



# ICLG

The International Comparative Legal Guide to:

## Corporate Governance 2016

### 9th Edition

A practical cross-border insight into corporate governance

Published by Global Legal Group, with contributions from:

Allens

Aksac Law Office

ALRUD Law Firm

Arzinger & Partners

Ashurst LLP

Astrea

BEITEN BURKHARDT

Blake, Cassels & Graydon LLP

bpv Hügel Rechtsanwälte OG

CAJIGAS PARTNERS, S.L.

Dorsey & Whitney LLP

Ferraiuoli LLC

Glatzová & Co.

GRATA International Law Firm

Hadiputranto, Hadinoto & Partners

Haxhia & Hajdari Attorneys at Law

Lendvai Partners

Lenz & Staehelin

Linklaters LLP

Lobo & Ibeas Advogados

McCann FitzGerald

Nielsen Nørager Law Firm LLP

Nishimura & Asahi

Portilla, Ruy-Díaz y Aguilar, S.C.

Trilegal

UGGC & Associés

Uscov – Attorneys at Law

Waselius & Wist

WBW Weremczuk Bobeł & Partners Attorneys at Law

WH Partners



global legal group

**Contributing Editors**  
Bruce Hanton & Vanessa  
Marrison, Ashurst LLP

**Sales Director**  
Florjan Osmani

**Account Directors**  
Oliver Smith, Rory Smith

**Sales Support Manager**  
Toni Hayward

**Sub Editor**  
Hannah Yip

**Senior Editor**  
Rachel Williams

**Chief Operating Officer**  
Dror Levy

**Group Consulting Editor**  
Alan Falach

**Group Publisher**  
Richard Firth

**Published by**  
Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

**GLG Cover Design**  
F&F Studio Design

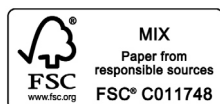
**GLG Cover Image Source**  
iStockphoto

**Printed by**  
Ashford Colour Press Ltd  
May 2016

Copyright © 2016  
Global Legal Group Ltd.  
All rights reserved  
No photocopying

ISBN 978-1-911367-00-0  
ISSN 1756-1035

**Strategic Partners**



## Country Question and Answer Chapters:

|    |                       |   |
|----|-----------------------|---|
| 1  | <b>Albania</b>        | Haxhia & Hajdari Attorneys at Law: Eris Hysi & Artan Hajdari  |
| 2  | <b>Australia</b>      | Allens: Vijay Cugati & Kate Towey   |
| 3  | <b>Austria</b>        | bpv Hugel Rechtsanwälte OG: Dr. Elke Napokoj, LL.M.  |
| 4  | <b>Belarus</b>        | Arzinger & Partners: Dmitry Viltovsky   |
| 5  | <b>Belgium</b>        | Astrea: Steven De Schrijver & Thomas Daenens  |
| 6  | <b>Brazil</b>         | Lobo & Ibeas Advogados: Paulo Eduardo Penna   |
| 7  | <b>Canada</b>         | Blake, Cassels & Graydon LLP: Frank P. Arnone & Madison Kragten                                       |
| 8  | <b>China</b>          | Linklaters LLP: Fang Jian & Grace Yu  |
| 9  | <b>Czech Republic</b> | Glatzova & Co.: Jindřich Kral & Milan Prieložny  |
| 10 | <b>Denmark</b>        | Nielsen Norager Law Firm LLP: Peter Lyck & Thomas Melchior Fischer                                   |
| 11 | <b>Finland</b>        | Waselius & Wist: Fredrik Lassenius  |
| 12 | <b>Germany</b>        | BEITEN BURKHARDT: Dr. Axel Goetz & Julia Schanz   |
| 13 | <b>Hungary</b>        | Lendvai Partners: Andras Lendvai & Dr. Gergely Horvath  |
| 14 | <b>India</b>          | Trilegal: Kosturi Ghosh & Bhusan Jatania  |
| 15 | <b>Indonesia</b>      | Hadiputranto, Hadinoto & Partners: Mark Innis & Andrew Frans  |
| 16 | <b>Ireland</b>        | McCann FitzGerald: David Byers & Paul Heffernan   |
| 17 | <b>Japan</b>          | Nishimura & Asahi: Nobuya Matsunami & Kaoru Tatsumi   |
| 18 | <b>Kazakhstan</b>     | GRATA International Law Firm: Marina Kahiani & Lola Abdukhalikova                                     |
| 19 | <b>Malta</b>          | WH Partners: Ruth Galea   |
| 20 | <b>Mexico</b>         | Portilla, Ruy-Daz y Aguilar, S.C.: Gonzalo Eugenio Ruy-Daz Benhumea & Luisa Fernanda Rascon Acosta |
| 21 | <b>Morocco</b>        | UGGC & Associes: Ali Bougrine  |
| 22 | <b>Poland</b>         | WBW Weremczuk Bobel & Partners Attorneys at Law: Łukasz Bobel & Krzysztof Weremczuk                   |
| 23 | <b>Puerto Rico</b>    | Ferraiuoli LLC: Fernando Rovira-Rullan & Yarot Lafontaine-Torres                                     |
| 24 | <b>Romania</b>        | Uscov – Attorneys at Law: Silvia Uscov  |
| 25 | <b>Russia</b>         | ALRUD Law Firm: Anton Dzhuplin & Victoria Sivachenko  |
| 26 | <b>Spain</b>          | CAJIGAS PARTNERS, S.L.: Jose Manuel Cajigas Garca-Ines & Pilar Lopez Munoz                       |
| 27 | <b>Switzerland</b>    | Lenz & Staehelin: Patrick Schleiffer & Andreas von Planta   |
| 28 | <b>Turkey</b>         | Aksac Law Office: Arzu Aksaç & Yaprak Derbentli   |
| 29 | <b>United Kingdom</b> | Ashurst LLP: Bruce Hanton & Vanessa Marrison  |
| 30 | <b>USA</b>            | Dorsey & Whitney LLP: Robert A. Rosenbaum, Esq. & Cam C. Hoang, Esq.                                  |

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

### Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

# Russia



ALRUD Law Firm

## 1 Setting the Scene – Sources and Overview

### 1.1 What are the main corporate entities to be discussed?

There are many types of legal entities in the Russian Federation. Depending on certain criteria and purposes of activity, all legal entities can be divided into (i) commercial (business aimed for making profit) and non-commercial (business not related with making profit), and (ii) corporate (whose members have the right to participate and shape the supreme governing body) and unitary (whose members do not have the right to participate and do not shape the supreme governing body) legal entities. However, as the principal and most commonly used legal entities for business in Russia are Limited Liability Companies, Joint Stock Companies (non-public) and Public Joint Stock Companies, it is worth focusing on the description of these forms of legal entities.

#### Limited Liability Company (“LLC”)

The absence of necessity to issue shares in LLCs makes this form of legal entity more customary and flexible with the least burdensome statutory obligations. The equity participation of the owners is determined by their capital contribution. The charter capital of the LLC is divided into “participatory shares”. “Participatory shares” are not actually “shares”; they fall outside the scope of the Russian securities law and are therefore not subject for registration as securities with the respective governmental authority.

The main features of the LLC include the following points:

- the number of participants may not exceed 50 (and may even be one). However, if the number of participants exceeds 50, the entity shall be reorganised into a JSC (joint stock company) or a manufacturing cooperative within one year. Furthermore, the LLC may not have another business entity consisting of a single entity as its sole participant;
- the minimum charter capital may not be less than RUB 10,000 (approx. USD 150);
- the General Meeting of Participants is the highest governing body of the LLC, and almost all matters fall within its exclusive competence. The board of directors is an optional corporate body;
- it is possible to broaden the competence of the board of directors by delegating issues which fall under the competence of the General Meeting of Participants (except certain issues, prescribed by the law) to it. It is also possible to broaden the competence of the General Meeting of Participants;
- it is possible to stipulate, in the charter, a procedure of convocation and holding of the General Meeting of

Participants (and the board of directors) and adoption of decisions which differs from the procedure prescribed by relevant legislation; and

- the LLC has no obligation to publish accounts.

#### Joint Stock Company (“JSC”)

The main features of the JSC include the following points:

- A JSC’s shares are distributed only among its founders or other predetermined group of persons. It is not permitted to conduct an open subscription of shares to an unlimited group of persons. If it is provided by the charter, shareholders could have pre-emptive purchase rights. Pre-emptive purchase rights can extend not only to the sale of shares but also to other transactions with consideration. In closed joint stock companies established before September 1, 2014, shareholders continue to have pre-emptive purchase rights by default until introduction of the first amendment to the charter.
- JSCs may not have as its sole shareholder another business entity consisting of a single entity.
- The minimum charter capital of JSC may not be less than RUB 10,000 (approx. USD 150).
- It is possible to limit, in the charter, the total amount of shares or their nominal value, or the maximum number of votes which belong to one shareholder.
- It is possible to broaden the competence of the board of directors by delegating to it issues which usually fall under the competence of the General Meeting of Shareholders (except certain issues). It is also possible to broaden the competence of the General Meeting of Shareholders.
- The board of directors is an optional corporate body if the number of shareholders is fewer than 50.
- It is possible to stipulate, in the charter, a procedure of convocation and holding of the General Meeting of Shareholders (and the board of directors) and an adoption of decisions which differs from the procedure prescribed by relevant legislation.
- The JSC has no obligation to publish accounts.

#### Public Joint Stock Company (“PJSC”)

Please note that previously, PJSCs were treated as open joint stock companies. The main features of the PJSC are the following:

- The company name contains a reference to the fact that such a JSC is public.
- The minimum charter capital is RUB 100,000 (approx. USD 1,500).
- An unlimited number of shareholders, and the unlimited number of shares owned by a shareholder.

- The PJSC may not have as its sole shareholder another business entity consisting of a single entity.
  - Open subscription to shares issued by it and free trade of them on the conditions established by a statute and other legal acts.
  - Additional obligations are imposed on PJSCs having more than a certain number of shareholders.
  - Obligation to publish an annual report, a balance sheet and a statement of profits and losses.
  - Shareholders do not have pre-emptive purchase rights.
  - It is not required to obtain other shareholders' consent for the sale of shares to a third party.
  - Comprehensive competence of the General Meeting of Shareholders.
  - The number of members of the board of directors shall be no fewer than five.
3. The Code of Administrative Offences (the “**Administrative Code**”), which sets out, *inter alia*, penalties for infringement of corporate governance rules and procedures by legal entities.
  4. The Federal Law No. 57-FZ dated April 29, 2008 “On Making Foreign Investments into the Business Entities which are of Strategic Importance for the Country’s Security Protection and Defence Support”, which sets out rules for acquisition of legal entities, having strategic importance for the Russian Federation, by foreign investors.
  5. The Federal Law No. 307-FZ dated December 30, 2008 “On Audit Activity”, which sets out, *inter alia*, principles and provisions on mandatory audit for legal entities.
  6. Moscow Exchange listing rules. These regulate the procedure of share listing on the Moscow Exchange.

## 1.2 What are the main legislative, regulatory and other corporate governance sources?

### Legislation

The main laws that have the most important impact on corporate governance in the Russian Federation are:

1. The Civil Code of the Russian Federation (the “**Civil Code**”). The Civil Code is the main regulatory law, which sets out, *inter alia*, the main principles of civil legislation in Russia, provisions on creation, reorganisation, liquidation of legal entities, rights and obligations of their participants (shareholders), and principles and instruments for the protection of civil rights and obligations. The Civil Code consists of four parts. The first part contains general rules and principles, the second part deals with the law of obligations, the third part refers to the law of succession and private international law and the fourth part of the Civil Code deals with intellectual property. Provisions of the Civil Code prevail, unless otherwise expressly provided in the Civil Code or other law.
2. Federal Law No. 14-FZ of February 8, 1998 (as amended) “On Limited Liability Companies” (the “**LLC Law**”). This law regulates LLC activities and provides detailed information about incorporation, charter capital, assets, management, competence of management bodies of LLC, transactions with participatory shares and other relevant provisions.
3. Federal Law No. 208-FZ of December 26, 1995 (as amended) “On Joint Stock Companies” (the “**JSC Law**”). This law regulates activities joint stock companies (public and non-public), provides detailed information about incorporation, charter capital, assets, issuance of shares, management, competence of management bodies of JSC, transaction with shares and other relevant provisions.

Other laws and regulations applicable to certain types of legal entities include the following:

1. Federal Law No. 39-FZ of April 22, 1996 “On the Securities Market” (the “**Securities Law**”), which establishes principles and requirements for holding, issuing and selling shares in the JSC (public and non-public), contains provisions on dividends, disclosure of information and financial agreements. The authorised body in the sphere of issuance of shares in the JSC is the Central Bank of the Russian Federation.
2. Federal Law No. 135-FZ of July 26, 2006 “On Protection of Competition” (the “**Competition Law**”), which sets out principles and rules of antitrust regulation in Russia. The authorised state body in the sphere of antitrust regulation is the Federal Antimonopoly Service and its regional offices. Thus, the Federal Antimonopoly Service has powers of control in the following areas: (i) economic concentration

- (ii) restrictive agreements, concerted practices and coordination of economic activity;
- (iii) abuse of dominant position; and (iv) unfair competition.

In addition to the laws and special regulations, there is a Code on Corporate Governance (which is not mandatory but recommended for use by legal entities) adopted by the Central Bank of Russia, which sets out basic principles of corporate governance in legal entities.

### Internal Corporate Governance Sources of Legal Entities

The main constitutional document in LLCs, JSCs and PJSCs is the charter. This document contains provisions on transfer of participatory shares/shares, the implementation procedure of pre-emptive rights (except for PJSCs), management bodies and their competence, and the rights and obligations of shareholders. The document also establishes other matters of corporate governance.

In addition, the companies are entitled to have internal corporate governance rules, policies, and regulations of certain bodies (e.g. of the board of directors).

### The Corporate Agreement (The Shareholders’ Agreement)

Shareholders (participants) of a legal entity are entitled to conclude corporate agreements according to which they have to execute their corporate rights in the agreed manner or refrain from the execution of their corporate rights (including voting on general meetings, execution of other actions with regard to company’s management, and transfer of shares of the company).

## 1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The significant reforms of the Civil Code were performed in 2014 and 2015 and new law concepts and instruments which previously did not exist and/or were not recognised were adopted in Russian legislation, such as:

- conclusion and provisions of the corporate agreement (as described above);
- dispositive regulations for LLCs and JSCs. Currently, doing business in Russia through a non-public commercial corporation provides shareholders/participants with maximum freedom and flexibility;
- multiplicity of sole executive bodies. The charter of the company may provide that the company authorises two or more persons to act as its sole executive body (jointly or separately);
- indemnity obligation (which is to some extent similar to the English law concept, but not the same as under the English law) – an agreement may provide for an obligation of the party to give an indemnity, which obliges such a party to



compensate the other party for any losses incurred upon occurrence of the event, which is not connected with breach of obligation of the parties under such an agreement;

- option agreement and option for conclusion of the agreement;
- representation and warranties (which are similar to, but not identical to representations and warranties under the English law). A party relying on a representation that is untrue can claim for damages or a penalty set forth in the agreement. If a party's representation that is untrue was essential to the other party to the agreement (which can be expressly provided in the agreement), such other party may terminate the agreement unless it is otherwise provided by the agreement between the parties. If a party was deceived or materially misled into entering into an agreement, such a party may demand invalidation of the agreement; and
- pre-contractual liability (parties of the negotiations may enter into an agreement concerning their negotiations). Such an agreement may set forth penalties for breach of the agreement.

One more positive tendency in the development of the Russian legislation is that the Supreme Court explained and interpreted its position with regard to changes introduced to the Civil Code to the lower courts in order to procure application of new provisions in a more clear and stable manner. The most significant acts of the Supreme Court are the following:

- Decree of the Supreme Court "On Application by the Courts of Certain Provisions of the First Part of the Civil Code of the Russian Federation" No. 25 dated June 23, 2015.
- Decree of the Supreme Court "On Application by the Courts of Certain Provisions of the Civil Code of the Russian Federation on Liability for Breach of Obligations" No.7 dated March 24, 2016.

## 2 Shareholders

### 2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

Shareholders of the company form the supreme management body of the company, i.e. the general meeting of shareholders. Shareholders of LLCs, JSCs and PJSCs have the following rights:

1. To participate in managing the affairs of the company.
2. To receive information on the activities of the entity, its accounting books and other documents in the order established by the laws and constitutional documents of the company.
3. To participate in the distribution of profits of the company.
4. To receive, in the case of liquidation of the company, the company's assets after settlements with creditors of the company.
5. To claim for exclusion of a company's shareholder from the company (except for PJSCs) in court with payment of the actual value of its shares to the court, in cases where such a shareholder's actions/omissions has caused significant harm to the company or it has considerably complicated its activities in achieving the objectives for which it was created.
6. To dispute decisions of management bodies of the company and challenge transactions of the company.
7. To claim for damages incurred by the company on behalf of the company.
8. To perform other rights provided by the law and constitutional documents of the company.

However, it needs to be mentioned that PJSCs or JSCs could have different types of shares – ordinary shares and privileged shares. Owners of ordinary shares have the same rights as provided by the law, whereas owners of the privileged shares do not have the right of vote on general meetings of shareholders (unless it is otherwise provided by JSC Law), but they have the right to receive a fixed amount to be paid as the dividends, as well as the pre-emptive right (in comparison with other shareholders) in acquisition of the company's assets left after liquidation of the company.

### 2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

Shareholders of LLCs, PJSCs and JSCs have the following responsibilities:

1. To pay for their shares in accordance with the provisions of the law and the company's charter.
2. Not to disclose confidential information concerning the company to third parties.
3. To participate in the company's decision-making process so that the company could operate its usual course of business.
4. Not to perform any acts aimed at causing losses to the company.
5. Not to commit any actions (or omissions) which can make it difficult or impossible to achieve the goals for which the company was established.
6. To perform other obligations provided by the law and constitutional documents of the company.

### 2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

#### Shareholder meetings in JSCs and PJSCs

There are two types of general meetings of shareholders ("GMS") in JSCs and PJSCs: the annual GMS (which are held in terms provided by the company's charter but no sooner than two months and no later than six months after the end of the reporting year); and the extraordinary GMS (other meetings held apart from the annual meeting of shareholders).

On the annual GMS, the shareholders have to elect the board of directors and the revision committee, approve the auditor, approve the annual report and the annual accounting (financial) report (unless this matter is referred to the competence of the board of directors of the company). Apart from these matters, the annual GMS can consider other issues included into the agenda of the annual GMS.

The extraordinary GMS can be held under the decision of the board of directors, upon demand of the revision committee, auditor of the company or shareholders being owners of no less than 10% of shares of the company as of the date of submission of the demand to the company. The extraordinary GMS shall be held within 50 days from the date of submission to the company of the demand on holding an extraordinary GMS.

Some of the matters referred to the competence of the GMS may be adopted by the majority of votes of shareholders (such as the determination of the number of members of the board of directors, establishment of executive body of the company etc.), whereas certain matters require a super majority approval (75% of votes), such as: the introduction of changes into the charter of the company; reorganisation of the company; and other matters provided by the JSC Law.

### Shareholder meetings in LLCs

There are two types of the GMS in the LLC: the ordinary GMS (which are held in terms provided by the company's charter at least once a year); and the extraordinary GMS (other meetings held apart from the ordinary meeting of shareholders). The company's charter should provide the term for holding the ordinary GMS, whose agenda will include approval of the annual results of business of the company; such a GMS must be held no sooner than two months and no later than four months after the end of financial year.

The extraordinary GMS can be held under the decision of the executive body of the company and the decision of the board of directors, upon demand of the revision committee, auditor of the company or shareholders who are owners of no less than 10% of the total participatory shares of the company. The extraordinary GMS shall be held within 45 days from the date of receipt of the demand for holding the extraordinary GMS by the company.

Most of the matters which refer to the competence of the GMS may be adopted by the majority of votes of shareholders (such as determination of main purposes of company's business, establishment of executive body of the company etc.), whereas certain matters require a super majority approval (2/3 of votes) or unanimous resolution of shareholders (e.g. liquidation or reorganisation of the company).

According to the Civil Code, shareholders of LLCs and JSCs are entitled to transfer matters which refer to the competence of the GMS to the competence of the board of directors by unanimous voting (except for certain matters provided by the law).

### 2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

As a general rule, the shareholders are not liable for acts or omissions of the corporate entity and bear risk of damages related to the business of the company within the value of their shares. However, the Russian law provides certain exceptions from this rule:

1. Shareholders who have not fully paid for their shares are jointly liable for obligations of the company within the unpaid part of such shares.
2. Shareholders who have the actual opportunity to determine the actions of a legal entity are liable for compensation of damages to a legal entity if such damages were caused by unreasonable or unfair actions of such shareholders.
3. Shareholders who have the actual opportunity to determine the actions of a legal entity bear subsidiary liability in the case of bankruptcy of the legal entity caused by the actions/omissions of such shareholders.
4. Shareholders may be brought to administrative liability for offences in connection with fictitious or deliberate bankruptcy, as well as for illegal actions during the bankruptcy procedure.

### 2.5 Can shareholders be disenfranchised?

In general, in accordance with the Russian law, shareholders may not be deprived of their rights.

There are, however, certain exceptions from that principle:

1. Mandatory buy-out of a company's shareholder by a person which acquired more than 95% of shares of this company.
2. The court may issue an order of prohibition of voting for matters which refer to the competence of the GMS or board of directors of the company, which may constitute or be directly associated with subjects of disputes, considered by the court.

3. Voting for the conclusion of related party transactions if such a shareholder is interested in such a transaction.

In practice, however, it is possible to provide certain limitations or temporary deprivation of rights of shareholders in different cases (e.g. in the case of a deadlock) in the corporate agreement.

### 2.6 Can shareholders seek enforcement action against members of the management body?

Shareholders of the company are entitled to sue the sole executive body or members of the board of directors for compensation of damages incurred by the company through the guilty actions of such management bodies.

### 2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

In general, there are no limitations regarding the number of shares which the particular shareholder can hold. However, certain exceptions are provided by the Foreign Investment Law with regard to foreign ownership of companies, performing business in banking, insurance, weapon production and other specific areas set out in the Foreign Investment Law.

In addition, in certain cases, a shareholder buying shares of the company shall be obliged:

- to obtain a prior consent of, or to make a notification to, the antitrust authority (in accordance with Competition Law); and
- to make a mandatory offer or request to all other shareholders in certain cases provided by the JSC Law.

## 3 Management Body and Management

### 3.1 Who manages the corporate entity/entities and how?

In addition to the GSM as the supreme management body in LLCs, JSCs and PJSCs, a company's governing bodies include:

1. The supervisory board (board of directors).
2. Executive bodies (sole executive body and/or collegial executive body).

The concept of governing bodies in Russia differs from the foreign law concept; in Russia, the board of directors is principally a supervisory body (along with the GSM) rather than a management body, while the management body includes executive bodies (sole executive body (which, according to the recent amendments to Russian law, may consist of several directors) and/or collegial executive body). Nevertheless, for the purposes of this publication, the GSM, board of directors and executive bodies as company's management bodies will be referred to in a general sense.

The creation of a board of directors is not mandatory for JSCs (with fewer than 50 shareholders) and LLCs. Shareholders of the company elect members of the board of directors, and the board of directors is accountable before shareholders of the company. Members of the board of directors have to act solely in the interests of the company, and are not obliged to follow the instructions of the shareholders. The company's board of directors is entitled to decide on matters which do not refer to the competence of the GMS.

The sole executive body manages the operational and day-to-day business of the company and is entitled to act on behalf of the

company without power of attorney, conclude transactions on its behalf, review and approve employment appointments, etc. The competence of the sole executive body includes issues which do not refer to the competence of the GMS and board of directors of the company. The sole executive body is accountable to the GMS and the board of directors of the company.

### **3.2 How are members of the management body appointed and removed?**

The board of directors in JSCs and PJSCs shall comprise at least five members. In LLCs, the charter may provide another number of members of the board of directors. In JSCs and PJSCs, members of the board of directors are elected by cumulative voting of shareholders of the company. In LLCs, the charter may provide other voting procedures with regard to appointment of the board of directors. In cumulative voting, the number of votes held by each shareholder is multiplied by the number of seats on the board of directors, and voting shareholders may cast all its votes for one nominee or distribute its votes among several nominees. Nominees who received the majority of votes shall be appointed to the board of directors, and only individuals may be appointed to the board of directors (generally, there are no limitations by age, nationality, length of tenure provided by Russian law).

Members of the board of directors are elected for a period until the next annual GSM. In JSCs and PJSCs, a decision on the termination of powers of members of the board of directors may be adopted only in respect of all members of the board of directors. In cases where the charter of an LLC does not provide cumulative voting for the election of members of the board of directors, it is possible to prescribe provisions in relation to the termination of powers of certain members of the board of directors of an LLC.

The sole executive body of the company is appointed by the decision of GMS, unless this matter falls within the competence of the board of directors.

### **3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?**

Contracts and remuneration of members of the board of directors and sole executive body are regulated on two levels:

- Legislation: the LLC Law (in relation to LLCs); and the JSC Law (in relation to JSCs and PJSCs).
- Local company's regulations: constitutional and internal documents of the company; and employment contracts.

### **3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?**

In general, there are no limitations with regard to the stakeholding by members of the management bodies. With regard to the disclosure of interests in securities held by the members of the management bodies, all members of the management bodies and shareholders of the company have to submit information about the legal entities where, independently or together with their affiliate (affiliates), hold 20% of voting shares to the board of directors, revision committee and auditor of the company.

### **3.5 What is the process for meetings of members of the management body?**

#### **GMS**

The procedure of holding a GMS in LLCs, JSCs and PJSCs is regulated by the Civil Code, the LLC Law and the JSC Law. Shareholders of LLCs and JSCs can unanimously decide to amend the charter of the company and to provide the procedure of holding a GMS which differs from the legislative provisions.

#### **Meeting of the Board of Directors**

A meeting of the board of directors shall be convened by the chairman of the board of directors at his own discretion, at the request of a member of the board of directors, the internal auditor, external auditor, and/or sole executive body.

The quorum for holding a meeting of the board of directors is at least 50% of the number of elected members of the company's board of directors (if a larger amount is not specified in company's charter).

Decisions on meetings of the board of directors shall be taken by the majority of votes of all members of the board of directors participating in such meetings, except for the cases provided in the law or in the charter of the company.

### **3.6 What are the principal general legal duties and liabilities of members of the management body?**

According to Russian legislation, all members of the management bodies of a company shall act in the best interests of the company, reasonably and in good faith. No one is obliged to follow the instructions of shareholders with regard to the adoption of a decision which refers to the competence of such a management body.

A possible liability of the members of the management bodies is damages, incurred by guilty actions in relation to the company. The sole executive body is liable for damages only in cases where it is proved that during the performance of its rights and obligations, it was acting unreasonably and in bad faith.

### **3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?**

Current legislation does not contain any specific corporate governance responsibilities/functions of members of the management body; however, it may be provided in company's charter.

As one of the latest biggest challenges for management bodies in courts, of particular note is the decision case No. 305-ЭС15-14197, adopted on March 31, 2016 by the Supreme Court of the Russian Federation, which in fact recognised in principle the possibility of challenging the decision of the GMS/participants, not only by actual shareholders/participants, but also by beneficiaries of the company (even if corporate structure beneficiaries own the company through a complex corporate chain in foreign jurisdictions).

### **3.8 What public disclosures concerning management body practices are required?**

PJSCs and JSCs carrying public placement of bonds or other securities are required to disclose information about the resolution passed by its board of directors, including on the following matters:

- convocation of an annual or extraordinary GMS;
- appointment or formation and early termination of powers of the sole executive body;
- dividend-related recommendations;
- inclusion of the company's liquidation in the agenda of a GMS;
- approval of a major transaction;
- confirmation of the company's registrar appointment and the terms of contract with it;
- repurchase of the company's outstanding shares, bonds and other securities; and
- creation and liquidation of branches and representative offices.

The annual report of such companies should also contain a brief biography of each member of the board of directors, including their current positions in other companies.

### 3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Article 53.1 of the Civil Code provides that the agreement on indemnity of members of management bodies for committing unfair actions (in LLCs and JSCs) and for committing unfair and unreasonable actions (for PJSCs) is void.

Liability insurance is optional for members of management bodies and very few companies in Russia use it.

## 4 Transparency and Reporting

### 4.1 Who is responsible for disclosure and transparency?

The sole executive body of the company is responsible for the following disclosures of the company:

- organisation of the maintenance and the state and reliability of accounts;
- timely submission of annual reports and other accounts to respective authorities; and
- provision of shareholders and creditors with details of the company's activities.

### 4.2 What corporate governance related disclosures are required?

#### LLC

According to Article 49 of the LLC Law, an LLC is not obliged to disclose information about its business activity, except for certain cases provided by the LLC Law:

1. The company that has acquired more than 20% of voting shares of a JSC or PJSC, or more than 20% of the charter capital of another LLC, is obliged to publish information about it in the special press.

2. Within three working days after the company's decision to reduce its share capital, the company shall report it to the federal tax authority and publish that information in the special press twice with an interval of one month.
3. Information about the company's reorganisation shall be published once a month in the special press.
4. In cases of placement of public bonds and other equity securities, an LLC is obliged to publish its annual reports and balance sheets.

#### JSC and PJSC

According to Article 92 of the JSC Law, the following information shall be disclosed by the company:

1. Annual reports and annual financial statements.
2. A message on the holding of the GMS.
3. A prospectus for securities issuance.
4. Other information determined by the Central Bank of Russia.
5. A JSC that has more than 50 shareholders shall disclose annual reports and annual financial statements.

### 4.3 What is the role of audit and auditors in such disclosures?

The company is obliged to approve an external auditor only in cases provided by the law. Such an auditor shall be appointed by the decision of the GMS.

PJSCs are required to be audited on an annual basis by the approved auditor.

### 4.4 What corporate governance information should be published on websites?

This is addressed in question 3.8 above.

## 5 Miscellaneous

### 5.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Corporate social responsibility is not subject to legal regulation in Russia. However, many leading Russian companies, such as Gazprom, Russian Railways, and Systema, etc. are involved in certain corporate social responsibility programmes. Such companies annually publish a special corporate social responsibility report on their websites.

### 5.2 What, if any, is the role of employees in corporate governance?

In general, employees do not play any important role in corporate governance in Russia. There are no legal requirements as to employees' representation in management bodies of the company.



**Anton Dzhuplin**

ALRUD Law Firm  
17 Skakovaya Street  
Building 2, 6<sup>th</sup> floor  
125040 Moscow  
Russia

Tel: +7 495 234 96 92  
Email: [ADzhuplin@alrud.com](mailto:ADzhuplin@alrud.com)  
URL: [www.alrud.com](http://www.alrud.com)

Anton Dzhuplin is a Partner at ALRUD Law Firm. Anton's diverse corporate practice includes M&A, domestic and international corporate finance, IPOs, private equity, joint ventures, public takeovers, corporate governance, restructuring and insolvency. He has an exceptional track record in many industries and he leads the firm's work in the pharmaceutical and infrastructure industry.

Anton joined ALRUD Law Firm in 2007. He became a Partner in 2014. Anton has a broad industry experience and is always admired by his clients and business partners for his sharp advice and business intelligence.

Anton graduated from the State University Higher School of Economics, Faculty of Tax and Financial Law. He is a member of the International Bar Association.

**Victoria Sivachenko**

ALRUD Law Firm  
17 Skakovaya Street  
Building 2, 6<sup>th</sup> floor  
125040 Moscow  
Russia

Tel: +7 495 234 96 92  
Email: [VSivachenko@alrud.com](mailto:VSivachenko@alrud.com)  
URL: [www.alrud.com](http://www.alrud.com)

Victoria Sivachenko is an Associate at ALRUD Law Firm. Victoria has experience in advising Russian and foreign companies on a wide range of corporate issues, including corporate governance, structuring of international or local M&A transactions, establishment of joint ventures, and preparation and negotiation of shareholders' agreements, share purchase agreements and ancillary documents. In addition to corporate and M&A expertise, Victoria specialises in the banking and finance field, advising clients on various regulatory requirements of Russian banking and finance law, currency control issues, cross-border lending, and representing interests of the banks and the borrowers in financing transactions.

Victoria joined ALRUD Law Firm in 2009. She has been an Associate since 2013. She graduated from the State University Higher School of Economics, Department of Law in 2008, specialising in Entrepreneurial Law. Victoria is a member of the International Bar Association.



Established in 1991, ALRUD Law Firm is the leading and most reputable Russian law firm. The firm provides the full scope of legal services to local and international clients in the areas of banking & finance, corporate/M&A, commercial law, competition/antitrust, data protection, dispute resolution, energy/natural resources, intellectual property, labour and employment, restructuring/insolvency, real estate, and tax law, etc.

ALRUD Law Firm serves clients from diverse industries such as energy/infrastructure, mining, banks, consumer goods, retail, investment management, government/public, healthcare, life sciences/chemicals, industrials, insurance, technology, media and telecoms, and transport/logistics. ALRUD Law Firm's reputation, reliability and competence are recognised by the leading global legal directories: *Chambers & Partners*; *The Legal 500*; *IFLR*; and *Best Lawyers*, etc.