



PRESS RELEASE

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The Ministry of Justice has published the draft Federal Law "On amending the Federal Laws 'On joint stock companies' and 'On limited liability companies' (to ensure the rights of shareholders of economic entities to information)" amended pursuant to a discussion on the Federal Web Portal of Laws and Regulations.

Disappointingly, the new version of the draft law, again, substantially prejudices the rights and legitimate interests of shareholders (primarily minority shareholders), as the essential provisions which caused the strongest and most meaningful objections remained intact.

In particular, while the minimum ownership percentage of the company's voting shares required to request information on the company's activities was reduced from 5 to 2 per cent, the threshold still virtually closes opportunities for the shareholders to obtain information, given that the average value of a mere 0.1% stake in 50 biggest Russian companies reaches approximately 400 million rubles. The API believes that the 0.1% threshold would suffice for protecting companies against abuse from shareholders who own just a couple of shares.

Besides, the 2% threshold reduces headroom for the judicial protection by shareholders of the company's and their own interests (including efforts aimed at the recovery of damage caused to the company by members of its management bodies), being twice above the threshold set even for such claims, let alone other claims which shareholders are allowed to file in the company's interest while holding still smaller stakes.

The draft law provisions (incorporated almost in the original wording) stipulating reasons for a refusal to provide information raise serious objections.

The right of refusal on the ground of availability in the requested document of commercially valuable information as well as for some "reasons to believe that the requesting party may use the information to cause damage to the company" is in contradiction with the good faith presumption applying to participants of civil law relations in accordance with Russia's Civil Code; besides, given the absence of legal criteria for such information, it enables companies to label nearly all details on their activities as commercially valuable information, making them completely unavailable to shareholders.

In the API's view, corporate interests are protected reliably as regards the really sensitive issue of information security and commercial secret and do not require additional legislative restrictions. The Presidium of Russia's Supreme Arbitration (Commercial) Court granted companies the *right* to require that the shareholder assume a written obligation to keep information received from the company confidential. The Bank of Russia took things a step further referring to a note confirming the shareholder's awareness of information confidentiality and of the obligation to keep it confidential as a *prerequisite* for providing confidential

information. In addition, access to information on the list of the company's insider information requires that the shareholder complies with the restrictions provided for by Federal Law no. 224-FZ including those applying to disposal of the shareholder's securities, which is a serious impediment for unfair claims.

The most disappointing and potentially conflict-triggering innovation of the draft law is the use of the 'reasonable business purpose' term adopted from foreign jurisdictions. The draft law does not contain a legal definition for this term, which increase risks for all parties to the process as regards validity or invalidity of interpretations underlying the arguments that the business purpose specified in the claim "is not/is reasonable."

The API regards this concept as much less meaningful and completely unproven compared with the conventional "abuse of right" term generally used in the Russian legislation.

In the API's view, the common efforts of Russia's legislative power, the Bank of Russia (including Instruction no. 3388-u as of September 22, 2014, letter no. 06-31/10245 as of December 22, 2014) and judicial bodies (the legal precedents, instructions and letters issued by courts) have formed a non-ideal but rather harmonious and well-balanced system which makes it possible for bona fide shareholders to exercise their legally established rights to request and receive information while enabling companies to effectively prevent the abuse of this right.

The API regrets that the draft law, in the wording currently proposed by the Ministry of Justice, impedes the collection by minority shareholders of information for exercising the rights provided for by the Russian legislation, including actions to impose liability on the joint-stock company's controlling shareholder(s) and executive bodies, to challenge transactions causing losses to the company and to claim reimbursement of damage caused to the company as a result of such transactions. The draft law relieves the above-mentioned parties from allegedly "excessive" control by minority shareholders, thereby creating objective conditions for possible abuse and prejudice to the company's interests.

If enacted, the draft law, while infringing on shareholders' rights, will also dramatically lower the level of transparency at Russian joint-stock companies achieved with long-term efforts, substantially diminish the real responsibility of management teams and Boards of Directors, as well as that of shareholders.