

Introduction from MZS & PARTNERS

In any jurisdiction shape and nature of business activities largely depend on the corporate relationships' framework, that in essence defines the accepted method by which investments turn into working capital. The way corporations operate, how investors are protected through them, and how the managers of corporations are accountable for their actions is one of the main factors a prudent businessman considers when making a decision to go with one jurisdiction for their project or another. Consequently, those jurisdictions that provide for the most acceptable equilibrium between the interests of minority and majority shareholders, or of investors and managers, or between private and public forms of corporations, win on the global market.

Russian corporate law has seen a good deal of transformations, often rather dramatic ones, and often mutually exclusive. The process is actually ongoing. The details of these changes are discussed further in various chapters of this book. The book itself is a good gateway for anyone wishing to familiarize themselves with the current Russian regulatory landscape in the area of corporate governance. Written by the practicing lawyers and legal academicians, with a simple enough yet precise language, covering all the major topics and issues, it will be helpful both to aspiring investors into Russian economy, and to foreign legal practitioners who may require to be in the know of such matters in order to communicate with their Russian counterparts in a more knowledgeable way. Even Russian audience may find this book of interest as it covers a number of the topical developments, trends and problematic issues.

We at MZS & PARTNERS have always relied on, and contributed in a major way to legal doctrine. Our established academic reputation allows us not only to practice, but to participate in the entire law-making process. We don't just advise on the law — we help make the law. We are therefore honored to have been invited to support this publication and contribute to it, by sharing our most recent practical research and findings in the sphere of corporate disputes, which may lay grounds for further advancements in Russian corporate law.

Anton Aleksandrov, Partner

Foreword

This volume for which I have the privilege of writing this foreword endeavours and indeed succeeds in providing an exhaustive and meticulous account of Russian company law. The examination of Russian company law in English has long been awaited. The authors are to be applauded for the clarity with which most convoluted concepts and doctrines of Russian company law are presented to a lawyer not trained in Russian law.

This book is the second in a series of publications on Russian law, Russian Law Essentials, with the first book in the series devoted to Russian business law. The editors-in-chief, Professors Dmitry Dedov and Alexander Molotnikov, gathered in one place the abundantly clear and comprehensive contributions on Russian company law, together with Levon Garslian whom I have met during his visiting fellowship at the University of Cambridge.

Readers will find many of the concepts in this book familiar. The reason undeniably lies in the fact that Russian company is in part, perhaps significant part, the fruit of a successful comparative analysis of leading legal systems. It is trite that Russian statutes on companies have to a great extent been influenced by civil and, notably, common law jurisdictions.

Having said that, Russian company law is distinctly unique and was adjusted over time to reflect the Russian social reality. And this volume goes to great lengths to explain concepts peculiar to Russian law. Traces of this are present in various chapters. Thus, Chapter 2 examines forms of legal entities unique to Russian law: unitary enterprises, economic partnerships, and investment partnerships. Further, Chapter 7 presents the almost unconstrained right of shareholders to bring derivative actions under Russian law. Such a power is unnaturally wide-ranging in the eyes of a common lawyer.

As a necessary introduction, Chapter 1 sets out the historical development of Russian company law. It is striking that many of the rights

of shareholders and internal structure of companies were clearly ahead of their time and could clearly have formed the skeleton of a modern company law statute. Chapters 2 and 3 set out the main forms of companies in Russia. The main building blocks and distinctions are familiar: commercial and non-commercial entities, partnerships and companies to name a few. The two main forms of commercial companies that Russian law recognises are joint-stock companies and limited liability companies.

Chapter 4 walks the reader through the labyrinth of procedures and formalities to establish and later on to reorganise a company, both an LLC and JSC, in Russia. Particularly interesting is the discussion of various forms of M&A, liquidation and combined reorganisation under Russian law and the mandatory provisions to ensure sufficient protection to the creditors of companies in the process of a reorganisation.

The contribution in Chapter 5 addresses two inter-woven topics: the charter capital of companies and the issuance of securities (principally bonds and shares) by a company. Chapter 6 looks at the transfers of shares/participation interests and the formalities to comply with, including the ubiquitous pre-emption rights. Chapter 7 presents to the reader the rights and obligations of shareholders in a company while Chapter 13 takes a more detailed look at the rights of minority shareholders. Relatedly, Chapter 12 presents the so-called 'control enhanced mechanisms' in Russian law (e.g., golden shares and non-voting shares) and their review in Russian judicial practice.

Chapter 8 examines the shareholders' agreements. What many foreign lawyers, both academic and practicing, will find extremely useful is the analysis of when, if at all, Russian shareholder agreements can be governed by a foreign legal system, notably English law. The discussion is most handy since the position is not well-settled and may give rise to legal battles before Russian courts (and possibly arbitral tribunals).

Chapter 9 examines the management and control bodies of companies, while Chapter 10 discusses when and how a company can enter into significant transactions and interested-party transactions. Chapter 11

examines the scope and extent of the liability of the company, its directors and parent companies. Special mention requires the issue of piercing of corporate veil.

All these topics are discussed in the present book in wide-ranging and stimulating terms. The scholarship is solid and comprehensive and the book will be valuable to foreign companies and their counsel seeking to trade or invest in Russia. It is my pleasure to recommend it both to academics and practising lawyers.

Dr. Hayk Kupelyants,

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Fellow, Homerton College, Cambridge

Preface

It is the second edition of the book and this fact demonstrates the importance of the company law to the academics and practical lawyers.

In the times when Russian business is rapidly developing and the law becomes the most sought after instrument of structuring business relations, this book provides a fresh perspective and a broad legal overview of performance of Russian corporations. It describes business opportunities in the world of contemporary law. The authors sought to scrupulously follow all the recent conceptual innovations and to meticulously analyze the backlog of legal cases.

Russian Company Law: The Essentials is a product of collaboration of academicians and practicing lawyers. While making it we tried to adhere to a functional approach. Therefore, it is going to become a comprehensive and easy practical guidance in the sphere of corporate law, a manual for businessmen and other specialists focused on development of their business skills.

Following the functional patterns we decided to devote each chapter to the most practically useful and disputable issues, including but not limited to rights and obligations of shareholders, functions of charter (share) capital, a role of corporate agreements in regulating relations between shareholders, liability issues, corporate control and dispute resolutions within corporations. In the light of the significant changes in the Russian company law over the last three years the book covers a new legislative approach to public and private corporations. Furthermore, it gives thorough insight into the history of the Russian company law which is essential for profound understanding of the subject.

The co-authors of *Russian Company Law: The Essentials* are representatives of the leading law firms in Russia as well as recognized specialists who share their expertise in the company law. The chief editors of the book are Alexander Molotnikov, associate professor of the Business Law Department, Lomonosov Moscow State University Faculty of Law, and

Preface

Dmitry Dedov, Judge of the European Court of Human Rights, former professor of the Business Law Department, Lomonosov Moscow State University Faculty of Law. We are also delighted to have endorsements from eminent legal experts in international corporate law.

Evgeny Gubin,

Professor,

Chairman of the Business Law Department,

Lomonosov Moscow State University Faculty of Law

Glossary

Anti-Money Laundering Law	Federal Law No. 115-FZ “On Combating Money Laundering and the Financing of Terrorism” dated August 07, 2001
Arbitrazh Courts of Subjects	Arbitrazh (commercial) courts of first instance in the Republics, in the regions, in the districts, in the cities of federal significance, in autonomous regions, autonomous districts
Arbitrazh Procedural Code of the RF	Arbitrazh Procedural Code of RF No. 95-FZ dated July 24, 2002
Banking Law	Federal Law No. 395–1 “On Banks and Banking Activities”, dated December 2, 1990
Bankruptcy Law	Federal Law No. 127-FZ “On the Insolvency (Bankruptcy)”, dated October 26, 2002
CBR Law	Federal Law No. 86-FZ “On the Central Bank of the Russian Federation (Bank of Russia)”, dated July 10, 2002
CBR or Bank of Russia	The Central Bank of the Russian Federation
Civil Code of the RF	Civil Code of the Russian Federation (First Part) No. 51-FZ dated November 30, 1994 Civil Code of the Russian Federation (Second Part) No. 14-FZ dated January 26, 1996 Civil Code of the Russian Federation (Third Part) No. 146-FZ dated November 26, 2001 Civil Code of the Russian Federation (Fourth Part) No. 230-FZ dated December 18, 2006
Civil Procedure Code of the RF	Civil Procedure Code of the Russian Federation No. 138-FZ as of November 14, 2002
Code of Administrative Offences of the RF	Code of Administrative Offences of the Russian Federation No. 195-FZ dated December 30, 2001
Constitutional Court of the RF	Constitutional Court of the Russian Federation

Glossary

Criminal Code of the RF	Criminal Code of the Russian Federation No. 63-FZ dated June 13, 1996
FAS	The Federal Antimonopoly Service
FL on Advertising	Federal Law No. 38-FZ “On Advertising” dated March 13, 2006
FL on Joint Stock Companies	Federal Law No. 208-FZ “On Joint Stock Companies” dated December 26, 1995
FL on Licensing	Federal Law No. 99-FZ “On Licensing of Separate Types of Activities” dated May 04, 2011
FL on Limited Liability Companies	Federal Law No. 14-FZ “On Limited Liability Companies” dated February 08, 1998
FL on Natural Monopolies	Federal Law No. 147-FZ “On Natural Monopolies” dated August 17, 1995
FL on Non-Profit Organizations	Federal Law No. 7-FZ “On Non-Profit Organizations” dated January 12, 1996
FL on Protection of Competition	Federal Law No. 135-FZ “On the Protection of Competition” dated July 26, 2006
FL on Securities Market	Federal Law No. 39-FZ “On Securities Market” dated April 22, 1996
FL on State Registration of Legal Entities	Federal Law No. 129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs” dated August 08, 2001
Foreign Investment Law	Federal Law No. 160-FZ “On Foreign Investments in the Russian Federation” dated July 09, 1999
JSC	Joint-Stock Company
NPJSC	Non-Public Joint-Stock Company
PJSC	Public Joint-Stock Company
Labor Code of the RF	Labor Code of Russian Federation No. 197-FZ dated December 30, 2001
Law on Investment Funds	Federal Law No. 156-FZ “On Investment Funds” dated November 29, 2001
LLC	A limited liability company

Russian Company Law: The Essentials

MSU	Lomonosov Moscow State University
Standards of Issue of Securities	Rules on standards of issue of securities, on procedure for the state registration of issue (additional issue) of emissive securities, on the state registration of a report on the results of an issue (additional issue) of emissive securities and on the registration of a prospectus of securities (approved by the Bank of Russia under No. 428-P as of August 11, 2014)
Strategic Company	Company engaged in activities of “strategic significance” listed in the Strategic Investment Law *
Strategic Investment Law	Federal Law No. 57-FZ “On the Procedure for Foreign Investments into the Business Entities of Strategic Significance for Ensuring National Defense and State Security” dated April 29, 2008
Supreme Arbitrazh Court of the RF	Supreme Arbitrazh Court of the Russian Federation
Supreme Court of the RF	Supreme Court of the Russian Federation
Tax Code of the RF	Tax Code of the Russian Federation (First Part) No. 146-FZ dated July 31, 1998 Tax Code of the Russian Federation (Second Part) No. 117-FZ dated August 05, 2000
The Competition Law	Law of the Russian Soviet Federative Socialist Republic No. 948-I “On Competition and Limitation of Monopolistic Activities on Trade Markets” dated March 22, 1991
USRLE	United State Register of Legal Entities

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History of the Russian Company Law

1. Corporate Legislation of the Russian Empire

The corporate form of enterprise activity in Russia appeared later than in Western/European countries. Although it should be noted that the rudiments of the so-called “company form of enterprises” are found by some researchers in artels. An artel can be defined as a cooperative association that existed in the Russian Empire and then in the Soviet Union during the years of the 1860s to the 1950s. First, these are the artels of the northern region (Kotlyana), where both labor efforts of the participants and their material resources were invested in the common cause, and the received income was equally shared between the members of the artel.¹

However, one must admit that Russia actually adopted the experience connected with introduction of the joint-stock companies from European countries. As G. F. Shershenevich remarked, “the joint-stock enterprises that appeared in Russia were created under the influence of Dutch, Danish and Swedish models.”²

¹ Lappo-Danilevskiy A. Russian industrial and trading companies in the first half of the XVIII century. Saint-Petersburg, 1899. P. 13–14.

² Shershenevich G. F. Course of the trading law. Vol. 1 Saint-Petersburg. Br. Bashmakovs Publishing. 1908. P. 401.

Another interesting point is that the government bodies sought to encourage Russian merchants to create corporations. In particular, in the 1660s, “the outstanding statesman Afanasiy Lavrentyevich Ordyn-Nashchokin tried to encourage Pskov merchants to unite by the model of the foreign companies, but this attempt was not crowned with success.”³

During the epoch of Peter’s transformations, the subject of enterprise activity organization in the new mode was raised again at the official level. It was during this period that the first regulatory legal act mentioning the sphere of corporate relations appeared. It is the Decree of Peter I issued on October 27, 1699, which encouraged the Russian merchant class to create trading companies. This decree had no significant consequences and, as a Dutch traveler wrote in one of his letters home, “the business obviously failed.”⁴

However, the need for private business development, for the strengthening of the Russia state, remained. In particular, L. N. Nisselovich remarked that Peter the Great argued that “the establishment and development of factories and plants necessary for the Russian economy by the state is not effective, decided to initiate the transfer of this sphere into private hands.”⁵

The most significant detail of Fyodor Saltykov's ideas is that the companies were to be created in an industrial branch, and not with respect to trading activities. However, the overwhelming majority of the Western companies that operated at that time were engaged first of all in trading operations; gaining profit from exercising the exclusive right on purchase and sale in some parts of the globe. Even if we look at the subsequent projects that appeared in Russia in the XVIII century, we will see that their main purpose was trading operations.

³ Lappo-Danilevskiy A. Ibid. P. 18.

⁴ Soloviev. History of Russia. vol. XV p. 91 quote according to Pavlov-Silvanskiy N. Projects of reforms in the notes of Peter the Great’s contemporaries. Saint-Petersburg. 1897. P. 42.

⁵ Nisselovich L. N. History of plant and factory legislation of the Russian Empire (part 1), Saint-Petersburg, 1883. P. 21.

During Peter's epoch there were two decrees which can be mentioned here: one devoted to the creation of a whaling company (November 8, 1723),⁶ and the other to the company established for trade with Spain (August 4, 1724).⁷ The text of the second decree is remarkable; in particular, item three stated that the East India Company should be the example of investing money in shares (forming the company's capital).

Later, up until the middle of XVIII century, one can hardly find any state initiatives on the establishment of companies. The individual projects submitted to the consideration of the country leaders should be mentioned here, for example, the 1739 project of Yakutia vice-governor Lorentz Lang on establishing the joint-stock company for trade with China.⁸

The official documents provide us with the information that by 1742 there were some companies (Persian, Bukharan, Khivan, Ukrainian, Polish, etc.) in Russia, which did not deserve to be called as such in the opinion of the Commission on Commerce.⁹ Probably, these companies were established by individual merchants without the sanction of the state.

In the opinion of many researchers,¹⁰ the Russian commercial company trading with Constantinople should be considered the first joint-stock company created in Russia;¹¹ the Decree on its establishment was

⁶ Complete collection of laws of the Russian Empire from 1649. Collection 1 (hereafter — "CCL-1"). Vol. VII edition of 1830. Art. 4350. P. 153.

⁷ CCL-1. Vol. 7. No. 4540. P. 332.

⁸ Lappo-Danilevskiy A. Ibid. P. 53; Mamai V. I. Federal law "On joint-stock companies". Scientific practical commentary. Article-by-article material. Court practice. /V. I. Mamai — Moscow: Publishing center "MarT."

⁹ Firsov N. N. Russian commercial and industrial companies in the first half of the XVIII century. Kazan. 1896. P. 33.

¹⁰ For example, Kaminka A. I. Joint-stock companies. Legal research. Vol. 1. Saint-Petersburg, 1902. P. 337; Lomakin D. V. Corporate legal relations: general theory and practice of its application in economic societies, 2008. Quoted according to the "Consultant Plus" information system.

¹¹ Also in non-official documents this company was named Temernik Company. Obviously, this was because of Temernik port, through which the commercial transactions with Turkey were carried out (For example, Yukht A. I. Trading companies in Russia in XVIII. // Historical notes of the head editor Acad. A. M. Samsonov. Moscow 1984. P. 239).

issued on February 24, 1757.¹² Unlike the previous documents on creating companies in Russia, this Decree described thoroughly and in detail all the aspects of the internal structure of the newly-created organization, including the structure of its management and business administration. In spite of the fact that the term “trading partnership” appears in the name of the Decree, the newly-created company was not a partnership in its essence.

Later on, more companies appeared in Russia. In particular, the Persian trading company in 1758, and the Central Asian company (the company trading with Khiva and Bukhara) in 1760. As a side note, the model of the Persian company shows us how the joint-stock form began to be used by unconscious founders, for the purpose of solving their own financial problems at the cost of shareholders.¹³

By the beginning of the XIX century, several joint-stock companies were operating in Russia, and new companies were being created on a regular basis: from 1799–1806, three companies were established, from 1807–1829, 19, and from 1830–1836, 30.¹⁴ The most famous company that seriously influenced the national economy was the Russian American company (the Decree issued July 8, 1799)¹⁵ that carried out trade in the Pacific region. Note that this company was not newly-established; it was formed on the basis of two private companies that already existed at that time.

Furthermore, the first legislative acts regarding joint-stock companies appeared during the period under consideration, which defined

¹² CCL-1. Vol. 14 No. 10.694 P. 726. It should be noted that the government officials tried to encourage the Russian merchants to establish the company for trading with Turkey for quite a long time. The Decree under consideration refers to two Decrees — of 1753 and of 1755, which were aimed at searching the founders for this company.

¹³ More in: “That state is rich, the citizens of which are rich:” “Proposition” of count R. I. Vorontsov to the Senate on revocation of monopoly of trade with Persia, Bukhara and Khiva. 1761 // Historical archive, No. 2. 1994 P. 192–193.

¹⁴ Shepelev L. E. Joint-stock companies in Russia of XIX — beginning of XX century. Saint-Petersburg, 2006. P. 30

¹⁵ CCL-1. Vol. 25. No. 19.030 P. 699.