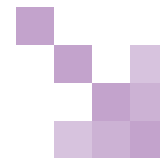


# Russian Federation



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## CORPORATE ENTITIES

There are two principal corporate entities typically used in Russia:

- **Joint stock company (*Aktsionernoe Obschestvo*) (JSC).**  
The members or participants of a JSC are referred to as shareholders and the registered capital is divided between shareholders as shares. A JSC can be either:
  - **An open JSC (OJSC).** There is no limit to the number of shareholders in an OJSC. The registered capital of an OJSC must be at least 1,000 minimum monthly wages (one minimum monthly wage is equal to RUB100 (about US\$2.8)). Where the number of shareholders in an OJSC exceeds 50, an independent licensed registrar must keep the shareholders' register. If there is only one shareholder, this should be reflected in the company's charter;
  - **A closed JSC (CJSC).** A CJSC can have no more than 50 shareholders and its registered share capital must be at least 100 minimum monthly wages.

JSCs are typically used for larger companies with a significant number of shareholders. All shareholders must be recorded in the shareholders' register, which can be kept by the company itself or by a licensed registrar (except in certain cases (*see above*)).

- **Limited liability company (*Obschestvo s Ogranichennoi Otvetstvennostyu*) (LLC).** The members of an LLC are referred to as participants and the registered capital is divided between participants as participatory interests. An LLC must:
  - not have more than 50 participants;
  - have registered capital of at least 100 minimum monthly wages (according to amendments to the LLC Law that come into force from 1 July 2009, an LLC must have registered capital of at least RUB10,000 (about US\$282));
  - record the names of participants and the sizes of their participatory interests in the company's charter. From

1 July 2009, following recent amendments to the LLC Law, the charter will be the only foundation document required for an LLC;

- record any change of participants or amount of participants' interest in the company's foundation documents, which are registered with relevant state authorities.

In both JSCs and LLCs:

- Shareholders and participants can be individuals or corporate entities.
- State registration is required.
- Liability is limited for shareholders or participants up to the level of their contributions.

## LEGAL FRAMEWORK

### 1. What is the regulatory framework for corporate governance and directors' duties?

Russian law sets out certain mandatory and non-mandatory requirements for both JSCs and LLCs. The company's charter should reflect the relevant requirements.

The legal basis for JSCs and LLCs is set out in:

- The Civil Code.
- Federal Law No. 14-FZ of 8 February 1998 on Limited Liability Companies (LLC Law).
- Federal Law No. 208-FZ of 26 December 1995 on Joint Stock Companies (JSC Law).

The Corporate Governance Code (Code) was adopted by the government and recommended by the Commission for Securities Markets for implementation by all JSCs. The Code is a list of recommendations and its application is voluntary. The Code does not apply to LLCs.

**BOARD COMPOSITION AND REMUNERATION OF DIRECTORS****2. What is the management/board structure of a company? In particular:**

- Is there a unitary or two-tiered board structure?
- Who manages a company and what name is given to these managers?
- Who sits on the board(s)?
- Do employees have a right to board representation?
- Is there a minimum or maximum number of directors or members of the managerial and supervisory bodies?

**Structure**

The management structure of both JSCs and LLCs includes:

- An executive body comprising either:
  - an individual executive body (a director, general director, president or other individual);
  - an individual executive body and a collegial executive body (*Pravlenie*) (collegial executive body).

Together these are referred to as the executive body. The choice of an individual executive body or collegial executive body should be set out in the company's charter. Only natural persons can be elected as the individual executive body or to the collegial executive body. The executive body carries out the company's daily activities, as set out in the charter. The executive body's competence is to act on behalf of the company to decide:

- issues relating to the company's everyday activities;
- other activities stipulated by law and the company's charter.

It does not decide on issues and activities in the exclusive competence of the general meeting (GM) (*see below*) or the board of directors (board).

- A supervisory body in the form of a board. A board is only required by OJSCs if the number of members exceeds 50. For CJSCs and LLCs, a board is permitted but not required. The board is responsible for overseeing the management of the company. The board's authority should:
  - be set out in the company's charter;
  - meet the legal requirements for charters.
- A supreme body in the form of a general meeting of shareholders or participants. There are two types of general meeting:
  - a general meeting which is held annually (annual ordinary general meeting (AOGM)) (*see Question 22*);

- extraordinary general meetings (EGMs). An EGM is usually called to approve a major transaction or other important matters.

The AOGM and EGM are both referred to generally as a GM where no distinction is necessary. The EGM and AOGM have the same authority to pass resolutions.

**Management**

In JSCs and LLCs, the individual executive body is the general director. If there is a collegial executive body, it usually consists of an administrative board or directorship. The executive body reports to the shareholders or participants, and the board.

The company can delegate the executive body's powers to a professional manager (a legal entity or an entrepreneur (that is, a person who is registered as an individual entrepreneur to perform his business activities without the formation of a legal entity)) on the basis of a management agreement. A decision to delegate powers should be adopted by the shareholders or participants at the GM, but only at the suggestion of the board.

**Board members**

The company's directors sit on the board. Directors are categorised as independent, executive and non-executive (*see Question 4*).

**Employees' representation**

Employees' representation is not required. If employee representation is provided for, this should be set out in the company's charter.

**Number of directors or members**

An individual executive body comprises one member (*see above, Structure*). The number of members of a collegial executive body should be set out in the company's charter and is unlimited.

There is no prescribed number of directors required to sit on an LLC's board. The number selected should be set out in the company's charter and can be amended by the GM.

A JSC's board cannot have fewer than five directors. A JSC with more than 1,000 shareholders cannot have fewer than seven directors. A JSC with more than 10,000 shareholders cannot have fewer than nine directors.

**3. Are there any age or nationality restrictions on the identity of directors?****Age restrictions**

A director should have full legal capacity, which he attains from the age of 18.

**Nationality restrictions**

Generally there are no restrictions on the nationality of directors. However, in the case of insurance companies with foreign investments, the general director must be a resident of the Russian Federation.

Non-Russian directors, like other foreign employees, must obtain a work permit.

#### 4. In relation to non-executive, supervisory or independent directors:

- **Are they recognised?**
- **Does a part of the board have to consist of them? If so, what proportion?**
- **Do non-executive or supervisory directors have to be independent of the company? If so, what is the test for independence or what makes a director not independent?**
- **What is the scope of their duties and potential liability to the company, shareholders and third parties?**

Directors are categorised as independent, executive and non-executive.

#### Independent directors

- **Recognition.** Independent directors in JSCs are recognised in the Code. Although the Code does not govern LLCs, the provisions below can also be applied to LLCs.

Regarding the position of independent directors in interested-party transactions, see *Question 18*.

- **Board composition.** According to the Code, a quarter of the board's total members must comprise independent directors so that they can:

- actively influence the decision-making process;
- ensure that the board considers the widest possible spectrum of opinions on matters being discussed.

In any event, it is recommended that the company's charter provide that the board includes at least three independent directors.

- **Independence.** Independent directors should refrain from taking actions that may compromise their independent status (*Code*). If, after the election of an independent director to the board, the independent director ceases to be independent due to any changes or new circumstances, the independent director should notify the board. The independent director must give a detailed account of all changes and new circumstances. On receipt of notice, or if the board becomes otherwise aware of changes or new circumstances, the board should notify the shareholders. If necessary, the shareholders can call an EGM to elect a new board. The procedure and grounds for election of a new board should be set out in the company's charter.
- **Duties and liabilities.** Neither the law nor the Code establishes any specific duties or liability of independent directors to the company, shareholders and third parties, above and beyond those applicable to all directors.

#### Executive directors

Executive directors are members of the board that also hold concurrent positions as members of the collegial executive body (*JSC Law*). Their number cannot exceed a quarter of the total number of the company's board.

There are no other requirements, limitations or other specific provisions relating to executive directors.

#### Non-executive directors

Non-executive directors are directors that do not hold positions in the collegial executive body.

There are no specific requirements, limitations or other specific provisions relating to non-executive directors.

#### 5. Are the roles of individual board members restricted? For example, can one person be the chairman and chief executive?

The individual executive body cannot also be the chairman of the board. The individual executive body can, however, be a member of the board. Members of the collegial executive body, other than the chief executive, can serve as the chairman of the board.

#### 6. How are directors appointed and removed? Is shareholder approval required?

#### Appointment of directors

In an LLC and JSC, directors are elected at the GM by a special majority vote requiring three quarters of shareholders or participants in favour.

The procedure for nominating new directors to a JSC's board is as follows:

- A shareholder who holds at least 2% of the total voting shares can nominate candidates to the board, unless the company's charter provides otherwise, no later than either:
  - 30 days after the end of the financial year;
  - 30 days before the date of an EGM.
- The number of candidates nominated should not exceed the total number of directors set out in the company's charter.
- Directors can only be elected at the GM by cumulative voting. The board must be re-elected annually by the AOGM, irrespective of when it was elected.

If an LLC's charter requires a supervisory body, it can be nominated by cumulative voting if provided by the charter.

The cumulative voting system (a type of stock voting system) gives minority shareholders or participants more influence by allowing them to cast all of their votes for a single candidate (in contrast with regular or statutory voting, in which shareholders or

participants must vote for a different candidate for each available seat, or distribute their votes between a number of candidates).

### Removal of directors

Members of the board are removed at the AOGM by the company's shareholders or participants in accordance with the law and the company's charter.

### 7. Are there any restrictions on a director's term of appointment?

In LLCs, there are no restrictions on a director's term of appointment unless specified in the company's charter.

In JSCs, the board is elected for one year, to hold office until the next AOGM. If there is no AOGM, the board's responsibilities are terminated, except for organising, calling and conducting the next GM.

The term of office of the individual executive body and collegial executive body should be set out in the charter.

### 8. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

#### Directors employed by the company

The person appointed as the individual executive body must be an employee of the company.

Members of the board and collegial executive body can, but are not required to, be employees of the company. Service contracts are commonly entered into between the company and members of the board or members of the collegial executive body.

#### Shareholders' inspection

Shareholders in JSCs can access all the documents that a company must legally store except for the company's books, and the records and minutes of its collegial executive body, which must only be disclosed to shareholders holding at least 25% (in total) of the company's voting shares. The company must keep all agreements specifying the rights and responsibilities of its directors, and shareholders can inspect all service agreements with directors.

An LLC does not have to provide its participants with access to documents. The participants in an LLC only have the right to receive information about the company's activities and inspect its documents if these rights are granted in the company's foundation documents.

### 9. Are directors allowed or required to own shares in the company?

The individual executive body, members of the collegial executive body and members of the board are allowed but not required to own shares (JSCs) or participation interests (LLCs) in the company.

### 10. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

#### Determination of directors' remuneration

Directors' remuneration is determined by shareholders or participants at the GM.

#### Disclosure

Public disclosure of directors' remuneration is not required except in specific cases. For example, in the case of a public offering of shares or other securities in a JSC, the company must disclose director's remuneration, for which shareholder approval is not required.

#### Shareholder approval

See above, *Determination of directors' remuneration* and *Disclosure*.

## MANAGEMENT RULES AND AUTHORITY

### 11. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

Internal management is regulated by the documents governing the company's activities, which are approved by shareholders or participants at the GM. These comprise:

- The charter (JSC). From 1 July 2009, the charter will be the only foundation document required for an LLC.
- The director's employment or service contracts.
- Other valid documentation.

The board is a supervisory body, whose primary function is to supervise the executive body. Meetings are assembled by the chairman of the board, under the procedures set out in the company's charter and internal regulations. There are no specific requirements for the length of notice for meetings of the board. In practice, five to ten days' notice is typically given. Quorum should be defined in the charter (which should follow the law) and sets out the number of directors that must be present for a quorum meeting. This is usually no less than half the elected board members. A decision can only be made where a quorum is present. Decisions of the board are made by a majority vote, unless the company's charter or other internal documents provide otherwise. When deciding matters at a board meeting, each director has one vote. Decisions of the board adopted against the procedures stipulated by the law or the company's charter are invalid.

The collegial executive body exercises its powers through meetings. Minutes must be produced following a meeting of the collegial executive body. The minutes must be presented to the board, the internal auditor and an external auditor of the company, at their request.

Meetings of the collegial executive body are convened by the individual executive body. The individual executive body can:

- Sign all documents in the name of the company.

- Prepare the minutes of meetings of the collegial executive body.
- Act without a power of attorney in the name of the company.
- Carry out the decisions of the collegial executive body, which are made within its authority.

A member of the collegial executive body cannot transfer his voting right to another person, including another member of the collegial executive body.

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**12. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?**

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### Directors' powers

The law and the company's charter specify that certain of the board's powers and responsibilities cannot be delegated to the individual executive body or collegial executive body. The board cannot make decisions on the GM's competence, apart from issues that are specified by the law.

The board's responsibilities include:

- Calling the GM.
- Setting the GM's agenda.
- Increasing the authorised capital of the company.
- Approving transactions valued at more than 25% of the company's assets.
- Recommending the rate of dividends.
- Opening branches or representative offices.

### Restrictions

The board, the individual executive body or the collegial executive body cannot exercise powers that are within the GM's exclusive competence (for example, approval of the charter and payment of dividends).

The executive body is accountable to the board and its powers to enter into transactions on behalf of the company can be restricted by the charter (typically by requiring the approval of the GM or the board). These restrictions are enforceable against third parties.

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**13. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?**

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The board's general competence cannot be divided between individual directors or a committee of directors. For a preliminary discussion of specific issues, a committee of directors can be formed. Only the board where a quorum is present can make final decisions after these discussions.

The individual executive body can issue a power of attorney to a third person and delegate a part of his authority to his deputies. The collegial executive body's competence cannot be divided between individual members or committees of members.

## DUTIES AND LIABILITIES OF DIRECTORS

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**14. What is the scope of a director's duties and personal liability to the company, shareholders and third parties? Please distinguish between civil and criminal liability under each of the following (if relevant):**

- General duties.
  - Theft and fraud.
  - Securities law.
  - Insolvency law.
  - Health and safety.
  - Environment.
  - Anti-trust.
  - Other.
- 

- **General duties.** Members of the board and the executive body have fiduciary duties to the company and its shareholders or participants, which includes using reasonable care and acting in good faith. The law sets out varying levels of liability for violating these fiduciary duties.

Members of the board and the executive body are jointly and severally liable for losses incurred as a result of their improper actions or inaction. A director is not liable if he voted against the relevant decision or abstained from the vote that approved it. A shareholder holding at least 1% of a JSC's voting shares, or any participant in an LLC, can seek compensation in damages for any of these violations.

Current legislation provides for a three-year limitation period in civil cases, which includes claims for compensation in damages. This period begins to run only after the alleged violation becomes known or should have become known to the shareholder or participant or the company.

Russian law also establishes a number of white collar crimes for which a director can be held liable, including:

- ❑ abusing or exceeding authority;
- ❑ abuse in the issuance of securities;
- ❑ bribery;
- ❑ misuse of commercial information; and
- ❑ misappropriation of property.

These violations carry various penalties, including fines, removal from office with or without the right to occupy similar positions in the future, and imprisonment for a maximum of 15 years.

- **Theft and fraud.** Members of the board and the executive body are subject to personal liability for theft and fraud, as defined by civil, administrative and criminal laws. Where there are aggravating circumstances, such as misuse of official position, directors or the executive body may be subject to more severe punishments (that is, fines, disqualification and imprisonment).
- **Securities law.** Members of the board and the executive body cannot use privileged information for their personal benefit. If a breach occurs, civil and administrative liability may apply.
- **Insolvency law.** Members of the board and executive body may be held liable for a company's fraudulent bankruptcy.
- **Health and safety.** In certain cases, members of the board and executive body may be civilly or administratively liable for violations of health and safety regulations.
- **Environment.** In certain circumstances, members of the board and executive body may be civilly or administratively liable for violations of environmental regulation.
- **Anti-trust.** Members of the board and the executive body may be liable for violating certain provisions of anti-trust laws. However, in practice the duty to comply with anti-trust regulations (for example, receiving authorisations and providing notices on the conclusion of transactions) lies with the individual executive body or collegial executive body and these individuals may also be liable for violations of these requirements.

#### 15. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

The liability of the members of the board and the executive body cannot be restricted or limited. There is no concept of indemnification against liability.

#### 16. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

Companies may provide directors' and officers' liability insurance to members of the board and executive body as a part of an incentive package.

#### 17. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

A parent company or controlling shareholder, which has the right to give to its subsidiary company binding instructions, is jointly liable with the subsidiary company for transactions concluded in fulfilment of those instructions.

## TRANSACTIONS WITH DIRECTORS AND CONFLICTS

### 18. Are there general rules relating to conflicts of interest between a director and the company?

Both the LLC Law and JSC Law set out conflict of interest rules that apply to situations where a member of the board or the executive body has or could have a material financial interest in the company's financial operations.

A member of the board or executive body is deemed to be an interested director if he (or his spouse, parents, children, brothers, sisters, related or affiliated persons) has an interest in the conclusion of a transaction by the company by:

- Being a related party to the transaction or participates as a representative or intermediary.
- Holding 20% or more of the voting shares or participation interests of the company, which is a party to the transaction, or participates as a representative or intermediary.
- Holding an office in the managing body of a legal entity, which is a party to the transaction, or participates as a representative or intermediary.

If a conflict exists, an interested director must disclose the existence of the conflict and all material conditions of the transaction. In addition, the interested director must submit the following information to the board and the board of auditors:

- A list of companies, in which the interested director has a material financial interest autonomously (or jointly with the affiliated persons) (that is, 20% or more of the shares).
- A list of companies in which he holds managerial positions.
- A list of possible or proposed transactions in which he could have a material financial interest.

An interested director cannot vote on the authorisation, approval or ratification of a transaction in which he has an interest, otherwise the contract or transaction is voidable. This restriction does not apply to any loans, transactions, or guarantees made in the company's ordinary course of business.

### 19. Are there restrictions on particular transactions between a company and its directors?

There are no specific restrictions on transactions between a company and members of the board or executive body, other than those described above (*see Question 18*).

### 20. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?

There are no restrictions on the purchase or sale by members of the board or the executive body, of shares and/or participation interests in the company for which he serves as a director or executive.

A person who uses or discloses inside information for the purchase or sale of securities may be held administratively liable.

## DISCLOSURE OF INFORMATION

### 21. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

A company must provide shareholders or participants with access to certain documents such as the company's charter, internal regulations and annual reports. In JSCs, a shareholder holding at least 25% of voting shares can request access to accounting books and meeting minutes of the collegial executive body.

OJSCs must publicly disclose annual reports and annual accounts and any prospectus for the issuance of shares.

All companies must publish annual reports, annual accounts and other information specified in the procedures established by the Federal Service for the Financial Markets in connection with the public offering of debentures and other securities. OJSCs must also publicly disclose any prospectus relating to the placement of shares to more than 500 persons.

Any company with a registered securities prospectus (regardless of whether or not the corresponding securities are publicly-held) must make public disclosures of information in the form of both:

- A quarterly report of its financial and business condition.
- Notices of material events affecting its business and financial operations.

Material event notices are required on the occurrence of certain events such as:

- Events that result in the increase or reduction of a company's assets by more than 10%.
- Events that result in the increase or reduction of a company's net income or net loss by more than 10%.
- A transaction or a series of related transactions, which involve 10% or more of the value of a company's assets.
- Issuance by a company of securities.
- Acquisition by a person of more than 25% of any given class of shares.

## COMPANY MEETINGS

### 22. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

A company must hold an AOGM in accordance with the time limits specified in the company's charter, but not earlier than two months and not later than six months in the case of JSCs and not earlier than two months and not later than four months in the case of LLCs, after the end of the financial year.

The following issues must be discussed and approved at the AOGM:

- Election of the board.
- Election of the board of auditors.
- Affirmation of the internal auditor.
- Approval of annual accounts and annual reports.
- Payment of dividends.

Shareholders or participants elect an individual to act as individual executive body for a term specified in the charter at the GM. If the charter provides for a collegial executive body, they are also elected at the GM.

### 23. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

The AOGM is called by the board in accordance with the charter.

An EGM can be held on the request of:

- The board.
- The board of auditors.
- The internal auditor.
- Participants or shareholders holding at least 10% of the participants' total vote or voting shares.

On the request of the board, board of auditors or internal auditors, an EGM must be held within 40 days.

In JSCs, shareholders who hold at least 2% of the voting shares can:

- Propose an issue on the agenda of a GM.
- Recommend a candidate for a post on the board, the collegial executive body, the board of auditors, or the individual executive body.

In LLCs, every participant has these rights.

## MINORITY SHAREHOLDER ACTION

### 24. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

In LLCs, any participant, including a minority shareholder, who believes that the company is being mismanaged, can start an action to recover losses resulting from the mismanagement.

In JSCs, shareholders holding 1% or more, in total, of ordinary shares can start an action for compensation of losses against a member of the board, the individual executive body or member of the collegial executive body.

In OJSCs, if any action or inaction by the individual executive body or any member of the collegial executive body or board breaches the procedures established by law for the acquisition of more than 30% of the shares of an OJSC, any shareholder can bring an action for compensation of losses.

## INTERNAL CONTROLS, ACCOUNTS AND AUDIT

### 25. Are there any formal requirements or guidelines relating to the internal control of business risks?

There are no formal requirements or guidelines relating to the internal control of business risks.

### 26. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The individual executive body and the chief accountant are responsible for preparing and filing accounts. The members of the board are not responsible for the company's accounts. The individual executive body and the chief accountant are subject to civil, administrative and criminal liability in connection with the proper preparation and filing of accounts.

### 27. Do a company's accounts have to be audited?

An internal auditor or board of auditors must audit the company's accounts every year before it can be approved by the:

- GM of participants (LLCs).
- Board (JSCs).
- General director if the board has not been formed.

In OJSCs, the company's accounts must be audited by an external auditor at least once a year (at year-end) and then published in the mass media. This also applies to any company that has made a public offering. The mandatory audit is also required for credit and insurance organisations and any company with either:

- Annual revenues exceeding 500,000 minimum monthly wages.
- Assets at the end of the relevant financial year exceeding 200,000 minimum monthly wages.

In an LLC, any participant may request to conduct an audit of the company at his own expense at any time.

### 28. How are the company's auditors appointed? Is there a limit on the length of their appointment?

A board of auditors is mandatory for:

- LLCs with more than 15 participants.
- JSCs.

The board of auditors must audit the company's financial and economic activities at year-end. In addition, interim audits can be started by:

- The board of auditors.
- The GM.
- The board.
- JSC shareholders holding (in total) at least 10% of the voting shares.

In LLCs, the board of auditors can review the company's financial and economic activities at any time. The members of a board of auditors that reviews the company's financial and economic activities are elected at the GM.

The number of members of the board of auditors and the duration of office should be established in the company's charter; there is no statutory limit. However, shareholders or participants can call for early termination of the authority of the board of auditors and elect a new board of auditors.

In LLCs, if provided by the charter, the GM can delegate the powers of the board of auditors to an independent external auditor.

The auditor is responsible for reviewing the company's financial and economic activities in accordance with any contract between the parties and applicable law.

### 29. Are there restrictions on who can be the company's auditors?

Only a person or company with an auditor's licence can act as the company's external auditor.

Members of the company's board of auditors cannot be, at one time, members of the board, the individual executive body or collegial executive body or hold another office within the management bodies of the company. There are additional statutory restrictions on the auditor's activities (for example, they cannot be shareholders or participants of the company).

### 30. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

The board of auditors cannot combine their activities with the board's activities or the executive body. However, any internal au-

ditor can also be a participant or shareholder of the company or an employee (other than as listed in *Question 29*). An external auditor can advise the company on financial matters unrelated to the audit of the company's accounts under a separate service agreement.

**31. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?**

Audit organisations and individual auditors can be subject to criminal, administrative and civil liability. For example, purposely preparing a deceptive audit report or committing a securities' violation can result in the auditor losing his licence and/or result in criminal liability for the audit report's signatory.

In a mandatory audit, the auditor (audit organisation or individual auditor) must insure the risk of liability if the auditor breaches the contract with the company.

The liability of auditors cannot be limited or excluded.

## CORPORATE SOCIAL RESPONSIBILITY

**32. Is it common for companies to report on social, environmental and ethical issues? Please highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.**

It is not common for companies to report on social, environmental or ethical issues.

## ROLE OF COMPANY SECRETARY

**33. What is the role of the company secretary in corporate governance?**

Russian law does not require a company secretary in either an LLC or JSC. In practice, some companies have corporate secretaries whose functions are mostly of a technical nature. These persons usually prepare minutes of the board and GM meetings and generally ensure procedures are observed during these meetings.

## ROLE OF INSTITUTIONAL INVESTORS AND SHAREHOLDER GROUPS

**34. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? Please list any such groups with significant influence in this area.**

Currently, there are no institutional investors or other shareholder groups that play a prominent role in monitoring and enforcing good corporate governance.

## WHISTLEBLOWING

**35. Is there statutory protection for whistleblowers (persons who disclose criminal activity or other serious malpractice within a company)?**

There is no specific statutory protection for whistleblowers.

Information on criminal activities is not considered confidential information; therefore, disclosure of this information cannot be grounds for liability in any civil action against employees.

## REFORM

**36. Please summarise any impending developments or proposals for reform.**

With JSCs, the most significant proposed reform relates to shareholders agreements, which are currently not enforceable. The draft law allowing shareholders agreements has not yet been delivered to the State Duma and is being considered in different governmental organisations and institutions. No other significant reforms to JSC Law are currently anticipated.

For LLCs, as mentioned above (*see above, Corporate entities and Question 11*), amendments to the LLC Law were recently approved. These amendments come into force on 1 July 2009. The key amendments are:

- Formation of an LLC. An LLC must now be legally formed by the decision of its participants. A foundation agreement is no longer required.
- Participants agreements. Participants of an LLC can now enter into an agreement similar to a western-style shareholders agreement under which they may covenant to exercise or refrain from exercising their rights in a certain way.
- Notary certification. Notary certification is now required for sale and purchase agreements, pledge agreements and other documents relating to the transfer of participation interests or any actions with similar effect.
- List of participants. An LLC must maintain a list of participants similar to the register of shareholders in a JSC.

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