "qualified investor" status cannot purchase such securities pursuant to the Securities Market Law. It is likely that the amendments concern only the securities of foreign issuers that have been admitted to public placement and circulation in Russia.

Commercial and exchange bonds, certified bonds with mandatory centralized keeping

The new rules have simplified the procedure for the issue of certified bonds with mandatory centralized keeping. This procedure applies if (i) bondholders are entitled to receive nominal value, or the nominal value with interest thereof, and (ii) payments are made in cash only. If both conditions are met, the decision on the issue of such bonds may consist of two parts: the first part which is represented by the bond programme and the second part which includes terms for a separate issue of bonds. The prospectuses of certified bonds with mandatory centralized keeping and the bond programme can be registered with the Central Bank simultaneously.

According to the amendments, in case of the issue of exchange bonds, stock exchanges must assign the identification numbers to the bond programme and to the particular stock issue within the programme and approve the issuer's compliance with the securities legislation.

Under the amended Securities Market Law, commercial bonds can be issued without state registration of the issue (additional issue), registration of the prospectus of the bonds, state registration of the report or the submission of the notification on the results of the issue of commercial bonds *provided that*: (i) the bondholders are entitled to receive the nominal value or the nominal value with interest thereof; (ii) the bonds are to be certified and are for the bearer; (iii) the payments are made in cash only; and (iv) the central depositary has assigned an identification number to the bond issue.

The amendments entered into force on 2 August 2014 with the exception of some provisions entering into force on different dates.

1 This rule does not release nominal holders of shares from the obligation, under the JSC Law, to notify their clients about upcoming shareholders' meetings and to provide them with all related information and materials.

2 The National Association of Securities Market Participants (the NAUFOR) has approved and submitted the notification standards for the registration with the Central Bank (available at http://www.naufor.ru/tree.asp?n=11057) 3 A 0.25% tax substituting any other applicable taxes (e.g., mortgage tax).

Corporate

Civil Code Reform

On 18 August 2014 the Central Bank issued Letter No. 06-52/6680 on certain issues related to the application of provisions of the Civil Code on joint-stock companies.

On 1 September 2014, the amendments on legal entities introduced in May 2014 to the Civil Code by Federal Law No. 99-FZ entered into force (refer to our Special Update for July 2014). In this regard, the Central Bank has clarified certain issues related to joint-stock companies, including: (i) the traits of a public joint-stock company; (ii) the certification of the minutes of the general shareholders' meeting; (iii) the adjustment of a joint-stock company's charter in line with the provisions of the amended Civil Code; and (iv) the payment of a joint-stock company's charter capital.

The traits of a public joint-stock company

The public placement and the public circulation of a company's shares (securities convertible into shares) are the uniform traits of a public joint-stock company. It is therefore of no consequence that the public placement and the public circulation of shares might be limited in time or may cease due to various reasons.

Joint-stock companies in respect of which securities are in the process of public placement may disclose the relevant information to investors and interested persons.

The certification of the minutes of the general shareholders' meeting

The amended Civil Code requires that the minutes of the general shareholders' meeting shall be certified. The Central Bank has clarified that the company's registrar performs the certification function by virtue of its carrying out the accounting board function as provided for by the JSC Law[3]. According to the Letter, these provisions do not apply to joint-stock companies where the sole shareholder owns all the voting shares.

The adjustment of a joint-stock company's charter to the provisions of the amended Civil Code

The Central Bank has stated that a general shareholders' meeting must adopt a decision on amending and/or supplementing the company's charter in order to comply with the amended Civil Code along with the first – after 1 September 2014 – decision on amending the charter in the normal course of business. If such first amendments are implemented in the charter on grounds other than the decision of the shareholders' meeting[4], the charter does not have to be simultaneously adjusted with the new provisions of the Civil Code[5].

The payment of a joint-stock company's charter capital

The founders of a joint-stock company, at its establishment, must pay in cash the minimum charter capital in the amount prescribed by the JSC Law[6]. The rest of the charter capital – as well as the shares to be placed later on – may be paid in kind by property (including certified securities), stocks in other companies and partnerships, state and municipal bonds, and exclusive and other intellectual property rights and license contracts rights having monetary value.

The Letter was published in the Central Bank Herald on 20 August 2014.

Banking

On 17 June 2014 the Central Bank issued Instruction No. 154-I "On the Procedure for Evaluation of Compensation Policies in Credit Organizations […].

The Instruction was registered with the Ministry of Justice on 30 July 2014.

The Instruction establishes the procedure for the Central Bank to evaluate whether the compensation policies of credit organizations comply with the nature and scope of their operations and the level and combination of incurred risks.

In particular, with respect to members of executive bodies and other employees whose decisions may entail situations which threaten the interests of creditors and depositors, a floating part of compensation (i) should be no less than 40 percent of the total amount of compensation and (ii) should be postponed (or spread) based on the results of their work (as rule, for a term of no less than three years) and can be decreased or eliminated in the case of negative financial results. With respect to employees of departments responsible for internal control and risk management, a fixed part of compensation must be no less than 50 percent.

If the Central Bank detects non-compliance of a credit organization's compensation policy with the established requirements, it will request to cure the breaches and, in if the credit organization fails to do so, will apply penalties established by the law.

The Instruction will enter into force on 1 January 2015.

On 11 June 2014 the Central Bank issued Directive No. 3277-U "On the Methods for Evaluation of the Financial Stability of a Bank for the Purpose of its Sufficiency for Participation in the System of Bank Deposits Insurance.

The Directive was registered with the Ministry of Justice on 31 July 2014.

3 For non-public joint-stock companies, the certification of the minutes can also be performed by a notary.

4 For example, on the ground of the decision of the Board of Directors (refer to Article 12 of the JSC Law).

5 A company does not have to call a special general shareholders meeting for this purpose.

6 RUB 10,000 – for non-public joint-stock companies; RUB 100,000 – for public joint-stock companies.

According to the Directive, the financial stability of a bank for the purpose of its sufficiency for participation in the system of bank deposits insurance is to be evaluated based on a group of indicators (relating to capital, assets, profitability, liquidity, quality of management and transparency of ownership structure). Generally, such indicators are to be determined following the procedures established by the Central Bank Directive No. 2005-U "On Evaluation of Banks Economic Position.

The Directive entered into force on 17 August 2014 and abolished Directive No. 1379-U of 16 January 2004 on similar matters.

On 20 June 2014 the Central Bank issued Directive No. 3287-U on amending Regulation No. 345-P on disclosure by banks who are participants in the system of bank deposits insurance of information on persons that control or significantly influence the bank.

The Directive was registered with the Ministry of Justice on 22 July 2014.

According the Directive, Regulation No. 345-P now regulates the disclosure by banks of information on their controlling persons not only on the website of the Central Bank, but also on the bank's own website. As before, where information is disclosed on the bank's website, it is to use the same list of controlling persons and a flowchart showing interconnections between the bank and those persons as are used for disclosure of information on the website of the Central Bank. The Directive slightly amends the form of the list and flowchart.

The Directive entered into force on 17 August 2014.

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