



**CENTRAL BANK OF RUSSIA ESTABLISHED THE THRESHOLD VALUES FOR
INTERESTED PARTY TRANSACTIONS**



On 13 May 2017, the Direction of the Central Bank of the Russian Federation No. 4335-U dated 31 March 2017 came into force that establishes the threshold values for transactions of joint stock companies and limited liability companies, in the event of excess of which the transactions the price or book value of the property being the subject matter of which does not exceed 0.1% of the book value of the companies' assets may be deemed interested party transactions.

The threshold values of transactions are differentiated depending on the book value of the companies' assets according to their accounting (financial) statements as of the last reporting date as follows:

- for companies where the assets book value is not more than 25 bln roubles - 20 mln roubles;
- for companies where the assets book value is from 25 bln roubles to 100 bln roubles - 50 mln roubles;
- for companies where the assets book value is from 100 bln roubles to 1 trn roubles - 500 mln roubles;
- for companies where the assets book value is from 1 trn roubles to 2 trn roubles - 1 mln roubles;
- for companies where the assets book value is more than 2 trn roubles - 2 bln roubles.

These thresholds are applicable from 13 May 2017 (the effective date of the Direction No. 4335-U).

From 1 January 2017 the new rules apply to the interested party transactions of joint stock companies (JSC) and limited liability companies (LLC).

Such transactions do not require, as it was before, an obligatory prior approval by the company's management bodies. However, upon demand of the sole executive body, a member of the collegial executive body of the company, a member of the board of directors (supervisory board) of the company or a shareholder (shareholders) possessing not less than 1% of the voting shares (in JSC)/participants (participant) possessing interests in total not less than 1% of the company's charter capital (in LLC), an interested party transaction can require prior approval from the board of directors (supervisory board) of the company or general meeting shareholders/participants.

A company shall report on the interested party transaction to members of the board of directors and members of the collegial executive body, or if all members of the board of directors are interested in the transaction, or if formation of the board is not provided for by law or by the charter of the company - to shareholders/participants according to the procedure provided for notification of the general meeting of shareholders/participants (another procedure can be provided for by the charter of the company).

A member of the board of directors, a sole executive body, a member of the collegial executive body of the company, or a controlling person of the company, or a person entitled to give to the company binding instructions, who are considered interested in the transaction shall notify the company of:

- legal entities in respect of which they, their spouses, parents, children, brothers, sisters and half-brothers and half-sisters, adopters and adopted children and(or) organisations under their control are control persons or have the right to give binding instructions or hold posts;
- transactions or contemplated transactions in which they can be recognised as interested parties.

Such notices shall be sent within 2 months from the day when the relevant persons learned or should have learned about the circumstances, under which they can be recognised as persons interested in execution of the transaction by the company.

The decision on approval of an interested party transaction is taken by the general meeting of shareholders/participants by a majority vote of all shareholders who are not interested in the transaction - holders of voting shares of the company/participants of the company taking part in voting, if the subject of the transaction or several connected transactions is the property which value under accounting data (offer price of the acquired property) is 10 or more percent of the book value of the company's assets according to the accounting (financial) statements as of the latest reporting date¹.

In other cases, the decision to approve an interested-party transaction in a non-public JSC and LLC is generally taken by the board of directors of the company by a majority votes of the directors not interested in the transaction (unless the company's charter provides for a larger number of votes). Additional requirements are established for the members of the board of directors by the Federal Law No. 208-FZ dated 26 December 1995 'On Joint Stock Companies' (hereinafter - the 'JSC Law'), as amended, for taking the decision on approval of an interested party transaction in a public JSC. Furthermore, additional criteria to be met by the members of the board of directors may be specified by the company's charter.

Besides, the charter of a non-public company may establish a different procedure for approval of interested party transactions, or provide that the rules on interested party transactions of the JSC Law or the Federal Law No. 14-FZ dated 8 February 1998 'On Limited Liability Companies', respectively, are not applicable to the company.

Where a company did not make appropriate changes to the charter and thereat any transaction that meets the criteria of an interested party transaction was committed to the detriment of the company's interests while it is proved that the other party to the transaction knew or should have known that the transaction was an interested party transaction for the company, and(or) that the transaction is not duly approved, the transaction may be rendered invalid upon the claim of the company, a member of the board of directors or shareholder(s)/participant(s) possessing in total not less than 1% of the voting shares/1% of the total number of votes of the participants of the company, respectively.

¹ In joint stock companies also:

if the transaction or several interconnected transactions are the sale of ordinary shares constituting more than 2% of ordinary shares previously placed by the company and ordinary shares, into which the previously placed securities can be converted, unless smaller amount of shares is provided for by the company's charter; or

if the transaction or several interconnected transactions are the sale of preferred shares constituting more than 2% of shares previously placed by the company and shares, into which the previously placed securities can be converted, unless the charter of the company provides for a smaller amount of shares.

Best Regards,

GRATA International Law Firm (Moscow)

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What we do:

- Development of charters and internal documents regulating the activities of controlling authorities of legal entities;
- Legal support in amending charters of legal entities;
- Advising on choosing the optimal form of incorporation for doing business in Russia;
- Legal support in establishing legal entities (including joint ventures), branches and representative offices of foreign legal entities;
- Due diligence of legal entities;
- Complex support of transactions for sale and purchase of shares/interests in Russian legal entities, including transaction structuring, drafting sale-and-purchase agreements, corporate contracts (shareholders' agreements) and other transaction documents, prior coordination with the antitrust authority.

Contacts:

Yana Dianova

Director of the Corporate and Commercial Law Department, GRATA International (Moscow)

Tel: +7 (495) 660 11 84

E.: Ydianova@gratanet.com