

# M&A: THE TAKEOVERS REGULATION.

The Federal Law No.7-FZ of January 5, 2006 lays down, for the first time, minimum Russian Federation rules concerning the regulation of takeovers of companies whose shares can be traded freely and which can have unlimited number of shareholders, so called 'open joint-stock companies' (OJSC). Due to certain historical reasons OJSC is the common form of privatised companies and a frequent target for takeover.

The law contains basic rules about takeover bids such as, for instance, when a takeover bid can or must be made, the price that must be paid to shareholders, the contents of bid documents prepared by a takeover bidder, requirements to inform employees, the time period a takeover bid will be open for and disclosure requirements for the bidder and affiliated persons. At the same time the law contains provisions restricting actions that might be taken to prevent a takeover by a target company or its board of directors. Finally, there are rules dealing with matters related to the minority shareholders remaining after a successful takeover known as "squeeze-out" and "sell-out".

The law, generally, is in line with the EU Directive on Takeover Bids. However, there are some differences. The most significant is that the law contains provisions for squeeze-out and sell-out procedures not linked to takeover bids.

The law does not apply to takeover bids for securities issued by the investment companies.

## **A voluntary bid.**

A takeover bidder (or a group of bidders) intending to acquire 30% of the total number of voting (ordinary or privileged) shares in an OJSC (taking into account the bidder's own securities and of its affiliates) is entitled to make a public bid to the company's shareholders to buy their shares, 'a voluntary bid'. The bid can also be made in regard to the securities convertible into shares.

The holders of shares must be informed of the terms of a bid by means of an offer document submitted to the target company. An offer document must contain information about the number of the company's securities owned by the bidder and its affiliates; type, category and number of securities the bidder intends to acquire; purchase price or method of its calculation; terms of payment for the shares (the shares must be paid for in cash. The holders, however, can be offered to choose either to be paid by securities or by cash); period of time for acceptance (it can not be less than 70 days and longer than 90 days from the bid).

If the bidder is a legal entity the document must also contain information about every shareholder controlling 20% or more of the company's equity, and each shareholder controlling 10% or more of the equity and located in 'a tax haven' (a jurisdiction granting preferential tax treatment and/or imposing minimal disclosure requirements), as well as information on beneficiaries of offshore structures. The obligation of the bidder must be secured by an irrevocable bank guarantee.

The board of directors of the target company must pass the offer document on to the shareholders together with a document setting out the board's opinion about the bid within 15 days from the receipt of the offer document.

After an offer document is submitted to the target company the powers of the management is limited to prevent them from taking certain actions to frustrate the bid without the approval of shareholders. From this moment and until 20 days after expiry of the bid the following matters can only be resolved by the general meeting of shareholders: (i) increase of the charter capital by issuing additional shares; (ii) placement of securities convertible to shares; (iii) approval of a transaction or several interrelated transactions associated with the purchase, sale or possible sale of property worth more than 10% of the value of the company's assets; (iv) approval of transactions in which the board may have an interest; (v) acquisition of own shares by the company; (vi) increase of remuneration of the company's executives or modification of their employment termination conditions. It should be noted that according to the law on joint stock companies certain powers such as amending the company's articles of association, mergers and acquisitions can only be resolved by the general meeting of shareholder and can not be delegated to the board.

However, any person can submit 'a competing bid'. The bid must be made at least 25 days before the end of the period for acceptance of the previous offer. The number of shares offered for purchase in a competing bid must be no less than the number of shares that could be acquired under the earlier bid.

### **A mandatory bid.**

Any person which acquired blocks of shares exceeding 30% (50% or 75%) in a OJSC must launch an offer to acquire the remaining shares of the company, 'a mandatory bid', within 35 days from the day when the shares have been registered in his name. From the day of

purchase and until the launch of mandatory bid the new shareholder has voting rights with only 30% (50% or 70% where relevant) of shares.

The price specified in a mandatory bid may not be less than: (i) weighted average price of the shares as quoted by stock exchanges for a period of six months prior to the submission of an offer document to the Federal Service For Financial Markets ("FSFM") (see below); or if the securities have not been traded on stock exchanges for at least six months the price must be the maximum of: (ii) the value determined by an independent appraiser; and (iii) the highest price paid for the same securities by the offeror or affiliated persons, over a period of six months before the bid.

### **The right of squeeze-out**

A bidder who, following a bid, acquired more than 95% of a company's shares is entitled to purchase the remaining shares in the company and securities convertible into shares at a fair price. In order to exercise this right, the majority shareholder must submit a relevant request within six months from the expiry of the voluntary or mandatory bid (provided that the mandatory bid resulted in the purchase of not less than 10% of the company's shares). The content of the request for sale is similar to the content of the voluntary bid.

### **The right of sell-out**

Within 35 days from the acquisition of more than 95% of the shares a bidder must notify the minority shareholders about their right to sell their shares. The minority shareholders may demand purchase of their shares within six months from the day of notification. The minimal price that can be offered for shares as a result of squeeze-out or sell-out procedures must be determined in the same manner as the minimal price for a mandatory bid. Additionally, the price can not be less than the price paid for securities acquired previously based on a voluntary or mandatory bid or the price that the purchaser or its affiliates paid or agreed to pay for the shares under the relevant voluntary or mandatory bid.

### **Squeeze-out and sell-out procedures not linked to takeover bids**

The article 7 of the new law contains provisions with respect to shareholders owning more than 95% of a company's shares as of 1 July 2006. Such shareholders must buy out the minority shareholders' shares upon their demand. On the other hand shareholders owning more than 95% of shares as of 1 July 2006 are entitled to demand that the minority shareholders to sell their shares. The rules also apply to shareholders owning more than 85% of company's shares as of 1 July 2006 who as a result of a voluntary bid increases the percentage of shares owned to more than 95%.

The majority shareholder must notify the minority shareholders about their right to sell-out within 35 days since article 7 coming into force. Minority shareholders can demand purchase of their shares within six months from the day of notification, or if notification is not given within one year from the day when article 7 comes into force. On the other hand the majority shareholder may demand that the minority shareholders sell their shares within one year from the effective date of article 7. In such event the sell-out provisions do not apply.

The price for the shares bought may not be less than (i) weighted average price of securities traded on stock exchanges over the period of six months prior to the submission of the demand that the shares be sold; and (ii) price determined by an independent appraiser and confirmed by a self-regulating organization of appraisers; and (iii) the maximum price paid or offered by the majority shareholder or its affiliates for the shares within six months prior to the dispatch of the demand that the shares be sold.

### **Supervisory authority**

Documents of offer concerning voluntary or mandatory bids, a purchase notification and a request for sale with respect to securities traded on organized stock exchanges must be submitted for review to the Federal Service for Financial Markets (FSFM). Within a 15 day period, FSFM may order the bidder to make corrections to the submitted documents to bring them in line with the law. The documents can be submitted to the target company upon expiry of 15 day period if FSFM does not order to make corrections.

The voluntary and obligatory offers concerning shares not traded on stock exchanges must be submitted to FSFM by the date of their submission to the company.

### **Coming into force**

The law comes into force on the 1<sup>st</sup> of July 2006, under exception of article 7 which becomes the law on the 10<sup>th</sup> of August, 2006.

### **August, 2006**