

BEGINNING STEPS IN CHANGING THE FRAMEWORK OF FINANCIAL MARKETS IN RUSSIA: THE IMPORTANCE OF AMENDMENTS ON THE FEDERAL LAW ON JOINT-STOCK COMPANIES

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INTRODUCTION

Many see the Russian Federation as lagging behind other countries in today’s global financial market, especially for a country of such large size and with an abundance of raw materials.¹ Even with all the opportunities in Russia, the country lacks the necessary investment needed for financial growth because many investors only see Russia as a country with numerous issues that negatively impact the financial sector, including an underdeveloped banking system.² Recently, Russia has

1. *See Russian Financial Markets and Monetary Policy Instruments* (Bank of Fin. Inst. for Econs. in Transition, Fin.), Mar. 3, 2012, at 4.

2. *Id.*

taken certain steps to try to simplify the securities market and revolutionize certain market practices as a way to bring Russia into the minds of investors all over the world. Although some of the steps may seem to be relatively minor, these actions seem to be just the beginning of substantial changes to come.

One of the most important steps the Russian Federation has taken was passing the Federal Law on Amendments to the Legal Acts of Russian Federation and Cancellation of Certain Legal Acts (hereinafter: Amendments to the Legal Acts) on December 29, 2012.³ The Amendments to the Legal Acts have made slight changes to three key existing laws, the Federal Law on Securities Market, the Federal Law on Joint Stock Companies, and the Federal Law on Banks and Banking Activities. Some of the most significant changes have been made to the Federal Law on Joint Stock Companies. The main goal of the Amendments to the Legal Acts is to improve the regulation and issuance of securities.⁴ All amendments will be put in effect by January 1, 2014,⁵ but implementation of amendments began as early as January 2, 2013.⁵ Although the changes to the law may seem slight, these changes seem to be only a showcase for future shifts in the regulatory regime and possible future changes to fix major structural issues. The amendments will have the impact of increasing stockholders' rights, implementing a new dividend payment system, and requiring many new administrative policies to streamline certain processes and create efficiency. These new changes might be the beginning steps Russia needs to increase the flow of some much-needed investment and make cities, like Moscow, important global financial hubs. This note will discuss the Amendments to the Legal Acts by explaining: (1) the Russian market and Russia's goals of becoming a financial powerhouse; (2) the characteristics of The Amendments to the Legal Acts; (3) details of The Federal Law on Joint-Stock Companies and the changes made by the Amendments to the Legal

3. *Recent Developments in the Russian Securities Market Regulatory Regime*, CLIENT ALERT (Latham & Watkins, L.A., Cal.), Feb. 11, 2013, at 1.

4. *Overview of Changes in Legislation*, NEWSLETTER (Andrey, Gorditsky, & Partners, Moscow, Russ.) Dec. 2012- Jan. 2013, at 1.

5. Latham & Watkins, *supra* note 3, at 11.

Acts; (4) the effects of the changes to The Federal Law on Joint-Stock Companies.

I. THE RUSSIAN MARKET AND RUSSIA'S GOALS OF BECOMING A FINANCIAL POWERHOUSE

A. Background on the Russian Market

The Russian market is considered small and underdeveloped for an economy of such a large size.⁶ The Russian market depends mainly on the country's export of raw materials, mostly crude oil and natural gas.⁷ Although there has been some rapid overall growth in the Russian financial sector and Russia has been recently ranked about tenth in the world for GDP, more growth has been deterred by the country's history of structural issues in the securities and financial markets.⁸

The Russian market is plagued with structural issues, including issues in the banking sector. The banking sector is extremely fragmented and underdeveloped.⁹ Only 30 of the biggest banks are able to borrow without collateral and a large number do not have access to the market at all.¹⁰ The Russian capital market also has some severe structural issues, including a lack of competition in certain market sectors.¹¹ The Russian capital market is split into government, regional and corporate.¹² The markets are small and considered extremely volatile because of the markets' high sensitivity to other international financial markets and the markets' link to the domestic liquidity concern.¹³ All three markets have a severe lack of institutional investors and most of the bonds are bought

6. Bank of Fin. Inst. for Econs. in Transition, *supra* note 1, at 4.

7. *Id.* at 11.

8. *Id.* at 4.

9. *Id.* at 8.

10. *Id.* at 5.

11. *Russian Economic Report 30: Structural Challenges to Growth Become Binding*, WORLD BANK (Sept. 25, 2013), <http://www.worldbank.org/en/news/press-release/2013/09/25/russian-economic-report-30>.

12. *Bank of Fin. Inst. for Econs. in Transition*, *supra* note 1, at 5.

13. *Id.*

by state owned entities.¹⁴ Foreign investors only buy Russian bonds as instruments for short-term investments.¹⁵

B. Russia's Position in an International Financial World

Russia is a country that is looking to change the perception the world has of the country in order for Russia to increase investment. In 2012, Russia joined the World Trade Organization, becoming the 156th member of the WTO.¹⁶ Since then, Russia has passed certain laws that act as amendments on current Russian business laws, including the Federal Law on Amendments to the Legal Act of Russian Federation and Cancellation of Certain Legal Acts.¹⁷ These steps are “expected to improve the business environment, facilitate trade, and attract investment,” but Russia still has a long way to go.¹⁸ Russia is still considered to have major weaknesses when it comes to individuals trying to do business in the country. Many investors struggle with the political, legislative, and administrative environment in Russia.¹⁹ In 2012, Russia was held 120th in the world in ease of doing business and 112th in 2013 in the World Bank’s “Doing Business” ranking.²⁰ However, Russia’s “Doing Business” ranking had risen from the country’s 2012 ranking when Russia held the 120th position for doing business.²¹ Russia also remains low on the list on the Transparency International’s Corruption Perceptions Index. In 2012, Russia ranked 133 on the Index.²² However, the 133rd ranking is an improvement from 2011 when Russia only held the 143th spot on the Index.²³ Part of Russia’s improvement may be because of the country’s intent to join the Open Government Partnership

14. *Id.* at 6.

15. *Id.*

16. *Shaping Russia's Future*, ATTRACTIVENESS SURVEY (Ernst & Young, London, U.K.), 2013, at 12.

17. *See id.*

18. *Id.*

19. *Id.* at 4.

20. *Id.* at 9.

21. *Id.* at 12.

22. Ernst & Young, *supra* note 16, at 9.

23. *Id.*

in 2012.²⁴ Russia will be one of 50 countries that share a goal of increasing transparency and “effective and accountable governments” through the Open Government Partnership.²⁵

C. Moscow as a Financial Market

Some of the active steps Russia has been taking to change the world’s perception of the country can be seen as an effort to try to establish Moscow as an important international financial center.²⁶ Russia no longer wants London to be seen as “the ‘financial capital’ of Russia.”²⁷ However, the city is no longer in competition with just western cities across the globe, like New York or London.²⁸ Instead, Moscow is now competing with close Eastern European cities, like Warsaw.²⁹ The difference between Moscow and cities like Warsaw is the negative reputation Moscow and Russia currently have.³⁰ Moscow is notorious around the world for being difficult to do business in.³¹ Other Eastern European countries, like Ukraine, are deciding to do business in Warsaw, instead of going public in Moscow.³² The city strives to be similar to Dubai and tries to mimic the Dubai model as a way to encourage growth.³³

24. *Id.* at 12.

25. *Id.*

26. Ian Bremmer, *Moscow Talks up a Financial Markets Future*, FOREIGN POLICY (Apr. 28, 2011, 11:45 AM), http://eurasia.foreignpolicy.com/posts/2011/04/28/moscow_talks_up_a_financial_market_s_future.

27. Jonathan Boyd, *BCS Sees Groundwork for Future Returns in Russian Financial Reforms*, INV. EUR. (May 14, 2013), <http://www.investmenteurope.net/investment-europe/feature/2267911/bcs-sees-groundwork-for-future-returns-in-russian-financial-reforms>.

28. Andrew E. Kramer, *Moscow Tries to Reinvent Itself as Financial Hub*, N.Y. TIMES (Apr. 3, 2013), http://www.nytimes.com/2013/04/04/business/global/moscow-tries-to-remake-itself-as-financial-center.html?_r=0.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Boyd, *supra* note 27.

There is also the hope that developing Moscow into an international financial center will help encourage “state-of-the-art financial infrastructure in Russia.”³⁴ The Russian government has taken steps to try to encourage growth and make Russia a more appealing investment. The Russian government has also set in place new regulatory bodies to allow for more regulation and oversight to prevent corruption and insure credibility.³⁵ Efforts have also been made “to require large private companies to adopt international financial reporting and accounting standards.”³⁶ In 2013, Ernst & Young established Moscow a foreign direct investment hotspot.³⁷ However Moscow was still placed 65th out of 79 cities in study done by an international consulting agency on a Global Financial Center Index.³⁸

However, the Russian government continues to make changes. In 2011, the Russian government announced a ten billion U.S. dollar investment fund that will be managed by a state-owned bank.³⁹ But strict regulations like these might be seen as part of the issue. Foreign investors find the Russian government regulations too overbearing and still feel the system has major structural issues.⁴⁰ However, laws like The Amendments to the Legal Acts might be beginning steps to relieving some concerns of investors.

II. THE FEDERAL LAW ON AMENDMENTS TO THE LEGAL ACTS OF RUSSIAN FEDERATION AND CANCELLATION OF CERTAIN LEGAL ACTS

The Amendments to the Legal Acts was approved on December 29, 2012 and makes adjustments to the Federal Law on Securities Market,

34. Ernst & Young, *supra* note 16, at 12.

35. Bremmer, *supra* note 26.

36. *Id.*

37. See Ernst & Young, *supra* note 16.

38. Kramer, *supra* note 28.

39. Bremmer, *supra* note 26.

40. *Capital Market in 2025: The Future of Equity Capital Markets*, PWC IPO CENTRE (PricewaterhouseCoopers), 2011, at 12, available at http://www.pwc.com/en_US/us/transaction-services/publications/assets/capital-markets-2025.pdf.

the Federal Law on Banks and Banking Activity and the Federal Law on Joint-Stock Companies.⁴¹ Although many of the changes may seem relatively minor, they lead to major impacts for the Russian financial market.

Changes to the Federal Law on Banks and Banking Activities consist of three changes to three Articles.⁴² The main concern of all of the changes is a general change of the Central Banks control over transactions that are “aimed at the acquisition of more than 20 percent of shares . . . in credit institutions.”⁴³ Even though many people complain about the overregulated Russian market, this change to the central banking system may not be negative. Credit institutions have a large amount of power in a country’s market. Strict regulation over such institutions, especially when it comes to these institutions having shifts in ownership, could prevent major issues in an important market sector.

The most changes have been made to the Federal Law on the Securities Market.⁴⁴ The Securities Market had about 32 changes to 18 Articles.⁴⁵ The changes range from adding “the words ‘and the Bank of Russia’” in paragraph 6, to making changes to the process for securities Prospectus.⁴⁶ Most of the changes to the Federal Law on the Securities Market are meant to streamline the system and increase efficiency. The Federal Law on Joint-Stock Companies also experienced numerous changes. The Federal Law on Joint-Stock Companies under went 16 changes to 14 Articles from the Amendments to the Legal Acts.⁴⁷ Similar to the changes to the Federal Law on the Securities Market, many of the differences are meant to streamline the system and increase efficiency. However, the changes to the Federal Law on Joint-Stock companies

41. See Federal Law of the Russian Federation on Amendments to Certain Legislative Acts of the Russian Federation and the Annulment of Certain Provisions of Legislative Acts of the Russian Federation, Dec. 29, 2012, No. 282-FZ, available at <http://www.rg.ru/2012/12/31/otdelnie-akti-dok.html> [hereinafter Amendments to the Legal Acts].

42. *Id.*

43. *Id.* art. 1, ¶ 1(c).

44. *Id.*

45. *Id.*

46. *Id.* art. 3, ¶ 32.

47. See *id.* art. 2, ¶ 7b.

could lead to a major increase in investment in Russian joint-stock companies.

III. THE FEDERAL LAW ON JOINT-STOCK COMPANIES AND AMENDMENT CHANGES

On November 24, 1995, State Duma adopted the Federal Law on Joint-Stock Companies and the law became active on January 1, 1996.⁴⁸ The purpose of the law was to establish a “procedure for the establishment, re-organization, liquidation, and legal status of joint-stock companies” along with determining “the right and obligations of their shareholders, and [] ensure the protection of the rights and interest of the shareholders.”⁴⁹ The law consists of 94 Articles and affects “joint-stock companies formed or to be formed” in Russia unless otherwise stated in a different Russian federal law.⁵⁰ The law defines a joint-stock company as a “commercial organization whose charter capital is divided into a specific number of stock certifying the rights and obligations of the” stockholders.⁵¹

The Federal Law covers everything from the responsibilities of the company to obligatory publication of information by the company.⁵² However, this note will focus on the original Articles that are changed by Amendments to the Legal Acts. Some changes made by the Amendments are nothing more than clearing up possibly confusing language. For example, the original version of Article 36 stated that bonds could not be priced lower than “par value.”⁵³ Under the Amendments, face value has been replaced with the term “nominal value,” but the change makes no substantive difference.⁵⁴ But most adjustments made by the Amendments have more substantial impacts.

48. Federal Law on Joint-Stock Companies, 1995, No. 208-FZ (Russ.).

49. *Id.* art. 1, ¶ 1.

50. *Id.* art. 1, ¶ 2.

51. *Id.* art. 2, ¶ 1.

52. *Id.* art. 3, 92.

53. *Id.* art. 33, ¶ 1; Federal Law on Joint-Stock Companies, *supra* note 48, ¶ 36.

54. Amendments to the Legal Acts, Dec. 29, 2012, No. 282-FZ, art. 2, ¶ 5, available at <http://www.rg.ru/2012/12/31/otdelnie-akti-dok.html>.

Article 9 of the Federal Law establishes how a joint-stock company should be established.⁵⁵ Specifically, paragraph 5 of Article 9 stated, “a contract concerning the creation of a company shall not be the constitutive document of the company.”⁵⁶ The Amendments to the Legal Acts changed the last sentence of paragraph 5 to now state that the contract that forms the company is still not a constitutive document of the company, but “is valid until the end of a certain period of contract payment for the shares to be distributed among the founders.”⁵⁷

Article 28 speaks on the way a joint-stock company must go about increasing charter capital.⁵⁸ Charter capital “may be increased by means of increasing the face value of shares or floating additional stocks.”⁵⁹ Originally, the Federal Law held that to increase charter capital by increasing the issuance of stock and when “there [also] exists a bloc of stocks granting more than 25% of the votes at the general [stockholders meeting] and consolidated in accordance with” Russian laws regarding privatization in state or municipal ownership may be enforced during consolidation as long as the increase of stock does not affect “the amount of participatory share of the State or municipal formation.”⁶⁰ Under the amendments, paragraph 4 has undergone some changes.⁶¹ Now, the issuance of additional stock must meet certain requirements.⁶² First, additional shares must contain the number of shares in both the ordinary share and preferred shares categories.⁶³ Second, the additional shares must include the price, the procedure in which the price will be determined, or an indication that the price or the procedure to determine the price will be set by the board of directors “no later than the beginning of placement shares.”⁶⁴ The price or the procedure for determining the price must follow the requirements in Article 77 of The Federal Law on

55. Federal Law on Joint-Stock Companies, *supra* note 48, art. 9.

56. *Id.* art 9, ¶ 5.

57. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 1.

58. Federal Law on Joint-Stock Companies, *supra* note 48, art. 28.

59. *Id.* art. 28, ¶ 1.

60. *Id.* art. 28, ¶4.

61. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 2.

62. *Id.*

63. *Id.*

64. *Id.*

Joint-Stock Companies, which requires the price be determined by the board of directors of the company unless stated otherwise in another Russian federal law.⁶⁵ Finally, additional shares must also include the form of payments.⁶⁶

Article 32 establishes the rights held by stockholders of preferred stocks.⁶⁷ Under Article 32, stockholders of preferred stock did not have the right to vote at general meetings, unless the vote concerns “reorganization and liquidation of the company.”⁶⁸ Originally, Article 32 allowed companies to have provisions in the company’s charter that would allow the stockholders to change their preferred stock to ordinary stock.⁶⁹ The necessary procedure for the change in stock type was set out by what the company’s charter stated at the time of the decision to change the stock was made.⁷⁰ Under the amendments, stockholders are still allowed to change their preferred stock to ordinary stock, but now the procedure for the stockholder to change the type of stock is based on the company’s charter “before the state registration of the issue of convertible preference shares.”⁷¹ The amendments solidify this change by prohibiting changing the relevant issues of the charter before the company places the first preferred stock for converting.⁷²

The Amendment to the Legal Acts also adds an additional subparagraph to Article 32.⁷³ This new paragraph states that shareholders of certain types of preferred stock will have the right to vote on decisions regarding the listing or delisting of preferred shares of the same type.⁷⁴ For a decision to be passed, three-fourths of the preferred stockholders holding that specific type of preferred stock must vote for the decision

65. *Id.*; Federal Law on Joint-Stock Companies, *supra* note 48, art. 77, ¶ 2.

66. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 2.

67. *Id.* art. 32.

68. *Id.* art 32, ¶ 1, 4.

69. *Id.* art 32, ¶ 3.

70. *Id.*

71. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 3a.

72. *Id.*

73. *Id.* art. 2, ¶ 3b.

74. *Id.*

and three-fourths of all stockholders participating in the general meeting must vote for the decision.⁷⁵

Article 33 gives companies “the right to issue bonds and other [] securities provided for by the laws of the Russian Federation on securities.”⁷⁶ Paragraph three of Article 33 sets requirements for joint-stock company to issue additional bonds and securities, including requiring par value, requirements for decisions regarding cancellation of bonds, and requiring bonds the floatation of bonds to be done with security.⁷⁷ The Amendments to the Legal Acts adds a new circumstance that would allow companies to issue additional bonds or securities. A “company may issue bonds after full payment of its capital shares.”⁷⁸ The amendments also allow bonds to be redeemed either in cash or other assets.⁷⁹ The amendments also added that when the repayment of bonds consist of outstanding shares of the company, the bonds do not have to follow the regulations in subparagraphs 2 and 3 in paragraph 2 of Article 33, which states decisions regarding these bonds must be left up to the board of the directors of the company.⁸⁰

Article 36 describes the procedure required for flotation pricing of a company’s share.⁸¹ Paragraph one of the Article requires the price of shares to not fall below their nominal value.⁸² The amendments add another element to this requirement. Now, just like the changes made in Article 28, additional shares issued for the creation of capital must state the price or the procedure for determining the price by the board of directors.⁸³

Article 41 sets the “procedure for exercising a priority right to acquire shares and issue securities convertible to shares.”⁸⁴ Originally, the first paragraph of Article 41 stated that every person listed as someone who

75. *Id.*

76. Federal Law on Joint-Stock Companies, *supra* note 48, art. 33, ¶ 1.

77. *Id.* art. 33, ¶ 3.

78. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 4.

79. *Id.*

80. *Id.*; Federal Law on Joint-Stock Companies, *supra* note 48, art. 33, ¶ 2.

81. *Id.* art. 36.

82. *Id.* art. 36, ¶ 1.

83. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 5.

84. Federal Law on Joint-Stock Companies, *supra* note 48, art. 41.

had priority rights were required receive certain information regarding when the person may exercise these priority rights.⁸⁵ This information included the quantity of share available; the price of the shares or the procedure to determine the price; and the term of the priority, which could not exceed 45 days.⁸⁶ Companies were not able to float additional stock until the term of priority had elapsed.⁸⁷ The amendments include all of the same requirements and more.⁸⁸ Now notifications for exercising priority rights must also contain the amount of securities that each person with priority rights may purchase; “the order in which the statement of these persons to acquire shares and equity securities convertible into shares, shall be submitted to society”; and the time frame which the company must receive these statements.⁸⁹ The amendments also took away the 45 day cap for the priority term.⁹⁰

Similar changes have been made to paragraph two of Article 41. Originally, paragraph two simply stated the application process for someone who desired to exercise their priority right by acquiring additional shares.⁹¹ The amendments did not take any of the requirements away, but only added a subparagraph, which requires the validity of preemptive rights⁹² to not be less than 20 days after delivery or notification of rights and eight working days from the time of disclosure of notification if done “in accordance with the legislation of the Russian Federation on securities.”⁹³

One of the most significant changes made to the Federal Law on Joint-Stock companies are the changes made to Article 42. Article 42

85. *Id.* art. 41, ¶ 1.

86. *Id.*

87. *Id.*

88. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 7a.

89. *Id.*

90. *Id.*

91. Federal Law on Joint-Stock Companies, *supra* note 48, art. 41, ¶ 2.

92. “The privilege of a stockholder to maintain a proportionate share of the ownership of a corporation by purchasing a proportionate share of any new stock issues.” FREEDICTIONARY.COM, <http://legal-dictionary.thefreedictionary.com/Preemptive+Right> (last visited Feb. 5, 2014).

93. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 7b.

sets out how a company must disburse dividends.⁹⁴ The major change made to Article 42 has been referred to as the “cascade system” for paying out dividends.⁹⁵ Originally, paragraph 4 of Article 42 simply required dividends be paid within 60 days of the decision being made to actually pay dividends.⁹⁶ Now, the payment of dividends must meet more requirements. Within 10 business days of the decision, dividends must be paid to all nominal holders, which consist of depositaries and trust managers.⁹⁷ Other authorized recipients must receive their dividends within 25 business days.⁹⁸ The cascade system was made in addition to the 60 day requirement and did not take place of the 60 day requirement.⁹⁹ Therefore, all stockholders who are entitled to dividends, but do not fall under either of the cascade system categories, must receive those dividends within 60 days.¹⁰⁰

However, the adoption of the cascade system is not the only change made to Article 42. The Amendments to the Legal Acts makes several other additions to Article 42. The amendments require “dividend payments to individuals who were in possession of the corresponding category [of shares] or persons engaged in compliance with federal laws on the rights of these shares at the end of trading day on the date on which [] the decision” to pay dividends was made.¹⁰¹ Another change to Article 42 revolves around the record date for creating a list of shareholders who are entitled to dividends.¹⁰² Originally, the record date was determined by the record date actually used in the general meeting where the attending shareholders considered dividend payments.¹⁰³ Now, the record date may be determined by the date of the decision to make

94. Federal Law on Joint-Stock Companies, *supra* note 48, art. 42.

95. *Recent Developments in the Russian Securities Market Regulatory Regime*, *supra* note 3, at 15.

96. Federal Law on Joint-Stock Companies, *supra* note 48, art. 42, ¶ 4.

97. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 8g.

98. *Id.*

99. *Id.*

100. Federal Law on Joint-Stock Companies, *supra* note 48, art. 42, ¶ 4.

101. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 8d.

102. *Recent Developments in the Russian Securities Market Regulatory Regime*, *supra* note 3, at 14.

103. Federal Law on Joint-Stock Companies, *supra* note 48, art. 42, ¶ 3.

dividend payments, however, that date cannot be less than 10 days from the shareholders meeting, but not more than 20 days from the shareholders meeting.¹⁰⁴ The amendments also add the possibility for payment of dividends to be done by registrar or a credit organization.¹⁰⁵

The amendments also made changes on the responsibilities shareholders have during general shareholders meetings.¹⁰⁶ Article 48 of the Federal Law on Joint-stock Companies provides a list of the responsibilities of shareholders.¹⁰⁷ This list encompasses responsibilities ranging from deciding to liquidate the company to determining the procedure for the general meeting.¹⁰⁸ The amendments add to this list of responsibilities.¹⁰⁹ The amendments give shareholders the new right to decide to list and delist company shares and equity securities of the company that are convertible into shares.¹¹⁰ Before the amendments, this responsibility did not belong to any particular company body.¹¹¹

Changes in Article 52 of the Federal Law of Joint-Stock Companies reflect the change of times and joint-stock companies entering into the new age. Even though the federal law was written in 1995, less than 20 years ago, parts of the law still quickly became outdated.¹¹² Article 52 is about the information sent to shareholders about the general stockholder meetings.¹¹³ Originally, Article 52 required stockholders to be sent an announcement of the general stockholders meeting no later than 20 days before the meeting.¹¹⁴ These notifications had to be sent by registered mail or could be published in a printed publication that was specified by the company's charter.¹¹⁵ Under the amendments, all the requirements

104. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 8c.

105. *Id.* art. 2, ¶ 8.

106. *Id.* art. 2, ¶ 10.

107. Federal Law on Joint-Stock Companies, *supra* note 48, art. 48, ¶ 1.

108. *Id.*

109. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 10.

110. *Id.*

111. *Recent Developments in the Russian Securities Market Regulatory Regime*, *supra* note 3, at 15.

112. See Federal Law on Joint-Stock Companies, *supra* note 48.

113. *Id.* art. 52.

114. *Id.* art. 52, ¶ 1.

115. *Id.*

remain the same, however, companies may now publish the notification on any Internet website specified in the charter, which is usually the company's website.¹¹⁶ This change also applies to nominee shareholders.¹¹⁷ Nominee shareholders may also be notified by Internet posting and those shareholders must then inform their depositors.¹¹⁸

Not only shareholders' rights and responsibilities have been changed by the Amendments to the Legal Acts. Article 65 of the Federal Law on Joint-Stock Companies lists the responsibilities of the board of directors.¹¹⁹ A few of the original responsibilities consist of "setting out priority guidelines of the company's development"; using the company's funds; and "acquiring shares, bonds other securities floated by the company" in certain specified cases.¹²⁰ The amendments do not take away any of the board of directors responsibilities.¹²¹ Instead, the amendments add the responsibility of filling out the application for listing the company's shares and other securities.¹²²

The final substantive changes are made to Article 75. Article 75 explains the "Purchase of Stock by a Company at the Demand of Shareholders."¹²³ Paragraph one says a stockholder may demand the company to purchase all of their stock if there is a reorganization of the company that the stockholder voted against or was not present for the voting or if there were changes or amendments made to the charter that the stockholder voted against or did not participate in the voting.¹²⁴ The amendments add a third scenario to the list.¹²⁵ Under the amendments, stockholders may also demand the purchase of all of their company stock if the stockholder voted against or did not vote for a decision to delist shares of the company or equity securities.¹²⁶

116. Amendments to the Legal Acts, *supra* note 41.

117. *Id.* art. 2, ¶ 12b.

118. *Id.*

119. Federal Law on Joint-Stock Companies, *supra* note 48.

120. *Id.* art. 65, ¶ 1.

121. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 14.

122. *Id.*

123. Federal Law on Joint-Stock Companies, *supra* note 48.

124. *Id.* art. 75, ¶ 1.

125. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 15.

126. *Id.*

The last change to Article 75 deals with the buyout price of the shareholder's stock.¹²⁷ Under the original federal law, the buyout price was to be determined by the board of the directors, but the price could not fall below the market price.¹²⁸ The market price was to be determined by an independent appraiser, but the appraiser was not able to take into account any activities of the company that caused the stockholder to exercise their buy out right.¹²⁹ This requirement remains the same for the original two scenarios, which allowed the stockholders to demand purchase of their stock.¹³⁰ However, in regards to the scenario added by the amendments, the delisting of securities, the buyback price is determined differently.¹³¹ For the new scenario, the buyback price must not be lower than the average price.¹³² The average price is to be determined by "the results of organized trading in the six months preceding the date" of the general stockholders meeting where the decision was made to delist the securities.¹³³

IV. THE EFFECTS OF CHANGES ON THE FEDERAL LAW ON JOINT-STOCK COMPANIES

However small some of the changes to the Federal Law to Joint-Stock Companies may seem, these small changes have major impacts, but most importantly, these changes show the direction Russia is looking to take the Russian financial market. Some of the seemingly minor changes to the Federal Law on Joint-Stock Companies allow Russia to be a stronger player in the global financial market.

127. Federal Law on Joint-Stock Companies, *supra* note 41.

128. *Id.*

129. *Id.*

130. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 15.

131. *Id.*

132. *Id.*

133. *Id.*

A. Changes to Stockholders' Rights

The beginning steps of the transition are visible by the significant changes made to stockholders' rights. The first major change for stockholders rights can be seen in Article 32 of the Federal Law of Joint-Stock Companies.¹³⁴ The amendments gave stockholders the right to vote on the listing and delisting of the company's securities.¹³⁵ Originally, this responsibility was not given to one specific body, but the amendments decided to give the responsibility exclusively to shareholders.¹³⁶ But that is not the only way the amendments changed the rights of stockholders. Shareholders with preferred stock also had an increase in rights.¹³⁷ Preferred stockholders are also now able to vote for the listing or delisting of the specific type of stock that the stockholder owns.¹³⁸ Also, stockholders, both ordinary and preferred, are now allowed to demand the company to buy back all of the stocks the shareholder owns if the shareholder voted against or did not have the opportunity to vote for the delisting of stock.¹³⁹ Although these may seem like slight changes, these changes are major steps in Russia increasing the stockholder's rights.

Shareholders' rights are important for several reasons. For shareholders, rights are important because rights give shareholders the ability to have control over their investment. For companies, shareholder rights mean something different. It may seem strange that a government giving up more of the company's power to stockholders would be a benefit for companies or would even be desired by some companies. However, increased shareholders rights may have a positive impact on companies for many reasons. Shareholders can bring three major contributions to a corporation: money, information, and discipline.¹⁴⁰

134. *Id.* arts. 2, 3.

135. Federal Law on Joint-Stock Companies, *supra* note 48, art. 32.

136. Latham & Watkins, *supra* note 3, at 15.

137. Amendments to the Legal Acts, *supra* note 41, arts. 2, 3.

138. *Id.*

139. *Id.* art. 2, ¶ 15.

140. Justin Fox & Jay W. Lorsch, *What Good Are Shareholders?*, HARVARD BUS. REV., July-Aug. 2012, available at http://www.law.harvard.edu/programs/corp_gov/long-term-value-creation-roundtable-2014-materials/what-good-are-shareholders.pdf.

Traditionally, shareholders' main purpose is funding.¹⁴¹ Shareholders are an important source of capital for corporations to be able to invest in the company's growth.¹⁴² However, this is not the only benefit of shareholders. Shareholders can also be a great source of information. Since shareholders have stake in the company, shareholders are willing and able give new and creative ideas to improve the company's operation. But shareholders alone are not the only source of information. The stock market itself can also be a great source of information.¹⁴³ Since the 1960s, scholars have been using the U.S.'s stock market as a way to assess a company's, or even a market's, worth.¹⁴⁴ This concept could easily be applied to stock markets around the world. However, a stock market cannot function without the necessary element of stockholders. Stockholders may be more in tune to the stock market and have more information about what industries and markets the company should invest in or avoid. This benefit is especially true for stockholders who frequently invest in the stock market. The final contribution stockholders may bring is an increase in discipline for the company.¹⁴⁵ Stockholders can provide a mutual goal for everyone in the company to reach for: maximizing stockholders' value.¹⁴⁶ A single, united goal gives everyone in the company something to work towards and also allows the company to maximize in one area, since it can be difficult to maximize in multiple areas.¹⁴⁷ Since there is a benefit to deciding on one goal for the whole team to focus on, maximizing stockholders' value seems like a strong choice since that goal decreases the company's debt and increases the company's equity.¹⁴⁸ However, a united goal is not the only way stockholders can add discipline. Stockholders are an entity that the president or chief executive officer has to answer to. Stockholders may prevent CEOs from making rash decisions that could have a negative

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. Justin Fox & Jay W. Lorsch, *supra* note 140.

146. *Id.*

147. *Id.*

148. *Id.*

impact on the company. Making an individual accountable to others causes that individual to think twice about their decisions because they will have to justify their choices to others, especially if the decision has a negative impact on the company.

Since Russia is a country that has struggled with attracting investment,¹⁴⁹ changes to shareholders' rights is a step in the direction of increasing investment in Russian companies. The increase of stockholders' rights will allow individuals to feel more confident about investing in Russian companies, which will cause an increase in capital from stockholders. The increase in stockholder capital in Russian companies will allow companies to grow and, hopefully, create overall growth for the Russian economy and financial markets. Although Russia struggles with foreign investors' concerns with doing business in Russia because of the lack of government transparency, the country may still be able to gather some capital from foreign investors through the increase in stockholders' rights. With stockholders having more say over the securities of the company, especially over the listing and delisting of securities, foreign investors will be more confident about investing in Russian companies. However, Russia still has a long way to go before foreign investors will feel fully confident in the market enough to begin opening foreign businesses in Russia.

Of course, increase in capital is not the only positive outcome of an increase in stockholders' participation in the Russian market. Bringing more shareholders into the Russian market will also bring the flow of new and different ideas. Russia is attempting to compete in a global market and keeping up with competition cannot be easily done without the flow of new ideas. New ideas will lead to creative business plans and new industry concepts. Specifically, if the new law on stockholders' rights brings an increase in foreign investment, the Russian market will be open to new ideas from all over the globe. These ideas will be imperative for Russian companies competing in the world market. Stockholders' ideas will also allow companies to receive knowledge about what industries are flourishing and what ideas are working and what concepts should be avoided.

149. Ernst & Young, *supra* note 16, at 12.

Finally, there is the increase in discipline. The increase in the number of stockholders could actually have a negative impact on the discipline of the company. Even though the goal of maximizing stockholders' value does not change with the number of stockholders nor does the accountability of the companies' president to the stockholders change, an increase in stockholders does increase the number of voices that want to be heard. More people with different ideas sharing their opinions could cause the company to lose focus. However, this is not a likely outcome. Stockholders do not have say in many day-to-day activities of the company. Stockholders vote on large decisions and make the president of the company accountable. And even if there were a negative impact on the company's discipline or focus because of the increase in the number stockholders, the negative impact would be greatly outweighed by the increase in capital and the flow of new ideas.

The increase in stockholders' rights goes beyond just increasing the responsibilities of the stockholders. The amendments give stockholders more of an opportunity to stand by their beliefs. The change made to Article 75 allows stockholders to demand the company to buy their stock if they voted against the delisting of securities or were not able to vote.¹⁵⁰ Although this may seem like a minor change considering stockholders already had the right in two other scenarios,¹⁵¹ the ability to have strong say in the delisting of securities continue to give confidence to future investors in Russian companies. Increased confidence could lead to an increase in shareholders' investment.

Another important addition to Article 75 is the change of how the buyback price is determined. Originally, the power of determining the price for the buying back of stock was in the hands of the board of directors.¹⁵² The only rule the board of directors had to follow was the price could not fall below the market price.¹⁵³ Now the power to determine the buyback price had been taken out of the hands of the board of directors.¹⁵⁴ Today, the buyback price is determined by the average

150. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 15.

151. Federal Law on Joint-Stock Companies, *supra* note 48, art. 75, ¶ 1.

152. *Id.* art. 75, ¶ 3.

153. *Id.*

154. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 15.

price, which is decided by the price of the last six months of organized trading.¹⁵⁵ The benefit of this change is obvious. The decision of the buyback price is taken out of the hands of the people who have the most interest in charging a certain price for the buy back.¹⁵⁶ This seemingly small change increases the transparency of the company and is another way stockholders find confidence in their investments.

B. New Dividend Payment Rules

However, an increase in stockholders' rights is not the only way the Amendment to the Legal Acts may increase capital from Stockholders. Stockholders will also be able to find increased confidence on their return on investment by the new dividend payment rules implemented by the Amendments to the Legal Acts. Stockholders have not only gained stability in increased responsibility and increased rights when it comes to decisions making, but have also gained stability in the way dividends are received. The first change to dividend payments is in Article 42.¹⁵⁷ Under the amendments, the record date for compiling a list of stockholders who are entitled to dividends no longer has to be the same record date as the date used for the general meeting.¹⁵⁸ Instead, the record date can be decided at the general meeting by the shareholder, but must be within 20 days of the general meeting.¹⁵⁹ This change has a positive affect for multiple reasons. First, the stockholders have the added responsibility of determining the record date. Although a small task, the added responsibility gives shareholders the feeling of having direct control over their investment. Second, the ability to have input on the time frame for dividend payments gives shareholders added confidence in their investment. Though shareholders do not determine the actual payment date, shareholders do have a say in the process. This input allows shareholders to feel confident they will see return on their investment

155. *Id.*

156. *Id.*

157. *Id.* art. 2, ¶ 8c.

158. Latham & Watkins, *supra* note 3, at 9; Federal Law on Joint-Stock Companies, *supra* note 48, art. 42.

159. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 8c.

because they will make it happen. Finally, an increase in confidence and feeling of control could lead to an influx of shareholders and with them all of the benefits, including capital.

The “cascade system” is another change to the dividend payment system that may have a positive impact on shareholders’ perspective on investing in Russian companies.¹⁶⁰ Originally, dividends only had to be paid within 60 days of record date, no matter the situation.¹⁶¹ Now, if the shareholder is operating through a nominal holder, the nominal holder will be paid within 10 business days and other specified recipients will be paid within 25 business days.¹⁶² This new “cascade system” encourages the use of nominal holders by making those who use nominal holders a priority in the dividend payment system.

Nominal holders, or in some places known as a nominee shareholder, exercise the voting rights and deal with the shares according to the instructions of the true owner.¹⁶³ The main reason for people to use nominal holders is to remain anonymous, since the only name that appears in public is the name of the nominal holder.¹⁶⁴ Nominal holders are generally used for offshore corporations.¹⁶⁵ However, there are numerous commercial reasons for using nominal holders, including companies investing in suppliers of competitors when the companies do not want their competitors knowing of the investment or administrative benefits for having numerous shareholdings.¹⁶⁶ Russia may want to encourage the use of nominal holders in order to encourage large companies to invest. Encouraging the use of nominal holders could open

160. Latham & Watkins, *supra* note 3, at 4.

161. Federal Law on Joint-Stock Companies, *supra* note 48, art. 42, ¶ 4.

162. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 8g.

163. JORDANS,

<http://www.jordans.co.uk/company-secretarial/nominee-shareholder-services.html> (lasted visited Feb. 5, 2014).

164. SMALL BUSINESS SEARCH,

<http://www.small-business-search.com/a/protecting-privacy-with-nominee-shareholder-service/> (lasted visited Feb. 5, 2014).

165. *The Nominee Shareholder or Trustee: An Unobtrusive Way to Control an Offshore Company*, TAX HAVEN GUIDE, <http://taxhavensguide.com/nominee-shareholder.php> (lasted visited Feb. 5 2014).

166. *Id.*

the doors to foreign companies investing in Russian companies that work in different industries or sectors or investing in Russian companies that may supply to competitors all over the world. Whatever the reason, allowing quick dividend payments for nominal shareholders will encourage large companies to invest in Russian companies because they will be allowed to do so anonymously. This reason also goes toward wealthy private individuals. Private individuals may want their investments in companies to remain anonymous because they invest in certain companies to diversify their financial portfolio or the individual is an employee or owner of a competing company or industry. For example, an investor who works for, or is strongly affiliated with, an oil and gas company may not want information about their investment in an alternative resource company public. Foreign investment is definitely lacking in the Russian market and this simple change to the dividend payment system could be the beginning steps to encouraging the needed investment and bringing growth to Russian markets.

C. Changes to the Administrative Process

Amendments to the Legal Acts made multiple changes to the administrative requirements for joint-stock companies. First, the amendments change the requirements for the formation document for a joint-stock company.¹⁶⁷ Although the amendments have not changed what actually constitutes as a formation document, the amendments do allow a contract to operate as a temporary formation document until the shares are distributed among founding members.¹⁶⁸ This small change allows for some flexibility in the establishment process. Requiring a strong, legally binding document before the founding members are assured of their investment could lead to discouragement for people to start new companies. The knowledge that people will be able to secure their shares while the company is still in the beginning steps will make people feel there is a decreased risk. Some of the concern is alleviated by

167. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 1.

168. *Id.*

the fact that a person's percentage of ownership is established, so changes in the founding document cannot take away their investment.

The amendments also have an effect on what is required for the issuance of additional stocks.¹⁶⁹ Now, additional stocks must contain the number of shares, the price or a way to determine the price, and a form of payment.¹⁷⁰ The requirements are also applicable to shares that are based on flotation pricing.¹⁷¹ These new requirements allow stockholders to be informed about the additional stocks they are paying for. The benefits of this requirement can be twofold. First, the requirements prevent the company from being able to take advantage of shareholders. Information given to the shareholders when they receive their additional stocks prevents the company from either over charging or improperly paying dividends. Second, the requirements allow stockholders to hold the company responsible for charging the proper price for additional stocks and properly paying dividends. Like many of the changes brought by the amendments, this change increases the confidence of the stockholders. Stockholders will not feel as if they have to rely on the company to follow the appropriate procedure because stockholders now have the information to make sure the company acts appropriately. Now the company can be held accountable for their actions regarding the selling and paying of dividends because the correct requirements will be given to the stockholders up front. This new requirement will cut down on company fraud, which is a constant concern of investors in every country.

The amendments also make important changes to the issuing of bonds for joint-stock companies. First, bonds may be redeemed with cash or other assets.¹⁷² Second, decisions regarding bonds no longer have to be left up to the board of directors.¹⁷³ Finally, companies "may issue bonds after full payment of capital."¹⁷⁴ Though these changes may seem to cover the board when it comes to changes affecting bonds, the ultimate

169. *Id.* art. 2, ¶ 2.

170. *Id.* art. 2, ¶ 2.

171. *Id.* art. 2, ¶ 5.

172. *Id.* art. 2, ¶ 4.

173. *Id.*

174. *Id.*

outcome of the changes are the same. The main effect of these changes is an increase in flexibility. Companies and stockholders now have more options when it comes to bonds. One of the most important changes that the amendments brought to bonds was the option for decisions to be made by another entity other than the board of directors. This power might shift to the shareholders at the general stockholders' meeting. This will continue to build the confidence of shareholders and increase shareholder capital because stockholders will feel as if they have control of their investment. In addition, the ability to redeem bonds by cash or other assets, and also adding another situation where companies may issue bonds, creates greater capital flexibility in the company. It is always important for companies to be able to respond to an ever-changing market and having additional flow of capital allows companies to make quick decisions.

Changes have also been made to the time frame for pre-emptive rights under Article 41 of The Federal Law on Joint-Stock Companies. Under the new time periods for exercising pre-emptive rights, the pre-emptive rights exercise period can now be reduced from 20 days to 8 days, in some cases, and this time period includes the time period for international offerings.¹⁷⁵ Although this may seem like a minor change, this slight shift in the time period actually brings Russia into the same offering and settlement procedure as international offering tranches.¹⁷⁶ With Russia being on the same time frame as most major international financial hubs, Russia will be able to be a player in the offerings market by providing simultaneous offerings. Russian joint-stock companies' new ability to make offerings at the same time as most other international offerings will put Russian companies in the minds of foreign investors. This is just one more, small step to increasing foreign investment in Russian companies.

Certain changes to The Federal Law on Joint-Stock Companies also demonstrate Russia taking steps to ensure their companies are keeping up with other international companies in the new technology age. One of these changes is the change made to Article 52. This change allows

175. Latham & Watkins, *supra* note 3, at 8-9.

176. *Id.* at 9.

companies to publish notification of general stockholders meetings on their websites or any other designated websites.¹⁷⁷ Although this change does not have any major impact on the Russian market, other than allowing stockholders to have easy access to important information, the change does demonstrate Russia's acknowledgement of the changing, high tech times and the country's willingness to adapt. This change may also have the added benefit of increasing information to stockholders and making stockholders feel more involved in the company, since they will have easier access to information. A stockholder who feels important and involved may continue to invest in the company or even encourage others to invest in the company.

CONCLUSION

Russia has continued to make steps towards changing the way the world views Russia in the global business world, including joining the World Trade Organization. The passing of The Federal Law on Amendments to the Legal Act of Russian Federation and Cancellation of Certain Legal Acts is another step in changing the world's perspective. Although many of the changes stemming from the amendments may seem minor, these changes may very well be the beginning steps of Russia trying to become a major player in the international finance game. Even though many of the changes affect mostly Russian issuers and companies, these changes are the beginning signs of a government slowly making the appropriate adjustments to encourage investment and growth. An important element to encouraging investment and growth in Russia will be an increase in shareholder capital. The amendments have a strong effect on this requirement by building stockholder confidence through increasing shareholders rights and changing dividend payment schedule in favor of shareholders. Though Russia may have a long way to go before any Russian cities reach the level of London, or even Warsaw, the Amendments to the Legal Acts is a sign that Russia is willing and able to make the changes necessary to bring the country into the minds of international investors and businesses.

177. Amendments to the Legal Acts, *supra* note 41, art. 2, ¶ 12a.

