



The concept of a wider responsibility of the company's management does exist in the recommended Code of Corporate Management which was approved by the Letter of the Russian Central Bank No. 06-52/2463 dated 10 April 2014 ("CCM")<sup>3</sup>, but the requirements imposed therein on the company's director(s) are non-binding. For example, members of the board of directors of a company ("BoD") must act reasonably and perform their obligations in good faith, with due care and diligence in the interest of the company, its shareholders and with the aim of attaining sustainable and successful development of their company. In exercising their duties, the BoD should assess not only economic risks, but also non-financial risks such as operational, social, ethical and others (Para. 69 of the CCM).

This being said, as in any country in the world, Russian companies must comply with certain standards and rules relating to the protection of their employees, the environment, public health and others. However, these rules stem from separate specific regulations and were not introduced as a systematic approach to implementing the concepts of sustainable development or accountability to stakeholders, but their breach may result in administrative fines (and in certain cases criminal liability of the company's directors) and thus they serve to defend the general interest and society as a whole.

Finally, in order to comply with international investor expectations, a number of major Russian companies have voluntarily developed and publicize sustainable development policies and social charters, which often include a chapter on corporate culture to promote transparency as well. In addition, Russian companies listed on foreign stock exchanges make the disclosures required or expected from them, which may include information relevant to stakeholders.

## REGULATORY FRAMEWORK

### **2 To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?**

Generally, civil law.

### **3 Are corporate/securities laws regulated federally/nationally, provincially or both?**

Corporate and securities laws are regulated exclusively at the federal level, mainly by the legislative authority (the Russian Parliament). There are some aspects of corporate and securities laws (e.g. procedures for reporting, auditing, listing, disclosure) which are regulated by federal executive or independent authorities (such as the Russian Central Bank). Some issues with respect to state-owned companies are regulated by the rules set by the Russian Ministry on State Property.

<sup>3</sup> The Code of Corporate Management is of a *non-binding* nature: its observance is not specifically prescribed by any federal law and Russian Central Bank recommends the Code of Corporate Management for adoption by Russian public companies. However, in certain cases Russian courts will take into account the Code's provisions as a matter of fact, especially when it has been voluntarily adopted by a company. A director serving in the company should therefore inquire whether the Code of Corporate Management has been so voluntarily adopted by the company and if so should familiarize himself/herself with its provisions.

#### **4 Who are the government corporate/securities regulators and what are their respective powers (in summary only)?**

The main regulatory authority responsible for supervising compliance with corporate/securities regulation is the Russian Central Bank, which took over in 2013 the functions and authority vested with the now defunct Federal Commission for Securities Markets, with the following prerogatives:

- development and implementation of governmental policy related to the Russian financial markets;
- regulation and supervision of various areas of the Russian financial markets (e.g., settlement, national payment system, banking operations, foreign exchange control, industry accounting standards for credit institutions and non-credit financial institutions, insider information and market manipulation, reporting requirements and others);
- state registration and licensing of various legal entities in the Russian financial markets (e.g., credit institutions, non-governmental pension funds, banking groups, non-credit financial institutions)
- regulating issuance of securities (e.g., approving securities prospectus, supervising compliance by issuers with the JSC Law and securities laws);
- regulating and supervising corporate governance in joint-stock companies;
- payment of compensation for household deposits in banks' bankruptcy cases;
- protection of the rights of shareholders and investors in the financial markets, insurers, insured persons, and beneficiaries.

#### **5 Does the jurisdiction have a stock exchange(s)?**

Yes. The main exchange for Russian financial instruments is the Moscow Exchange (Moex), which hosts trading in equities, bonds, derivatives, currencies, money market instruments and commodities (<http://moex.com/en/>). Moex is the biggest stock exchange in Russia and was created by the merger of two other big exchanges – Moscow Interbank Currency Exchange (MICEX) and Moscow Interbank Currency Exchange. Besides MOEX there exist a number of small exchanges but the trend over the past few years has been one of consolidation.

### **INCORPORATION AND LISTING**

#### **6 Do the concepts of “limited liability” and “separate legal personality” exist?**

The concepts of “*limited liability*” and “*separate legal personality*” do exist under Russian law and are applicable to various types of legal entities incorporated in the Russian Federation.

“*Limited liability*” implies that the participants’ (shareholders’) liability is limited to the value of their participatory interest (shares) as is the case with, for example, limited liability companies (“*obschestvo s ogranichennoy otvetstvennostyu*” or “OOO”) (“**LLC**”) and joint stock companies (“*aktsionernoye obschestvo*” or “AO”) (“**JSC**”). An LLC is a commercial organization with its charter capital divided into participatory interests. The participants’ liability to the company’s creditors is limited to the value of their fully paid up participatory interest. A JSC is a commercial organization with its charter capital divided into shares. The shareholders’ liability to the company’s creditors is limited to the value of their fully paid up shares.

Generally, the concept of “*separate legal personality*” implies that the companies (i) have a legal personality (and assets) which are separate from their owners and shareholders, (ii) may have their own rights and incur their own liabilities and (iii) sue and be sued in court (Art. 48 of the RCC).

**7 Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or to respect its stakeholders?**

Incorporation or listing does not (and did not historically) require any recognition by the company or its directors of a duty to society, an obligation to take account of the company’s social or environmental impacts, or to respect its stakeholders.

**8 Do any stock exchanges have a responsible investment index, and is participation voluntary (See e.g. FTSE4Good, Dow Jones Sustainability Index, the Johannesburg Stock Exchange’s Socially Responsible Investment Index.)**

There are no responsible investment indexes in Russian stock exchanges.

**9 To whom are directors’ duties generally owed?**

Directors’ duties are owed to the company’s shareholders and, more generally, to the company.

Apart from that, pursuant to Para. 127 of the Code of Corporate Conduct (which, as mentioned above, is of non-binding nature) members of the BoD *must* take into account interests of other interested parties, including employees, creditors and counterparties. The company *should* be socially responsible and members of the BoD should, therefore, adopt decisions compliant with applicable ecological and social standards.

**10 What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company’s reputation?**

The basic duties and principles of liability of directors are as follows:

- directors must always act in the interests of the company, exercise their rights and carry out their duties reasonably and in good faith;
- if a director is at fault (through wrongful action or inaction), such director shall be individually liable for losses (including actual damages and loss of profit) incurred by the company.<sup>4</sup>

As a general rule, under Art. 44 of the LLC Law and Art. 71 of the JSC Law, the liability of directors is joint and several (in Russian, *solidarnaya*). However, since the BoD adopts decisions by way of a collective vote, there have been no cases yet of directors being held liable individually. Therefore, any reference below to either an individual director or to directors as a group should be read as applying equally to any one of the members as well as the whole of the BoD. That said, directors who have voted against a decision which caused losses, or who did not participate in the vote, are relieved from liability.<sup>5</sup>

Acting in the interests of the company also implies acting in accordance with the purpose of the company as provided under the laws and the charter of the company. The main aim of any JSC as a commercial company is to be profitable.<sup>6</sup> Hence, the directors must act in line with this aim.

The actions of directors are also expected to meet certain standards which may be found in the CCM. The CCM suggests that acting reasonably and in good faith (as required under Para. 3 Art. 53, Para. 1 and Para. 3 Art. 53.1 of the RCC and Art. 71 of the JSC Law) means that a director should exercise his/her rights and perform his/her duties: (1) independently from the company's general director, shareholders or other interested parties (Para. 2.4.1 of the CCM), (2) in an informed manner, and (3) with due care and diligence (Para. 2.6 of the CCM). Moreover, members of the BoD should attain sustainable and successful development of the company (Para. 126 of the CCM). Please note that pursuant to Para. 260 of the CCM a company should also take measures to avoid corruption.

**11 More generally, are directors required or permitted to consider the company's impacts on non-shareholders, including impacts on the individuals and communities affected by the company's operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss.(1))?**

Russian law does not provide for such a detailed rule as Section 172 of the UK Companies Act 2006. However, pursuant to Para. 127 of the CCM (which, as mentioned above, is of non-

<sup>4</sup> Para. 3 Art. 53 and Art. 53.1 of the RCC, Art. 44 of the LLC Law and Art. 71 of the JSC Law.

<sup>5</sup> Para. 2 Art. 53.1 of the RCC, Para. 2 Art. 44 of the LLC Law and Para. 2 Art. 71 of the JSC Law.

<sup>6</sup> Art. 50 of the RCC.

binding nature), members of the BoD *must* take into account interests of interested parties, including employees, creditors and counterparties. The company *should be* socially responsible and members of the BoD should, therefore, adopt decisions compliant with adopted ecological and social standards. No distinctions are made whether the impact is in or outside of Russia.

**12 If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to balance different factors including such impacts? What additional liabilities, if any, do the board or individual directors assume in exercising such discretion?**

There are no specific rules establishing the extent of the directors' discretion in determining how to balance the different interests which may be affected by their decisions.

Nevertheless, there are certain rules developed by court practice, but they were created to address situations where directors have not been acting in good faith, abused their powers and acted without necessary corporate approvals. Namely, pursuant to Decree of the RF High Commercial Court No. 62 dated 30 July 2013 "On certain issues related to compensation of loss by persons – members of a company's body" the director, in taking his/her decisions, *should take into account necessary and adequate information, which is common for business practice in similar circumstances and, if such information cannot be obtained at the moment of adoption of the decision, should postpone the adoption of the decision until (s)he obtains the necessary information*. It is doubtful whether this rule could be applied by a director to consider impacts on non-shareholders, but, nevertheless, it should not be disregarded.

**13 What are the legal consequences for failing to fulfil any duties described above; and who may take action to initiate them? What defenses are available? Can these issues give rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?**

As a general rule, under Art. 44 of the LLC Law and Art. 71 of the JSC Law, failure to comply with directors' duties leads to the joint and several liability. However, the directors who have voted against a decision which caused losses, or who did not participate in the vote, are relieved from such liability.

If the company's directors fail to fulfil any of the duties described above, a company or its shareholder are entitled to claim damages from such directors (see Para. 1 Art. 53.1 of the RCC, Para. 5 Art. 44 of the LLC Law, Para. 5 Art. 71 of the JSC Law).

As previously mentioned, however, Russian companies are subject to numerous laws and regulations that indirectly protect stakeholders – e.g. employment, environment or consumer protection legislation. If such laws are breached, a stakeholder who has suffered a direct loss generally has a direct cause of action against the company. If there is no loss, it is still possible to put pressure on the company by complaining to the State authority responsible for enforcing

the particular piece of legislation – e.g. the Federal Antimonopoly Service for consumer protection. Such complaints are frequently made and will normally be rapidly looked into by the relevant State authority which will then decide to act in view of the importance of the breach and its own priorities.

Please also note that Para. 5 Art. 53.1 of the RCC explicitly bans agreements whereby directors of an LLC or JSC are relieved (or limited) from liability for their bad faith actions and, in public JSCs (i.e. JSCs in which shares are publicly traded), also for their unreasonable actions.

**14 Are there any other directors' duties which are relevant to the interests of stakeholders?**

There are no other directors' duties which are relevant to the interests of stakeholders.

**15 For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures? What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?**

Russian law does not provide for two tier board structures. Russian law does provide however for the mandatory appointment of independent board members in JSC companies with more than 1,000 shareholders having voting shares. Only independent directors can vote on the corporate approval of interested-party transactions (Art. 83 of the Law on Joint Stock Companies).

There are no direct rules imposing obligations on senior managers who are not board directors. However, in practice, the general duties and obligations of directors of a company described in answers to the questions above apply as well to the members of senior management.

## REPORTING

**16 Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).**

Companies are not required to disclose the general impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts. With regards to transparency, there are no mandatory reporting requirements.

There are however various reporting obligations on specific matters that are imposed on companies depending on the type of legal entity, which can be of interest to non-shareholders. In the case of LLCs – such companies are generally not subject to public disclosure of their information (Art. 49 of the LLC Law), save for certain cases provided for by law, e.g. if the company is a credit institution; if the company has acquired 20% shares in another company; if the company has decreased the level of its charter capital; if the company was reorganized; if it is an issuer of publicly traded shares and others. On the contrary, JSCs are required to publish annual financial statements and other financial reports which are audited by an independent auditor (Art. 88 of the JSC Law). In addition there are additional information disclosure requirements imposed on the JSCs (Art. 92 of the JSC Law). Specific reporting requirements are also imposed on banks which may be established either in the form of an LLC or a JSC.<sup>7</sup>

**17 Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?**

Generally, legal reporting obligations do not extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction.

However, there are certain reporting obligations imposed on companies issuing securities (including public companies). Pursuant to p. 2.4.7 of the Rules on Disclosure of Information by Issuers of Securities adopted by the decision of the Russian Central Bank No. 454-P dated 30 December 2014, issuers of securities are required to disclose information on possible responsibility of the issuer for actions of third parties (including its subsidiaries).

**18 Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?**

Pursuant to Art. 88 of the JSC Law, the information contained in the company's annual reports mentioned above are to be verified by an internal auditor, the financial reports are to be verified by an independent auditor and such reports of JSCs are publicly available (e.g. placed on the company's website) and may be accessed by any person. However, the verification and publication requirements are limited to the annual and financial reports with the restricted scope as described above.

---

<sup>7</sup> See: Decree of Russian Central Bank No. 2332-U dated 12 November 2009; Decree of Russian Central Bank No. 2851-Y dated 16 July 2012.



According to Para. 7 Art. 6 of Federal Law No. 46-FZ dated 5 March 1999 “On Protection of Rights and Lawful Interests of Investors in the Securities Market” in case the information reported to the companies’ shareholders (investors) is misleading, such shareholder (investor) may also claim repudiation of the contract between such shareholder (investor) and the company and claim damages pursuant to general rules of the RCC.

Pursuant to Para. 10.1 and 10.2 of Federal Law No. 86-FZ dated 10 July 2002 “On Central Bank of the Russian Federation” it’s the Russian Central Bank which is vested with authority to supervise compliance by JSCs and securities’ issuers with reporting requirements. The Russian Central Bank is also responsible for supervising compliance with consolidated financial reporting requirements (Art. 6 of Federal Law No. 208-FZ dated 27 July 2010 “On Consolidated Financial Reporting”).

**19 What is the external assurance regime for reporting on a company's impacts on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance. Please summarize any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.**

There are no requirements in connection with external assurance regime for reporting on companies’ impacts on stakeholders. Nevertheless, companies may choose to refer to a third party opinion in order to set standards or goals for performance improvement and increase of competitiveness.

## STAKEHOLDER ENGAGEMENT

**20 Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?**

No, there are no restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts.

**21 Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard? How does the legal duty of the fund align with term and contractual performance criteria of fund managers – does this facilitate or deter consideration of such impacts?**

Institutional investors, including pension funds, are not required to consider such impacts in their investment decisions, but are not prohibited from doing so.

**22 Can non-shareholders address companies' annual general meeting? What is the minimum shareholding required for a shareholder to raise a question at a company's AGM?**

Non-shareholders are not entitled to address companies' annual general meeting (AGM).

Pursuant to Para. 2 Art. 36 of the LLC Law any participant (shareholder) of a limited liability company is entitled to raise a question at the company's AGM. Pursuant to Para. 1 Art. 49 of the JSC Law a shareholder holding not less than 2% of voting shares of a joint-stock company is entitled to raise a question at the company's AGM.

### OTHER ISSUES OF CORPORATE GOVERNANCE

**23 Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?**

One of such standards is the CCM mentioned above. Another source is the Order of the President of the Russian Federation No. 236 dated 4 February 1994 "On Governmental Strategy of the Russian Federation on Protection of Environment and Insurance of Sustainable Development" which provides for the general principles of government policy towards sustainable development, the protection of the environment, etc. The said order does not encourage companies to consider in a structured way their impact and the interests of their wider stakeholders including through a stakeholder engagement process.

**24 Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?**

There are no general laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards.

Some specific rules related to employee representation in the companies may be found in Russian labor law. Under Russian law employees may be represented in a company by trade unions. Generally, trade unions have no right to be represented on the company's boards. However, there are certain rights granted to trade unions under the Russian Labor Code and Federal Law No. 10-FZ dated 12 January 1996 "On trade unions, their rights and guarantees of their activities." Nevertheless, there are cases where a company must (i) take into account in the decision making process certain employment issues (e.g. internal employment policies and

regulations, compensation and vacancy policy) and (ii) agree with trade unions certain employment issues (if the necessity of such agreement is prescribed by a collective agreement between the company and its workers (see Art. 40 of Russian Labor Code).

**25 Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?**

There are no specific laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards.

From a broader perspective, pursuant to Para. 2 Art. 19 of the Constitution of the Russian Federation the State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds are prohibited.

**26 In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholders groups? Are there any serious proposals to impose such responsibility?**

Pursuant to Para. 2 Art. 67.3 of the RCC a parent company is jointly and severally liable with its subsidiary only for the transactions entered into by the subsidiary which were directed by the parent company.

**27 Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.**

To the best of our knowledge, there are no incoming laws or proposals that are relevant to the issues raised in this questionnaire.