***Profound changes in the definition and the approval procedure of major transactions and interested-party transactions, carried out by Russian joint-stock companies and limited liability companies.***

Since January 1, 2017, amendments to the Russian Federation Law of 08.02.1998 No. 14-FZ "On Limited Liability Companies" and the Russian Federation Law of 26.12.1995 No. 208-FZ "On joint stock Companies" entered force. These changes affect the legislative regulation of interested-party transactions and major transactions concluded by Russian joint-stock companies and limited liability companies.

These amendments to the Russian corporate law may be important for you **should you be a controlling person or hold a position on a governing body** of a joint-stock company or a limited liability company acting in Russia. In this article, we will review the impact that the aforementioned changes will have on the Russian companies, and what should be considered about them.

According to the updated formulations of the two Company Laws, the following persons could have a vested interest in conclusion of a transaction by the company: the person acting as the company’s single-member executive body, a member of the company’s collective executive body, a member of a company’s board of directors, and the company’s controlling person.

To deem the above persons interested in company’s execution of a transaction it is required that they or their spouses, parents, children, blood brothers, blood sisters, half-brothers, half-sisters, foster parents, adopted children, as well as controlled by them legal entities, either themselves are a party to, beneficiary, intermediary or agent in such a transaction, or are a controlling person and (or) hold positions on a governing body of a legal entity which, in turn, acts as a party to or a beneficiary, intermediary, or agent in such a transaction.

One of the most important changes in the legislation of interested-party transactions was made by introducing of the concept of **controlling person**. Deemed as such are the **persons who directly or indirectly** (through controlled persons) **handle more than 50 per-cent** (50%) **of the votes on the company’s general shareholders’ (participants’) meeting**, or have the right to elect the single-member executive body and (or) to elect more than 50 per-cent (50%) of the collective governing body of the controlled company. Here counts either direct representing of shares (participation interests) in the controlled legal entity, or holding the votes under an agreement, the subject of which is the exercise of rights, certified by shares (participation interests) of the controlled company.

This concept replaces the affiliates, which greatly narrowed the range of persons, transactions with whom require compliance to the interested-party transaction rules. Thus, the **threshold of ownership of shares (participation interests)**, necessary to deem such owner an interested party, **increased** due to this from 20 **to 50 per-cent**. Furthermore, **interested-party transactions no longer include transactions with an individual from the group of persons of an interested person**.

The legislator has introduced **a new obligation for those, who may be deemed interested** in concluding a transaction by the company, which is **to notify the company** on the following:

- the legal entities which are controlled either by themselves, or by their close relatives and (or) controlled persons, or to which they have the right to give obligatory instructions;

- the legal entities, in which such persons and (or) their close relatives hold positions in any governing bodies;

- the transactions in process or pending in respect of which such persons may be deemed interested in.

Interested persons must notify the company on the specified circumstances within two months from the date of when they learned or had to learn about their occurrence. Along with this the company must be notified on changes in the aforementioned information within two weeks.

The company, in turn, is obliged to inform the persons, mentioned in the Company Laws, about an interested-party transaction within fifteen days prior to the execution of such a transaction, unless a different period is stipulated in the charter of the company. A Limited liability company must inform its uninterested participants and the members of the board of directors (if any). A joint-stock company must inform the members of the board of directors and the members of the collective executive body. In case all members of the JSC’s board of directors are interested, or in case of its deficiency, the company must inform its shareholders in a way used to inform them about the general shareholder meeting.

Certainly, the most important change in the interested-party transactions regulation is the abolition of obligatory preliminary approval of such transactions. Now transactions, in which there is a vested interest on the part, do not require a consent prior to their execution. Such a consent must be received only upon request made by the company’s single-member executive body, a member of the company’s collective executive body, member of a company’s board of directors or by shareholders (participants), handling more than 1 per-cent of such company’s voting shares (participation interests) in total.

Thus, **generally only the preliminary informing about interested-party transactions is now obligatory**, instead of their preliminary approval.

Profound changes occurred also to the list of transactions, to which the provisions on the interested-party transactions do not apply. Now the following transactions shall not be regarded as such:

- Transactions concluded in ordinary course of business of the company;

- Transactions involving company’s property, the price, or the book value of which does not exceed 0.1 per-cent of the book value of the company’s assets as of the last reporting date;

- Transactions concluded on the same conditions as the preliminary contract, if such a contract contains all the information necessary to obtain a consent, provided a consent to its conclusion had been obtained.

The **procedure of invalidation** of transactions that have been concluded without a required consent, was also subject to changes. So, an interested-party transaction may be invalidated under a lawsuit filed by the company, or a member of its board of directors, or by its shareholders (participants) owning more than 1 per-cent of its voting shares (participation interests) in total, in case court will prove that **the specified transaction has been made to the detriment of the company’s interests**. Invalidation in such case requires also a **proof that the counterparty did know (or should have consciously known) about the company’s interest in conclusion of the disputed transaction and (or) about the deficiency of a consent required for it**.

Thus, the legislator introduces a minimal threshold for share (participation interest) ownership to protect companies against minority holders’ actions to invalidate transactions. Apart from that, from now on the **plaintiff bears the burden of proving counterparty’s bad faith** in such cases.

It is worth mentioning that the legislator has also introduced a situation in which a detriment of the company’s interests is presumed because of an interested-party transaction. This requires contemporaneous deficiency of consent to execute such a transaction and failure to provide information upon plaintiff’s request information, stating that the specified transaction does not counter interests of the company.

The Russian Federation Law of 26.12.1995 No. 208-FZ "On joint stock Companies" provides another remedy to protect interests of a joint-stock company as well: the party, interested in the company’s conclusion of a transaction will be liable for the company’s losses to the extent of their amount, whether or not such transaction has been invalidated. Furthermore, **guilt of the person who failed to notify company on the circumstances due to which this person may be deemed interested in the company’s conclusion of a transaction is now presumed**.

As for the legislative control of major transactions, here the most significant amendments were made to the legislative definition itself. From January 1, 2017, a major transaction’s essential attribute is executing such a transaction beyond the ordinary course of business of the company. Evidence of this attribute is essential for inquiry on the following attributes, on grounds of which the transaction may be deemed invalid.

The previously existing list of transactions, which may be regarded major, was added by transactions on transfer of property for temporary possession and (or) use, as well as licensing agreements granting third parties rights to use intellectual properties and (or) means of identification.

The list of exceptions not subject to the major transaction regulations was considerably expanded, and is now uniform for joint-stock companies and limited liability companies both.

***We will do our best to provide you with more detailed advice in the matter of major and interested-party transactions, as well as to assist you in any other matters of the legal supervision of your business.***