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The review provides a detailed analysis of main trends in Russia's economy in 2010. The paper contains 6 big sections that highlight single aspects of Russia's economic development: the socio-political context; the monetary and credit spheres; financial sphere; the real sector; social sphere; institutional challenges. The paper employs a huge mass of statistical data that forms the basis of original computation and numerous charts

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6.2. The 2006-2010 Corporate Law: Some Results and Novelties

Adopted in the mid-2000s, the Concept of development of corporate law for the period through 2008 pursued fairly ambitious objectives of reforming the emerged by then corporate law system for the sake of creation of institutional conditions of economic growth. A whole string of its fundamental provisions nonetheless formed a rationale for that conclusion regarding *a radical re-orientation of the corporate regulation model towards majority shareholders*. Certain moves with regard to implementation of measures provided for by the Concept became concomitant with the process of activation of *the state (largest state-owned corporations') operations* on the market for corporate control. This necessitates an evaluation of results of the Concept implementation in the first place. To this end, we deliberately picked the period until 1 January 2010, for, while measures of urgent anti-crisis regulation had already kicked off by then, the factor of the 2008-09 crisis had not yet affected corrections of measures provided for by the Concept.

As evidenced by *Table 16* and *Fig. 2*, the progress in implementation of the Concept across multiple directions appeared fairly different.

Table 16

Progress in Implementation of the Concept of Development of Corporate Law for the Period through 2008*

Key directions of development of corporate law	Spheres of modification of regulation	Specific weight of novelties of the block in the Concept's general structure, as %	Specific weight of legislative implementation of proposed measures of the block, as %
Block I – prevention of corporate conflicts and their regulation	1) Solving corporate disputes; 2) Public registration of legal entities; 3) Account of securities	25	60
Block II – development of the corporate governance system	1) Structure of corporate management bodies and allocation of competences between them; 2) Responsibility of individuals engaged in management bodies; 3) Conflicts of interests (prevention and regulation); 4) Profit allocation; 5) Non-arm's length transactions and large transactions	44	33
Block III – organizational and legal forms of legal entities	1) Commercial organizations; 2) Non-profits	15	18
Block IV – development of integrate business structures (IBS)	1) Reorganization of legal entities; 2) Peculiarities of regulation of IBSs; 3) Tax regulation of a group of affiliated entities; 4) Affiliated entities	16	34

* Quantitative assessments presented in *Table 16* and *Fig. 2* are exclusively of estimated and illustrative nature

It was measures aimed at regulation and prevention of corporate conflicts that enjoyed the greatest demand (the level of their implementation accounts for more than 60%). Meanwhile, despite their impressive volume (slightly under 50% of all the novelties in the Concept), the measures on development of corporate governance were implemented in a volume of roughly 1/3. The measures on development of IBSs likewise were implemented in roughly the same volume, while those in the area of organizational and legal forms of legal entities were implemented in a volume less than 1/5. That said, the levels of legislative implementation of new legal norms differ substantially across the spheres of regulation.

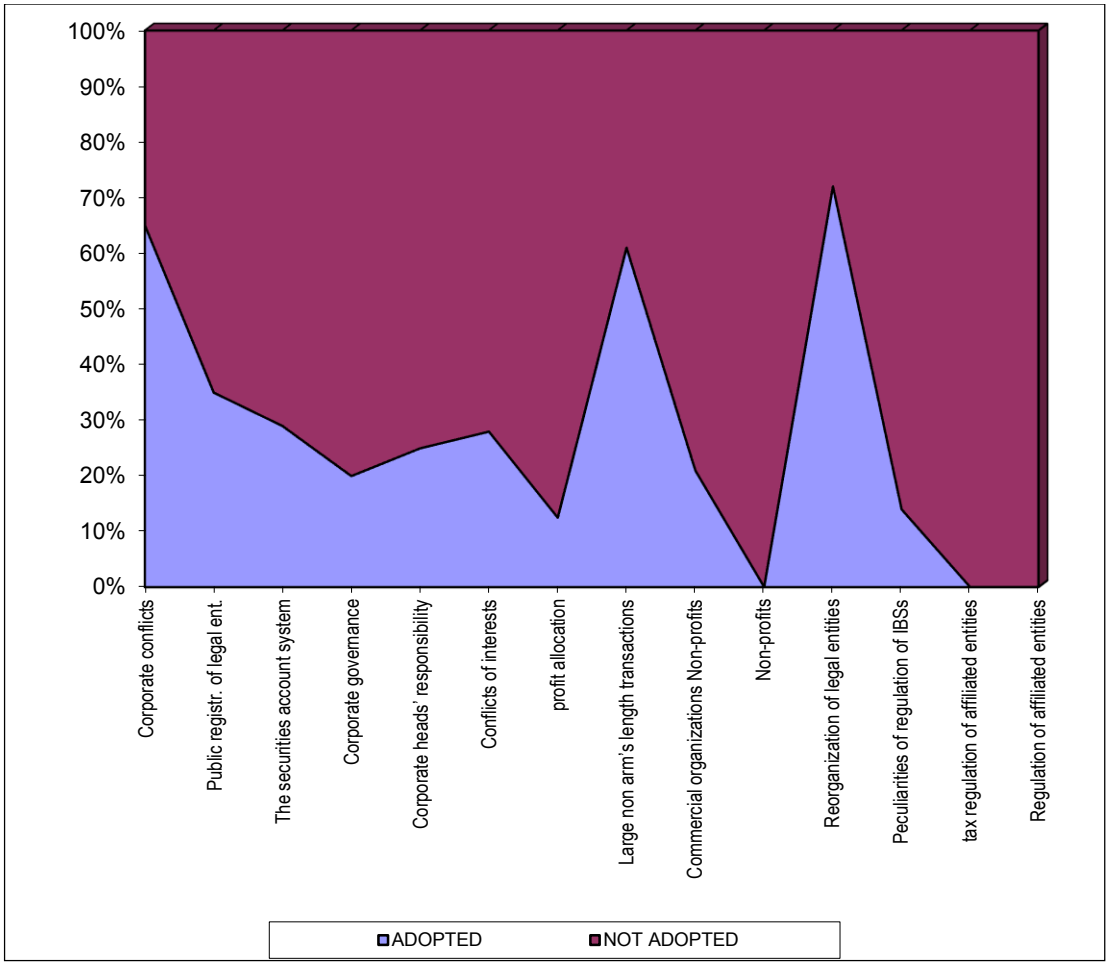

Fig. 2. Implementation of the Concept of Development of Corporate Law for the Period through 2008 across Directions of Regulation by 1 January 2010.

Out of measures the RF Government planned and approved in the frame of the Concept in 2006 practically untouched remained novelties that concern:

- Conflicts of interests;
- Non-profits;
- Regulation of integrate business structures;
- Tax regulation of affiliated entities;
- Profit allocation.

So, the changes to the least extent affected the most controversial and potentially lucrative for fixers directions of the corporate governance law reform[1].

Meanwhile, some directions of development of corporate law underwent insignificant changes, with individual mechanisms, which today are capable of protecting the largest creditors, being

[1] As to tax regulation of affiliated entities' operations, because of numerous large corporations' increasingly complex financial standing between late 2008 and 2009, the problem was once again became a pressing one. In May 2009, the RF Ministry of Finance unveiled a concept of the bill on consolidated group of taxpayers. By July 210 the bill had been passed in the first reading at the State Duma and was set to be passed, together with bill on transfer pricing, in the second reading; however, as of March 2011, the bills failed to be signed into law.
The bill introducing changes into the law on affiliated entities was presented by the RF ministry of Economy in February 2010. The document provides for a broadening of the concept of affiliation and its introduction into the Civil Code of RF; introduction of the parent company's presumption of innocence with regard to a daughter one, provided the former has the right to control 50%-plus of the latter's equity or shares, etc. As of March 2011, the bill failed to be signed into law.

improved, while fundamental objectives left for the future. Specifically, measures in the sphere of responsibility of persons sitting on management bodies were implemented with a great deal of selectivity. The month of July 2009 saw implementation of the mechanism of collective lawsuits, which provides for the possibility for one person to file a lawsuit on behalf of a whole group of entities concerning corporate disputes in particular. The sizes of fines for economic offenses were slightly changed too (in February 2009). Since June 2006 the clause of the Labor Code, which caps the amount of recovery of losses resulted from individuals sitting on management bodies of an economic company causing damage to the company, has no longer applicable to the individuals in question.

Meanwhile, a string of challenges remained untouched, such as:

- Reasons for the torts liability of individuals who hold positions in management bodies, including the right to claim for compensation of losses;
- Matters relating to insurance of individuals who hold positions in corporate management bodies;
- The shareholders' right to disqualify directors and managers by judicial means;
- Development of the procedures of regulation of collateral actions.

The securities accounting system was modified solely with regard to definition of the nature and volume of responsibility of the registrar and issuer for breaching the procedure of running the register and fixing ways of protection of the rights of owners of securities, the rights to which are proved by making an entry into the account in the event of an unpermitted write-off. At this point, likewise, numerous problems remained unresolved, including:

- Identification of the securities' status;
- Insurance of the registrar's professional responsibility;
- Exclusion of a possibility for withdrawal of original documents on accounting of rights to securities.

In the frame of the registration system of legal entities, requirements to the application forms for registration of legal entity were tightened slightly: now they should be certified by a notary. In addition, a new justification for refusal of public registration was introduced - namely, disqualification of an individual having the right to act on a legal entity's behalf without the power of attorney (December 2008).

Regulation of commercial companies' operations was modified by tightening requirements to disclosure of information (in December 2007[2] and in April 2009[3] -with regard to foreign investors), improvement of the institution of joint-stock agreements (in June 2009[4]). Prior to that (in July 2006[5]), the Government imposed a ban on issuance by joint-stock companies of obligations in an amount exceeding their authorized capital in the event there are no external guarantees or a letter of comfort.

That the 2000s saw an objective trend towards a gradual improvement of corporate law, including certain aspects of corporate governance in a narrow sense of the word, to the benefit of a broad circle of agents concerned, cannot be challenged. That said, the government's recent vigorous activity on the market for corporate control (in the form of obtaining control over the largest assets, establishment of public corporations, boosting state-owned equity) was unfolding in parallel with the stagnation in promoting the institution of property and corporate law.

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[2] Federal Act of 06.12.2007 № 334-FZ "On introducing amendments to the Federal Act "On investment funds" and individual legislative acts of Russian Federation".

[3] Federal Act of 28.04.2009 № 74-FZ "On introducing amendments to the Federal Act "On securities market" and art. 5 of the Federal Act "On protection of rights and legal interests of investors on the securities market".

[4] Federal Act of 03.06.2009 № 115-FZ "On introducing amendments to the Federal Act "On joint-stock companies" and art. 30 of the Federal Act "On securities market".

[5] Federal Act of 27.07.2009 № 138-FZ "On introducing amendments to the Federal Act "On securities market" and some other legislative acts of Russian Federation.

The only exception became "S.W.A.T" measures aimed at preclusion of corporate conflicts – a new procedure of consideration of corporate disputes and some measures aimed at countering stripping bankrupt and indebted corporations of their assets, which – and this is typical of recent years, proved too late to implement. Adoption of systemic measures on a further development of the institution of property and corporate law was postponed.

Let us now more thoroughly consider *typical novelties of the late 2000s*.

The general public economic policy, one of manifestations of which since mid-2000s has been the state's more pro-active direct intervention in the economy, emerged as the most significant factor that determined the nature of modifications in the corporate law (as the corporate governance's regulative base) between 2006 and 2010. The corporate governance's advancement in the period in question was to a significant extent determined by pursuance of tasks on securing the public and quasi-public interests on the market for corporate control.

All that lied at the core of establishment of a new legal base on reorganization of corporations in 2006, which to a significant extent helped amalgamate hundreds of companies into 7 public corporations and a number of large holdings. The process had been complete by and large by 2008.

According to FAS's assessments made in 2008, enjoying the political and administrative resources and greater financial capacity, public corporations can exert a critical influence on general conditions of circulation of goods on respective commodity markets. Threats to competition arising due to the rise of public corporations lie in mandating to them some public functions and powers in respect to pursuance of the public policy. Plus, the state created exclusive conditions for the public corporations' economic operations, which makes it impossible for private corporations to compete with them. Finally, seeking collective domination, the public corporations are keen to create horizontally or vertically integrated structures[6].

Inspections the legal enforcement agencies ran in 2009 afforded ground to conclude the public corporations failed to accomplish their functions and mandate; what's more, their operations appeared inconsistent with objectives set in federal acts on their creation, and their use of public assets and financial resources assigned to them was inappropriate or inefficient. The examination of the public corporation's operations resulted in filing more than 20 criminal cases; as well, the results became yet another argument in favor of their gradual reorganization and liquidation. The head of the presidential Control Department has reckoned recently that the Government was tasked to develop proposals until 1 March 201 on transformation of operating in the competitive environment public corporations into other organizational and legal forms, including, in particular, joint-stock companies.

In addition, as early as since 2004 the Government began undertaking legal measures aimed at protection, retention and simplification of tasks of consolidation of new assets. More specifically, such measures were undertaken in the areas of corporate regulation, bankruptcy, anti-monopoly law[7]. The problem of conflict of interests the government faced *as the regulator and an active player* on the M&A market became evident already in 2006-08. A greater attention to interests of public companies and backbone corporations (with the latter entities being a fuel for expansion of the former ones) entails the deterioration of the quality of the *general* state regulation of the

[6] To solve these challenges FAS believes it is appropriate to: 1) strengthen the anti-trust control over public corporations; 2) return to the state the public functions currently exercised by public corporations; 3) broaden the use by public corporations of tender-based mechanisms in the course of procurement of goods, works, services from private Russian companies; 4) secure transparency in the public corporations' operations; 5) impose a moratorium on founding new public corporations; 6) exclude the possibility of a government's permanent financial support of public corporations. See: Report of the RF Federal Anti-Monopoly Service "O sostoyanii konkurentsii", www.fas.gov.ru.

[7] See, for example: Radygin A., Entov R., Apevalova E. et al. Vnutrenniye mekhanizmy korporativnogo upravleniya: nekotorye prikladnye problem. M., IEPP, 2009; Apevalova E., Radygin A. Razvitiye institute bankrotstva.- V: Ekonomika perekhodnogo perioda: ocherki ekonomicheskoy politiki postkommunisticheskoy Rossii. Ekonomichesky rost 2000-2007. M., Delo, 2008, pp. 463-497.

corporate sphere, *for narrow and bespoke provisions designated for servicing the public sector's interests expanded to encompass all the economic agents*.

The provision of the state relief to companies between late 2008 and early 2009 in the frame of the combat with effects of the financial crisis by loans-for-shares means demanded for creation of mechanisms which would enable one to easily acquire the companies in question and control them. That gave rise to new, more flexible levers of allocation and pawns involving shares in limited liability companies, changes in assignment of powers between the companies' management bodies towards simplification of critical decisions concerning company management practices. For instance, Federal Act of 30 December 2008 № 306-FZ "On introducing amendments to some legislative acts of RF in connection with improvement of the procedure for the levy of execution on pledged property" established a mechanism of the extrajudicial reassignment of rights to Russian corporations' pledged stakes and other assets. The procedure for, and conditions of, exit of participants from LLCs and/or pledging their shares were fundamentally modified, too. As well, one can reference to a much disputed 2009 bill "On financial rehabilitation" which in the first place was set to meet the interests of the largest groups that had amassed sizeable debts.

The need to secure interests of the banks that are mostly controlled by the state dictated unprecedented limitations of timelines for attempts to challenge decisions made by management bodies of economic companies and a drastic reduction of the list of rationales for filing respective suits, and of introduction of much-needed proceedings measures which help an efficient consideration of corporate disputes.

Against that background the government implemented measures developed and proposed back in 2008 in the Concept of development of corporate law through 2008. That said, while key players on the market for corporate control saw their interests be promoted quite flawlessly, the said measures had enjoyed no demand whatsoever until recently.

The acts adopted with regard to LLCs partly helped close the gap between the respective legislation and the urgent needs and the company legislation. Meanwhile, the introduction of simplified mechanisms of change of owners in the conditions of a limited access to financial resources and the "dictatorship" of banks, which was born by the state, constitutes an assets redistribution lever.

The government and the group of controlled by it banks' active operations on the financial market between late 2008 and early 2009 were backed by measures on modification of circulation of marketable securities. Specifically, there arose and was legitimized a new concept of "qualified investors". They became eligible for an access to a broader array of securities, while benefiting from more lenient requirements to transparency of such operations, for they no longer are subject to the concept of public offer and respective information disclosure requirements.

In anticipation of a rise in corporate raids in the regions against the backdrop of crisis and a drastic fall in costs of assets[8], the government took a pro-active stance with regard to modifications of the *law in the corporate disputes area*. Made in July 2009[9] , the most significant changes in this particular sphere determined:

a) Special procedures of consideration by arbitration courts of this particular category of cases, including such disputes being subject to exclusive *locus standi* of the court of law at a given legal entity's location;

[8] Addressing the Collegiums of the Attorney General's Office, Pres. Medvedev asserted that corporate raiding could spark social tensions in urban areas. Mr. V. Pligin, Chairman of the State Duma Committee for constitutional law and nation-building prognosticated a possible rise of the so called "raider captures" (Rossiyskaya Biznes-gazeta, 09.12.2008) and by Yu. Korotky, the First Deputy Head of Rosfinmonitoring (Rossiyaskaya finansovaya razvedka opasayetsya vspleska reyderstva na fone krizisa, 14.4. 2009. – http://www.raudspb.ru/ node/45), ti name a few.

[9] Federal Act of 19.07. 2009. № 205-FZ "On introducing amendments to individual legislative acts of Russian Federation". The amendments in question took effect on 21. 10.09.

b) Special provisions that concern employment of interlocutory injunction, which is supposed to preclude the nuisance and collective lawsuits;
c) Obligation to disclose information oon the initiated dispute or preparations thereto;
d) The ban on extension of the limitation period with regard to suits on annulment of corporate acts.

That said, not adopted remained a string of modifications that concern the "healing" of the legal entity founded or reorganized in contravention of the law, the ban on extension of the period of limitations with regard to lawsuits on annulment of acts of the public registration of legal entities.

In 2009, arbitration courts witnessed a drastic growth in the number of cases on failure to honor obligations, which became one of the reasons behind the implementation in July 2010 of the *act on mediation*, which came into effect on 1 January 2011[10]. The document provides for the possibility for a dispute regulation mechanism, with an independent entity playing a mediator. The procedure can be applied to disputes arising from civil relationships, including entrepreneurial or other economic activities, as well as to disputes engendered by labor of family legal relations. As to other categories of disputes, it can be applied only in the event the federal law provides for that.

The exercise of the mediation procedure is voluntary and confidential, and it is run on the basis of an agreement between the sides. It can be employed to a dispute that arose both prior to or after applying to the court of law or the arbitration court and can be initiated, in particular, per the judge or the arbiter's suggestion. To run the procedure the sides agree upon and pick one or several mediators. Should the sides turn to an organization that carries out operations on securing the conduct of the mediation procedure, such organization can recommend mediator/mediators or appoint them. The procedure per se is set by the agreement on conduct of the mediation procedure. The mediation agreement is made in writing and should contain information on the parties thereto, the subject of the dispute, the mediation procedure implemented, the mediator, as well as the obligations mutually agreed upon, and timelines for their implementation. The meditative agreement the parties arrive at the end of the mediation process should be executed voluntarily and in good faith. In addition, it can be approved as an amicable settlement by the court of law or the arbitration court, should the mediation takes place after the case was brought to the court. As to mediators, they can be both professionals, that is, having a profile higher education and taking a special training course in mediation, and amateurs. Some experts believe that, for instances, lawyers and notaries can handle mediation quite efficiently, for *ex officio* they often resort to amicable settlement and conciliation methods in their work.

Another large block of modifications was formed by *change in the procedure for conclusion of large transactions and non-arm's length transactions,* which was caused by the necessity to prevent siphoning off assets mostly of corporate debtors and corporate bankrupts. In July 2009[11], it was established that a large transaction or a non-arm's length one might be recognized as an invalid one only providing its negative consequences for the company or a shareholder, which should be proved in the court of law. The novelty clearly is a pro-majority one, and it will considerably diminish the number of transactions in question which the court of law renders ineffective.

Plus, the amended legislation specified the list of entities that have interest in effect of transactions and have a possibility to influence their completion; as well, the Board of Directors hence has enjoyed the possibility (along with the general meeting) to approve future transactions.

Lastly, a number of transactions are no longer subject to a special procedure for their conclusion (interest). This novelty concerns:
a) transactions whose conclusion is binding for the company, per the law;
b) transactions in which all the participants are interested, which are entered into by an LLC,;

[10] Federal Act of 27.07. 2010. № 193-FZ "On the alternative procedure for regulation of disputes with the participation of the intermediary (the procedure for mediation)".
[11] Federal Act of 19.07.2009 № 205-FZ.

c) transactions effected by companies consisting of the sole participant who concurrently exercises the functions of the one-man executive body;
d) relations arising in the course of the assignment to the company of a stake or its share in the company's authorized capital[12].

Earlier on, in July 2006[13], out of the procedure for approval of large transactions and non-arm's length transactions were taken transactions conditioned by the decision on reorganization; as well, the procedure was specified for finding by the Board of Directors of the market value of the alienated or purchased assets with regard to such transactions. The modifications concerned joint-stock companies' operations. In July 2009, they were also implemented with regard to LLCs in respect to taking away non-arm's length transactions[14].

It is also worth noting a temporary cancelation of, or limitations put on, the effect of a number of legal provisions, mostly through 1 January 2011 (in the frame of an urgent response to liquidity shortages). In the focus of such a crisis narrowing of the legal environment in the joint-stock area were banks, which faced the following meaningful changes:

1) requirements to the procedure for completion of non-arm's length transactions did not encompass the subordinated unsecured loans extended by VEB[15] and the ones CBR disbursed to Sberbank, which combined stood at Rb. 500 bln., with the term to maturity being 31 December 2019 and the interest rate being 6.5% annualized[16];
2) in compliance with the CBR decision, the requirement to diminish the company's authorized capital until 1 January 2011 did not encompass banks[17];
3) Requirements to the procedure for exercise of the mandatory offer for sale of equity or other issuable securities by the entity that has purchased 30%-plus of the company's equity (art. 84.2 of Federal Act of 26.12.1995 №208-FZ "On joint-stock companies"[18]) had not concerned until 1 January 2011:
   - Credit organizations, should they acquire property rights for joint-stock companies' equity that form collateral;

[12] Pp."c" and "d" were adopted in December 2008 with Federal Act of 30.12. 2008 № 312-FZ " On introducing amendments to Section One of the Civil Code of Russian Federation and individual legislative acts of Russian Federation".

[13] Federal Act of 27.07.2006 № 146-FZ "On introducing amendments to the Federal Act 'On joint-stock companies".

[14] Federal Act of 19.07.2009 № 205-FZ.

[15] - to open-end joint-stock company "Bank VTB" in an amount not in excess of Rb. 200 bln. with the term to maturity being 31 December 2019 and the interest rate being 6.5% annualized (as amended in Federal Act of 27/07.2010 № 206-FZ);

- to open-end joint-stock company "Rosselkhozbank" in an amount not in excess of Rb. 25bln. with the term to maturity being 31 December 2019 and the interest rate being 6.5% annualized (as amended in Federal Act of 27/07.2010 № 206-FZ);

From the date of enactment of Federal Act of 13.10.08 № 173-FZ and through 31 December 2009 <the aforementioned banks> have the right to extend unsecured subordinated credits (loans) to credit organizations, should they comply with the following conditions (as amended in Federal Act of 27.07.2010 № 206-FZ):

a) In the event the credit organization has the long-term credit scoring not less than the set minimal level as of the date of applying for the credit (loan);
b) The credit organization received after 1 October 2008 subordinated credits (loans) and (or) amounts to pay the contribution to the said credit organization's authorized capital.

[16] P. 2 art. 6 of Federal Act of 27.10.2008 № 173-FZ "On additional measures on support of the financial system of Russian Federation".

[17] P. 8 art. 7 of Federal Act of 27.10.2008 № 173-FZ "On additional measures on support of the financial system of Russian Federation".

[18] As amended in Federal Act of 03.11.2010 № 292-FZ "On introducing amendments to art. 84.2 of the Federal Act "'on joint-stock companies".

- Third parties that purchased from credit organizations property rights for joint-stock companies equity that formed collateral, including auctioned off ones;[19]
- Since 20 July 2009, the Federal Act "On joint-stock companies" has been in effect as it pertains to banks in respect to issuance and circulation of issued by banks securities to the extent that it does not contravene Federal Act of 18.07.2009 № 181-FZ "On using public treasuries to raise the banks' capitalization".

To what degree the above measures were justifiable one can judge only in the context of the anti-crisis strategy as a whole. That said, the peril of an uncontrolled and opaque redistribution of the largest assets under the said legal framework appears significant.

Yet another direction of development of legislation is formed by systemic novelties that considerably changed *the standing of minority shareholders and creditors to corporations*. This refers to the introduction of mechanisms whose ultimate objective is to lower the level of corporate raiding and limiting possibilities to challenge transactions and decisions made by a company's management bodies.

The milestone development back in June 2009 became enactment of the bill (Federal Act of 03.06.2009 № 115-FZ) that changed the then existing balance of forces within the "shareholders - Board of Directors - company head" triangle. The critical peculiarity and, at the same time, the most profound challenge facing the Russian corporate governance model is the Board having no independence and exercising the will of the controlling shareholder. Meanwhile, other shareholders have no real instruments at hand to influence the company's management.

The new Act *solidified the shareholders' interests* by granting them the right to initiate and terminate the company head (one-man executive body's) powers before an extraordinary shareholder meeting. Such a meeting can be convened by initiative of a shareholder who holds more than 10% of voting shares. The extraordinary meeting at the same time considers the issue of an early termination of the Board members and election of its new composition (sp 6, 7, art. 69 of FA "On joint-stock companies"). Besides, shareholders owning more than 2% of voting shares were granted the right to nominate the candidacy of the company head at the extraordinary shareholder meeting (p. 2 art. 53 of FA "On joint-stock companies").

Plus, the corporate law saw the introduction therein of the institution of "shareholder agreement" that constitutes an agreement between shareholders, which can obligate the parties to vote in a certain way at the general meeting, buy and sell equity at a certain price or not to sell them until certain circumstances arise, etc. Such an agreement forms the mechanism of coordination of shareholder's will and, in this sense, theoretically, can help regulate corporate conflicts.

Given Russia's peculiarities (a high concentration of equity, a special position held by the government as a shareholder and by companies it controls, a low level of legal culture and corporate governance), though, the mechanism in question can be equally employed for a latent increase in the level of control over corporations' operations by the government, state-controlled banks, public corporations and other large proprietors.

Changes in regulation of the corporate dividend policy adopted in December 2010 (FA of 28.12.2010 № 409-FZ[20]) to some extent consolidated the shareholders' influence. The changes provide for introduction of a three–year timeline for realization of the right to appeal to the court of law with the request to pay announced dividends. The company's Charter can extend the timeline up to 5 years.

In addition, it was legislatively set that "the company has no right to grant a preference in respect to payment of dividends to individual owners of shares of the same category (type). The

[19] Federal Act of 30.12.2008 № 306-FZ "On introducing amendments to some legislative acts due to improvement of the procedure for the levy of execution on pledged property".

[20] Federal Act of 28.12.2010 № 409-FZ "On introducing amendments to individual legislative acts of Russian Federation with regard to payment of dividends".

payment of announced dividends by shares of each category (type) shall be effected concurrently to all the owners of shares of a given category").

As noted above, novelties of the period in question affected rights of creditors to reorganized legal entities. (FA of 30.12.08 № 315-FZ[21]). The creditors' rights were de-facto narrowed: while earlier they had a possibility to choose between demanding from the reorganized entity for termination or an early fulfillment of its obligations, presently the termination of obligations and reimbursement of thus arising losses can be possible only in the event of the impossibility to early fulfill the obligations.

That said, even such castrated rights of creditors of reorganized companies are not applicable to creditors to public corporations Rosavtodor[22], Rosnanotekhnologii[23], Rosatom, as well as FPUEs and FPEs whose property complexes are assigned as the RF's contribution to Rosatom[24] and FSUEs whose assets form the contribution to Rosnanotechnologii and Rosatom.

Now creditors are entitled for demanding from the reorganized company for an early fulfillment of obligations or termination of obligations with the recovery of losses through court action only, providing the reorganized legal entity, its participants or third parties' failure to ensure a sufficient collaterization.

This implies a string of technical novelties which should protect creditors' rights in the event of reorganization, including:

a) Making an entry on reorganization of the company in the register of legal entities;
b) The legal entity's obligation to notify tax authorities of reorganization within three days from the moment of taking the decision thereof;
c) The company's obligation to publish the statement on reorganization;
d) Additional requirements to the statement of reorganization, including procedures for, and conditions of, laying by creditors of reorganized companies their claims, information of entities that are going to provide collaterization to the creditors, among others (p. 61 Art. 15 of FA "On joint-stock companies).

The requirements may not be applicable to the aforementioned public corporations, except for Rosnanontecknologii.

As to credit organizations, in addition to notifying their creditors of reorganization by posting the respective information on their homepages in the Internet, publication in media or notifying each creditor in writing, they are obligated to disclose information on substantial facts of their financial and economic operations during the whole period of reorganization, including facts and transactions that resulted in an increase or diminishment of the value of their assets by more than 10%; acquisition by an entity of a 5% -more stake in the credit organization, etc.[25]

The mitigation of the level of protection of creditors' rights continued in December 2009 (FA of 27.12.2009 № 352-FZ[26]). Whilst considering lawsuits brought by creditors of companies

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[21] Art. 2, 3 of Federal Act of 30.12.2008 № 315-FZ "On introducing amendments to the Federal Act "On banks and banking" and some other legislative acts of Russian Federation".

[22] P. 2 Art. 41 of Federal Act of 17.07. 2009 № 145-FZ "On public company "Rossiyskiye avtomobilnye dorogi" and on introducing amendments to individual legislative acts of Russian Federation".

[23] P. 1 Art. 5 of Federal Act of 27.07. 2010 № 211-FZ "On reorganization of the Russian corporation of nanotechnologies".

[24] P. 10 aArt. 37 and p.2 Art. 41 of Federal Act of 1.12. 2007 № 317-FZ "On public corporation on nuclear power Rosatom".

[25] For more details, see Art. 23.5 of FA of 2.12.1990 №395-1 "On banks and banking" as amended in FA of 30.12.2008 № 315- FZ "On introducing amendments to the federal Act "on banks and banking" and some other legislative acts of Russian Federation".

[26] Federal Act of 27.12.2009 № 352-FZ "On introducing amendments to individual legislative acts of Russian Federation with regard to revision of limitations for economic companies in the course of formation of authorized capital, revision of means of protection of creditors' rights under reduction of authorized capital, changes in requirements to economic companies in the event of authorized capital failing to match the cost of net assets, revision of restrictions associated with the exercise by economic companies of issuance of obligations".

wherein a decision was made to reduce a company's authorized capital, the court of law was granted the right to reject a claim in the event:

- The creditors' rights are not abused due to reduction in authorized capital;
- Collaterization appears sufficient to ensure a due fulfillment of obligations (Art. 30 of FA "On joint-stock companies").

Such novelties provide significant opportunities for abuse due to the dominating formal approach to consideration of cases by the courts and a low level of development of relationships and control in the property appraisal area.

Meanwhile, the company is obligated to report to tax authorities on the decision to reduce its authorized capital and to publish the information in media. The rights of creditors of companies wherein the decision to reduce the authorized capital was made were regulated in a manner analogous to the regulation of the rights of creditors to the aforementioned reorganized companies.

Plus, the Act has no longer held the obligation to identify the cost of the company's net assets (to present it to the general shareholders meeting) on the basis of the annual balance sheet or results of the financial audit. Instead, the Board of Directors should include in the annual report subject to submission to the general shareholders meeting "indicators that characterize the dynamic of changes in the value of assets and the authorized capital over the three years", "findings of the analysis of causes for, and factors of" such state of affairs, and the list of measures the Board is going to undertake.

All the measures stipulated in the Act may not be applicable to credit organizations founded in the form of joint-stock company.

In July 2009 (FA of 19.07.2009 № 205-FZ[27]), the company law was enriched by the arsenal of measures aimed at minimizing possibilities for cancelation and challenging of rulings by management bodies of joint-stock companies and encouraging prevention and amicable settlement of corporate conflicts.

Specifically, the procedure for convening an extraordinary shareholder meeting was modified. Now it can be held only through a court proceeding, rather than by the shareholders' initiative (Art. 55 of FA 'On joint-stock companies"). As well, the new Act establish solidary responsibility of the company and the registrar for losses caused to the shareholder, with exoneration of the debtor who compensated for losses to another debtor in a volume of ½ of the amount due (p. 4 Art. 44 of FA "On joint-stock companies").

Both the uncertainty with regard to the sphere of the registrar's responsibility and the previous mechanism of holding extraordinary shareholder meetings were sore spots that were actively used in the course of corporate raiding in the 2000s.

As to reduction of possibilities for challenging the company's management bodies' rulings, the following novelties are worth noting:

1) 2-fold contraction (from 6 to 3 months) of the period of appeal of the general shareholders meetings' decisions (p. 4 Art. 44 of FA "On joint-stock companies");
2) Imposition of the ban on recovery of the default to a limitation period on claims on annulment of large transactions and non-arm's length ones (p. 6 Art. 79 and p.1 Art 84 of FA "On joint-stock companies"), as well as on claims to recognize the general shareholders meetings' decisions nude/illicit;
3) Introduction into the law of grounds for the court to reject a discharge of claims on annulment of large transactions and non-arm's length ones;
4) Specification in the law of cases in which the general shareholders meeting and the Board of Directors' rulings have no effect without the verdict rendered by the court of law (p. 10 Art. 49 and p. 8 Art. 68 of the Federal Act "On joint-stock companies"). To all intents, this implies

[27] Federal Act of 19.07.2009 № 205-FZ "On introducing amendments to individual legislative acts of Russian Federation".

conditions of nullity of decisions made, but if implemented, these provisions can spark greater conflicts between shareholders;

5) Encouragement of the joint consideration of disputes on large transactions and non-arm's length ones that involve challenging the general shareholders meeting, the Board of Directors' decisions (p.p. 7,8 Art. 68; p. 3 Art. 70, p. 4 Art. 77 of the Federal Act "On joint-stock companies").

All these measures substantially complicate the return of assets the company sold and stimulate their re-selling from an intermediary to a "*bona fide* purchaser". Meanwhile, the question of the constitutional legitimacy of the clause on the ban on extension of the default to a limitation period remains unanswered.

Besides, the shareholders' rights were extended – they were granted the right to challenge the Board of Directors' ruling in the court of law, provided the decision abused the company or the shareholder's rights and/or legal interests; they also were granted the right to claim, in a judicial proceeding, "coercion of the company" to place the question on the agenda of the general shareholders meeting or to include a nominee in the list of candidacies (p. 6 Art. 53 of FA "On Joint-stock companies").

A logical continuation of the policy aimed at *lowering the level of corporate transparency* became the enactment in October 2010 (FA of 04.10.2010 № 264-FZ[28]) of an Act that allows joint-stock companies, following the ruling of their general shareholders meetings, to apply to FSFM for discharge of the obligation to disclose or submit information per the Act on securities (Art. 92.1 of FA "On joint-stock companies"). Such a decision should be passed by the margin of ¾ of shareholders' voting, with holders of preferred shares also having the voting authority. The provision came into effect on 1 January 2011.

In 2009-10 *non-for-profit organizations* (NPOs) likewise saw notable changes in the legal regulation of their operations. In July 2009 (FA of 17.07.2009 № 170-FZ[29]), a simplified reporting procedure was introduced for non-for-profits whose founders (participants, members) are not foreign citizens (organizations) or apatrides. As well, the Ministry of Justice's powers with regard to public registration of NPOs were limited – the Ministry hence has no right to demand for submission of documents other than those stipulated in the Act.

In April 2010 (FA of 05.04.2010 № 40-FZ[30]), the legislator introduced the notion of the "socially oriented non-for-profit organization". Those are organizations which exercise activity to tackle social problems, development of the civil society, protection of environment, etc. As amended, the Act on NPOs provides for measures of the state support of such organizations, including engaging such NPOs in delivery of supplies, works and services for the government's and municipal needs; granting the NPOs benefits, including tax ones, etc.

In addition, in December 2010 (FA of 28.12.2010 № 401-FZ[31] and of 03.11.2010 № 292-FZ[32], respectively):

1) The circle of transactions recognized as large ones and requiring their completion following a special procedure was slightly broaden;

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[28] Federal Act of 4.10.2010 № 264-FZ "On introducing amendments to the Federal Act "On market for securities" and individual legislative acts of Russian Federation".

[29] Federal Act of 4.10.2010 № 264-FZ "On introducing amendments to the Federal Act "On market for securities" and individual legislative acts of Russian Federation".

[30] Federal Act of 05.04.2010 № 40-FZ "On introducing amendments to individual legislative acts of Russian Federation on the matter of support of socially oriented non-for-profit organizations.

[31] Federal Act of 28.12.2010 № 401-FZ "On introducing amendments to the Federal Act "On electric power sector" and individual legislative acts of Russian Federation".

[32] Federal Act of 03.11.2010 № 292-FZ "On introducing amendments to Art. 84.2 of the Federal Act "On joint-stock companies".

Under the category of large transactions now fall transactions whose completion is obligatory for the society in compliance with the federal law or other legal acts of RF and settlements by which are made using prices and tariffs set by the Government.

Perhaps, the legislator believes that complicating the procedure for completion of the "obligatory" transactions should strengthen control over them; however, the mechanism of completion of large transactions, together with non-arm's length ones, has proved the most inefficient one in the effective corporate law, so no positive changes should be anticipated in this regard;

2) The area of effect of legal norms on the obligatory offer of the company's equity (Art. 84.2. of FA "On joint-stock company") continued to shrink.

   The list of cases below constitutes those ones under which one is discharged of the duty to put forward a public offer in the event of buying a 30% stake in the company:

A) Acquisition of equity as a result of the Government's contribution with them to the authorized capital of a JSC in which the Government has been or is going to be an owner of more than a 50% stake.

B) Acquisition of equity with which the Government contributes to the payment of placed by means of closed subscription for supplement shares of JSCs included in the list of backbone corporations and JSCs approved by the RF President.

While these measures can be tagged as anti-crisis ones, they can also be regarded as new ways of solidification of the Government and/or its individual representatives' position on the market for corporate control.

The novelties of the period between October 2008 and 2010 in the first place *changed the balance of forces within a company by strengthening the shareholders' positions,* granting them the right to elect/dismiss the company head, the right to early termination of the Board of Directors' powers, and the right to conclude shareholder agreement, etc. In addition the following agents saw their possibilities be cut substantially:

- Creditors to reorganized companies;
- Creditors to companies that made the decision to diminish their authorized capital;
- Entities intending to challenge large transactions and non-arm's length transactions concluded by joint-stock companies;
- Current and former shareholders of companies consolidated into public corporations and large holdings the Government created recently.

It is shareholders, "old" owners, as well as new ones, including the Government that has bolstered its corporate presence in 2007-08, state-controlled banks which provided loans for assets, including equity, and their affiliated structures, which acquired those assets, that have become beneficiaries resulting from such novelties. Between 2003 and 2009 it was corporations owned by financial structures that most often played the role of buyers of other companies – their share in the aggregate amount of M&A deals accounted for 26% (and 33% of the total amount of funds spent on those)[33].

It can be assumed that the problem of acquisition by the Government (the companies its controls) of new assets was replaced by the problem of obtaining an actual corporate control and negotiation of existing conflicts by more or less legal means. The list of the "victims" of the novelties comprises creditors to Rosnanotechnologii, Rosavtodor, Rosatom, FSUEs and FSIs consolidated into these corporations, as well as management (members of boards of directors and heads of companies, including those consolidated into state-controlled holdings).

It goes without saying, pluses of the novelties are associated with constraining the company management's arbitrariness and strengthening of shareholders' position, introduction of the obligation to hold extraordinary shareholder meetings only through a court proceeding. They will

[33] Rossiyskaya ekonomika v 2009 g.: tendentsii i perspektivy, M., IEPP, 2010, p. 575.

be instrumental for all the parties concerned; however, it is not excluded that once the "new" shareholder changes the "old" management, the legislator's strategy in the corporate regulation area may change once again.

In July 2010, the Federal Act[34] was promulgated, which established criminal responsibility for:

- Falsification of the Single State Register of Legal Entities or the Register of Securities Owners, particularly for entering into the latter knowingly inaccurate data. Such abuses are punished by the fine amounting from Rb. 100,000 to 300,000 or by deprivation of liberty for the term of up to two years with the fine of up to Rb. 100,000. In the event of falsification of the Single State Register of Legal Entities or the Register of Securities Owners with the use of violence or the threat of its use the punishment is deprivation of liberty for the term between three and seven years and the fine of up to Rb. 500,000;
- falsification of a decision of the general meeting of shareholders (participants) of the economic company or a decision of the Board of Directors (Supervisory Board) of the economic company. Such abuses are punished by the fine amounting from Rb. 100,000 to 500,000 or by deprivation of liberty for the term of up to five years with the fine of between Rb. 100,000 to 300,000. Such a penalty is provided for in the event the falsification was committed by means of intimidation of a company's shareholder, participant in the limited liability company, member of the Board of directors of the economic company to make him/her vote in a certain way or refuse to vote, along with a blackmail or threat to use violence or destroy or to cause damage to one's property;
- entering in single state registers knowingly inaccurate data[35].

In tandem with the adopted corporate regulation measures, the above novelties can be regarded as quite anti-raiding ones. The regulation of problems in the area of running the shareholder registers, holding extraordinary shareholder meetings may basically block opportunities to try certain ways of seizure of corporate assets, but there remain other means and ways. Besides, the measures in question should have been implemented long ago, for it was in the early 2000s that the respective challenges were really pressing. Retention of the opacity of corporate governance across a number of directions (the problem of conflict of interest, regulation of operations of groups of companies, in particular, in the tax sphere, affiliated entities, profit allocation, to name a few) also gives no grounds to assert there has been any notable progress in this particular sphere.

[34] Federal Act of 01.07.2010 № 147-FZ "On introducing amendments to the Criminal Code of Russian Federation and Art. 151 of the Criminal-Procedural Code of Russian Federation".

[35] Gosduma prinyala zakon o borble s reiderstvom.,- Rossiyskaya gazeta, 16.06.10.