

OBTAINING INFORMATION ON BENEFICIAL OWNERSHIP AND CONTROL IN THE RUSSIAN FEDERATION^{1*}

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I. UP-FRONT DISCLOSURE SYSTEM

EFFECTIVENESS OF SYSTEMS

1. Possibility of Obtaining and Maintaining of Information

Russian legislation stipulates for provision of information connected with legal entities to the state authorities in the following cases:

- 1) in connection with maintenance of the unified state register of legal entities – to the Federal Tax Service (FNS);
- 2) in the course of the state registration of securities' issues and disclosure of information by issuers – to the Federal Service for Financial Markets (FSFR), the Bank of Russia;
- 3) when open joint stock companies disclose information on their affiliated entities– to the FSFR, the Bank of Russia;
- 4) in the course of disclosure of information on acquisition of the major stock – to the FSFR;
- 5) while carrying out actions subject to the antimonopoly control – to the Federal Antimonopoly Service (FAS);
- 6) while counteracting to legalization (laundering) of criminally gained incomes and financing of terrorism – to the Federal Financial Monitoring Service (FSFM).

Below these cases will be considered.

1) Obtaining of information and documents in connection with maintenance of the unified state register of legal entities

Under the Russian law any legal entity shall be deemed established from the moment of its state registration, i.e. from the moment of its entry into the unified state register of legal entities (register of legal entities).²

² Clause 2 Article 51 of the RF Civil Code.

For the purposes of the state registration of a newly established legal entity (both through foundation and reorganization) the following documents have to be submitted to the state body performing state registration of legal entities, in particular³:

- Application for the state registration;
- Foundation documents of the legal entity to be established (originals or notarized copies); as well as
- Extract from the register of foreign legal entities of the relevant state of origin or other similar legal proof of legal status of the foreign legal entity acting as the founder.⁴

The application for the state registration shall contain the following information on the founders (participants) of the new legal entity:⁵

for legal entities:

- full name;
- legal form;
- share in the charter capital of the new legal entity;
- state of registration (incorporation) and location in the state of registration (incorporation), registration date, registration number, name of the registration authority (if the founder (participant) is the foreign legal entity);

for individuals:

- full name;
- taxpayer's identification number (INN), if any;
- share in the charter capital of the new legal entity;
- details of the document certifying identity;
- address of the place of residence in the Russian Federation (if the founder (participant) of the new legal entity is the Russian Federation citizen permanently residing on its territory);
- address of the place of staying in the Russian Federation (if the founder (participant) of the new legal entity is the Russian Federation or foreign citizen or stateless person permanently residing outside of the Russian Federation);
- state and address of the place of residence (if the founder (participant) of the new legal entity is the foreign citizen or stateless person permanently residing outside of the Russian Federation).

The state register of legal entities shall include information on the founders (participants) of legal entities (with respect to joint stock companies – also information on keepers of their shareholders' registers).⁶ Pursuant to the law the legal entities shall notify of changes in the register, including changes in the structure of the founders (participants).⁷ The latter requirement shall not apply to joint stock companies pursuant to FNS clarifications.

³ Under Article 2 of the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs" and clause 1 of the Russian Federation Government Resolution of 17.05.2002 No. 319 "On the Authorized Federal Executive Body Performing the State Registration of Legal Entities" the state registration of legal entities is performed by tax authorities.

⁴ Articles 12 and 14 of the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs".

⁵ See the Russian Federation Government Resolution of 19.06.2002 No. 439 "On Approval of the Forms and Requirements for Documents Used in the Course of the State Registration of Legal Entities as well as Individuals in the Capacity of Individual Entrepreneurs".

⁶ Clause 1 Article 2 of the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs".

⁷ Clause 2 Article 17 of the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs".

Moreover, foundation documents of certain legal entities, in particular, the foundation agreement which is the foundation document of the unlimited partnership,⁸ special partnership⁹ shall include information on their founders (participants) including information on unlimited partners and depositors, therefore, change of the structure of their founders (participants) requires making of the necessary modifications to their foundation documents. Such modifications to the foundation documents shall be registered by the state body performing the state registration of legal entities.¹⁰

A special note shall be made with respect to participants of the business partnerships and limited (additional) liability companies. Under the Civil Code and other laws¹¹ the state registration of changes to the foundation documents shall be binding for third parties. Therefore, the law requiring to list the participants of the business partnerships and limited (additional) liability companies in the foundation documents nevertheless does not connect the transfer of equity share with changes in such agreements and with their state registration accordingly. Given that the actual structure of the participants of the business partnerships and limited (additional) liability companies may be different from the structure stated in the foundation agreement and in the register of legal entities.

Besides the information on founders (participants) of the legal entity the register of legal entities shall contain the following information:

Address (location) of the permanently acting executive body of the legal entity (in case of absence of the permanently acting executive body of the legal entity – other body or person having the right to act on behalf of the legal entity without a power of attorney), at which the communication with the legal entity shall be performed;

Full name and title of the person having the right to act on behalf of the legal entity without a power of attorney as well as passport details of such person or details of documents certifying identity under the legislation of the Russian Federation.

The register of legal entities is publicly available¹² and therefore can be accessed by all persons, including not only the FNS, which keeps it, but also by other state authorities. Information which is contained in the register of legal entities shall be provided within 5 days from the moment when the FNS receives the relevant request¹³.

Therefore, one may conclude that the register of legal entities is the source of the information:

- 1) on founders of legal entities;
- 2) on a sole executive body of a legal entity.

The register of legal entities is not the source of information:

⁸ Article 70 of the RF Civil Code.

⁹ Article 83 of the RF Civil Code.

¹⁰ Clause 3 Article 52 of the RF Civil Code and clause 1 Article 17 of the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs".

¹¹ Clause 3 Article 52 of the RF Civil Code, clause 5 Article 5, Clause .6 Article 21 of the Federal Law "On Limited Liability Companies".

¹² Clause 1 Article 6 of the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs".

¹³ Article 14.25 of the Code on Administrative Offences even provides for administrative liability in the form of fine for illegal refusal to provide or untimely provision of information and (or) documents being contained in the register of legal entities or other documents required under legislation on the state registration of legal entities and individual entrepreneurs to persons interested in obtaining of such information and (or) documents.

- 1) on shareholders of joint stock companies (except of shareholders acting as founders of joint stock companies). The register is the source of information on the keeper of the shareholder's register, i.e. on whether the shareholders' register is kept by the company itself or by professional registrar and which particular registrar keeps the register. Therefore, the structure of the shareholders of a joint stock company can be found out if a state body asks the keeper of register (law enforcement bodies and the FSFR have such powers)¹⁴;
- 2) on participants of the business partnerships and limited (additional) liability companies (except of participants being the founders of such legal entities). As noted above, Russian legislation does not condition transfer of shares in the business partnerships and limited (additional) liability companies by making entries into the foundation agreement and the register of legal entities. Moreover, a business partnership or company can even be unaware of the effectuated transfer of shares, therefore they will be unable to notify the FSFR¹⁵. Given that, the information on participants of business partnerships and companies available from the register can hardly be considered as reliable;
- 3) on persons acting on behalf of legal entities on the basis of the power of attorney;
- 4) on beneficiary owners of the founders (participants) of legal entities;
- 5) on entities having established control over the legal entity in the result of agreement with such legal entity itself;
- 6) on persons having established control over the legal entity in the result of agreement with other participants or other persons.

The documents containing information from the register of legal entities shall be stored in the FNS. Also the information and documents (foundation documents) being stored in the FNS can be accessed by all state bodies.

2) Obtaining of information and documents in the course of the state registration of securities' issues and disclosure of information by issuers

Below is the description of the regimes of provision of information, which are obligatory for the legal entities planning to place or having placed securities. In general under the Russian legislation there are two main regimes of provision of information by issuers. The first regime is for the issuers whose securities are not publicly placed and circulated while the second one is for the issuers whose securities are publicly placed and (or) circulated. The first issuers have to provide information at registration of the securities' issue to the state body performing the state registration of the securities' issue and afterwards are not obliged to disclose any information. The latter shall disclose information at registration of the securities' issue and afterwards shall disclose information periodically (in the form of quarterly reports) and promptly (in the form of notices on material facts).

¹⁴ On the system of registration of rights to securities please see Section 2.

¹⁵ At the present time Mineconomrazvitia of Russia has prepared the amendments to the Federal Law "On Limited Liability Companies" stipulating that the equity shares in limited (additional) liability companies are transferred provided the relevant changes to the register of legal entities are made.

2.1) State registration of the securities' issues

Under Russian legislation each issue of emissive securities (including shares and bonds) shall be subject to the state registration¹⁶.

In order to register an issue of emissive securities the issuer shall submit to the FSFR or the Bank of Russia¹⁷ a questionnaire, which has to contain information on the shareholders (participants) of such issuer owning not less than 2% of the charter capital or not less than 2% of common shares¹⁸. Such information includes, in particular:

if the shareholder (participant) is an individual – full name, name of the Russian Federation constituent member, city (settlement, village, inhabited locality) where such person resides, share of such person in the issuer's charter capital, and in case the issuer has the legal form of a joint stock company then also the portion of the issuer's common shares owned by such person;

if the shareholder (participant) is a joint stock company – company name, number of the state registration certificate and the state registration date, taxpayer's identification number (INN), share of such entity in the issuer's charter capital, and in case the issuer has the legal form of a joint stock company then also the portion of the issuer's common shares owned by such shareholder;

if the shareholder (participant) has a legal form different from a joint stock company – company name, number of the state registration certificate and the state registration date, taxpayer's identification number (INN), share of such entity in the issuer's charter capital, and in case the issuer has the legal form of a joint stock company then also the portion of the issuer's common shares owned by such shareholder;

The issuer's questionnaire shall be submitted to the registration authority at each registration of an issue (additional issue) of emissive securities. Information on the shareholders (participants) shall be stated as of the date of approval of the resolution on issue (additional issue) of securities.

2.2) Registration of the securities' prospectus

Registration and disclosure of the securities' prospectus under Russian legislation is the condition of the securities' public placement and circulation. Registration of prospectus is obligatory in case of flotation of emissive securities through open subscription or closed subscription among more than 500 entities, - in this case registration of prospectus is performed simultaneously with registration of the securities' prospectus.¹⁹ If registration of the securities' issue is not accompanied with registration of prospectus (for example, in case of closed subscription), the prospectus can be registered by the issuer on a later stage in order to ensure possibility of public flotation of the already issued securities (for example, for listing of securities)²⁰.

¹⁶ Clause 1 Article 19 of the Federal Law "On the Securities Market".

¹⁷ The registration authority is the Federal Service for the Financial Markets and its territorial bodies (Clause 1 Article 20 of the Federal Law "On the Securities Market"), while the Central Bank of Russian Federation is responsible for the securities' issues of credit organizations (Clause 10 Article 4 of the Federal Law "On the Central Bank of Russian Federation (the Bank of Russia)").

¹⁸ Clause 2 Article 42 of the Federal Law "On the Securities Market" and the Standards of the Securities Issue and Registration of the Securities Prospectuses approved by the Russian FCSM Resolution of 18.06.2003 No. 03-30/ps (Annex 2).

¹⁹ Clause 2 Article 19 of the Federal Law "On the Securities Market".

²⁰ Clause 3 Article 19 of the Federal Law "On the Securities Market".

The requirements for disclosure of information on the participants in prospectus are less strict, on the one hand, than the requirements for information on the participants in the issuer's questionnaire (since it is necessary to disclose information on owners of 5% but not 2% of shares), while on the other hand, they are more strict (since it is necessary to disclose information not only on major participants of the issuer but also on major participants of such participants).

The securities' prospectus shall contain the following information:

1) information on the issuer's participants (shareholders) owning not less than 5% of its charter capital or not less than 5% of its common shares:²¹

- full and abbreviated names (for legal entities), full name (for individuals), INN (if any);
- location address (for legal entities);
- size of the shareholder's stock in the charter capital and amount of the owned common shares of the joint stock company.

If the relevant parts of shares are registered in the shareholders register in the name of the nominal holder, such fact has to be reflected accordingly.

2) information on the participants (shareholders) of the issuer's participants owning not less than 20 percent of the charter (authorized) capital (share fund) or not less than 20 percent of their common shares:

- full and abbreviated names (for legal entities), full name (for individuals), taxpayer's individual number (INN), if any;
- location (for legal entities);
- share in the charter (authorized) capital (share fund) of the legal entity as well as share owned by the holder of common shares of the issuer's participant (shareholder);
- share in the issuer's charter capital and if the issuer is a joint stock company – also a stock of common shares of such issuer owned by it.

A serious drawback of disclosure of the above-mentioned information in the prospectus is that the issuer is not required to identify the actual shareholders in case a nominal holder is listed in the shareholders register. In that case the issuer can just indicate that 5 and more percent of shares are registered in the name of the nominal holder.

In order to compensate this drawback the legal acts require that the prospectus indicate the structure and participation volume of the shareholders (participants) of the legal entity – issuer owning not less than 5 percent of its charter (authorized) capital (share fund) or not less than 5 percent of its common shares according to the information from the lists of persons entitled to participate in every general meeting of shareholders (participants) of the issuer, which has been held during the last 5 years.²²

This information can be useful as it allows identifying the persons who have had voting rights at the past general meetings of the issuer. For these purposes, pursuant to the Russian law, special

²¹ Clause 8 Article 22 and Article 30 of the Federal Law "On the Securities Market" and the Regulations on Information Disclosure by Issuers of Emissive Securities approved by the Russian FCSM Resolution of 02.07.2003 No. 03-32/ps (Annexes 4 and 11).

²² Ibid.

lists are compiled, while the nominal holders shall submit information on those persons in the interests of which they perform their functions. Such information disclosure requirement aims at retrospective identification of the actual shareholders, which have been hiding behind the nominal holders.

The following information has to be disclosed on the entities being listed as persons entitled to participate in every general meeting of shareholders (participants):

- full and abbreviated names (for legal entities) or full name (for individuals),;
- share in the issuer's charter capital and if the issuer is a joint stock company – also a stock of common shares of such issuer owned by it.

Again one may say that the drawback of such information is that the latter is not actual. Moreover, taking into account the approach existing in practice, pursuant to which the nominal holders are not obliged but have the right upon their clients' approval to provide such information for compilation of lists, the information on the actual shareholders – clients of nominal holders, being disclosed in the prospectus, is also incomplete.

The FSFR and the Bank of Russia consider information disclosed in the securities' prospectus and within 3 days after the state registration the securities' prospectus shall be published on the Internet. The securities' prospectus shall remain available on the Internet for not less than 6 months from the date when the registered report on the results of issue (additional issue) of securities has been placed on the Internet.²³

After the registration it become publicly available, i.e. it can be accessed by all persons including the state authorities. Moreover, it is forwarded to the body which has registered the issue.

Given that, one may conclude that the securities' prospectus cannot be the source of the information:

- 1) on the shareholders if the issuer is a joint stock company whose securities are registered in the names of nominal holders;
- 2) on the persons acting on behalf of the issuer on the basis of power of attorney;
- 3) on the beneficiary owners of the issuer's founders (participants);
- 4) on the owners of depositary receipts for the issuer's shares;
- 5) on the persons having established control over the issuer under agreement with it;
- 6) on the persons having established control over the issuer under agreement with other participants or other entities.

2.3) Information disclosure by the issuers with respect to the securities, a prospectus of which has been registered

The Russian law obliges the issuers, with respect to the securities of which at least one prospectus has been registered, to disclose information in the form of the quarterly report and notifications on material facts.

²³ Cl. 2.4.3 of the Regulations on information disclosure by the issuers of emissive securities approved by Resolution of the FCSM of Russia of 02.07.2003 No. 03-32/ps.

The issuer shall disclose in the quarterly report the same information as in the securities' prospectus²⁴.

The quarterly report shall be submitted to the FSFR not later than 45 days from the final date of the reporting quarter. The quarterly report is submitted in paper or electronic form.

Moreover, within 45 days from the final date of the relevant quarter the issuer shall place the quarterly report on the Internet. The quarterly report shall be available on the Internet during not less than 6 months from the date of its publication or before the next quarterly report of the issuer is placed on the Internet.

Information disclosure in the form of notices on material facts aims at operative disclosure of information on events which may be significant for the securities market participants. Such notification on material fact has to be filed to disclose information if the issuer's register has new entry on an entity owning more than 25 percent of the issuer's securities of any type²⁵. The following information has to be disclosed on such entity:

- name (for legal entity), full name (for individual), location, and if this entity is the nominal holder of securities – also a relevant note with respect to this fact;
- stock of the issuer's securities registered in the name of the entity which has been registered in the system of keeping the issuer's register of the securities owners;
- date of making the receipt entry on personal account of the entity which has been registered in the system of keeping the issuer's register of the securities owners.

The notification on the said material fact shall be published in the news-line within 1 day, on the Internet web-site – within 3 days, and in the periodical printed publication – within 5 days from the date of making the receipt entry on personal account of the entity which has been registered in the system of keeping the issuer's register of the securities owners. The notification on material fact shall remain available on the Internet for not less than 6 months from the date of its publication.

Moreover, such notification shall be submitted to the FSFR in paper or electronic form.

The drawbacks of information disclosure in the quarterly report are similar to the drawbacks of the information disclosure in the securities' prospectus.

The drawback of information disclosure in the notification on material fact is that this form does not provide for disclosure of information on acquisition of 5 and more percent of the charter capital (5 and more percent of common shares) – the information is disclosed when over 25 percent is acquired. For joint stock companies such drawback is compensated with the requirement for disclosure of information which may have substantial effect on value of the issuer's securities. Such drawback is not compensated for other issuers.

Another drawback of information disclosure in the form of notification on acquisition of more than 25 percent of common shares is that, as in prospectus (quarterly report), if the buyer is hidden behind a nominal holder, the issuer is not obliged to identify it but can report on registration of more than 25 percent of shares in the name of nominal holder.

²⁴ Or prospectus of the securities issue, if it has been registered before 30 December 2002.

²⁵ Article 30 of the Federal Law "On the Securities Market" and Clause 6.2.8 of the Regulations on information disclosure by the issuers of emissive securities approved by Resolution of the FCSM of Russia of 02.07.2003 No. 03-32/ps.

2.4) Information disclosure by joint stock companies with respect to the securities, a prospectus of which has been registered

In addition to information disclosure in the form of quarterly reports and notifications on material facts joint stock companies are subject to additional regime of information disclosure similar to the regime of information disclosure in the form of notifications on material facts – "disclosure of information, which may have substantial effect on value of the issuer's securities". Such information includes data on changes in the structure of the shareholders owning not less than 5 percent of the issuer's common shares²⁶:

- name (for legal entities), full name (for individuals) of the shareholder;
- stock of the issuer's common shares owned by the said person before and after changes;
- date on which the issuer has learned about change of the stock of the issuer's common shares owned by the said person.

The joint stock company has to publish such information in the news-line within 1 day, on the Internet web-site – within 3 days from the date when the joint stock company has learned or should have learned about such change of the shareholders structure. Such information shall remain available on the Internet for not less than 6 months from the date of its publication on the Internet.

In addition, such information has to be submitted in paper or electronic form to the FSFR within 5 days from the date when the joint stock company has learned or should have learned about such change of the shareholders structure.

The requirement for disclosure of information on changes in the structure of shareholders – owners of 5 and more percent of common shares is aimed at compensation of absence of the requirement for disclosing of the relevant information in the form of notification on material fact. It is clear from the requirement that the FCSM has consecutively tried to introduce the requirement for disclosure of information on ownership of 5 percent of shares (similar to the one, stipulating that the information on such stock has to be disclosed in the prospectus and quarterly report).

This case differs from other cases of information disclosure, since a joint stock company shall disclose information on shareholders but not on nominal holders. This requirement does not impose on joint stock companies special obligation to identify the actual shareholder, whose shares are registered in the name of nominal holder, however, if it became know to the joint stock company (which can happen, for example, in the course of compilation of the list of entities having the right to participate in the general meeting of shareholders), then the joint stock company is obliged to disclose such information.

3) *Disclosure of information by open joint stock companies on their affiliated entities*

Russian legislation obliges open joint stock companies to disclose information on their affiliated entities.²⁷ Closed joint stock companies and limited (additional) liability companies are obliged to maintain such lists but not to disclose or provide them to the state authorities.

Affiliated entities mean individuals and legal entities being able to influence on activities of the joint stock company and, in particular, include.²⁸

²⁶ Clause 2 Article 92 of the Federal Law "On Joint Stock Companies" and Clause 1.14 of the Regulations on Information Disclosure by Issuers of Emissive Securities approved by the Russian FCSM Resolution of 02.07.2003 No. 03-32/ps.

²⁷ Clause 1 Article 92 of the Federal Law "On Joint Stock Companies" and Resolution of the FCSM of Russia of 01.04.2003 No. 03-19/ps "On Disclosing Information on Affiliated Entities by Open Joint Stock Companies".

- 1) member of board of directors, member of collective managerial body (executive committee) as well as entity performing the functions of the single-member executive body of the joint stock company;
- 2) entities being entitled to dispose over 20 percent of the total number of votes falling on the voting shares of the joint stock company (such entities can include not only the shareholders – owners of the voting shares, but also other entities exercising voting rights in particular trustees²⁹);
- 3) legal entity in which the joint stock company has the right to dispose over 20 percent of the total number of votes falling on the shares making up the charter **(authorized) capital**, contributions, participation interests of the given legal entity;
- 4) if the joint stock company is a participant in a financial-industrial group, its affiliated entities shall also include the members of the boards of directors or other collective managerial bodies (executive committees), collective executive bodies of other participants in the financial-industrial group as well as entities performing the functions of single-member executive bodies of other participants in the financial-industrial group;
- 5) entities belonging to the same group of entities to which the joint stock company belongs; "group of entities" shall mean a group of legal entities and/or individuals as applied to which one or several of the following conditions are observed:³⁰
 - a) entity or several entities in the result of agreement (concerted actions) jointly have a right to dispose directly or indirectly (including on the basis of purchase and sale contracts, trust executive agreements, agreements on joint activity, agency and other transactions) of over 50 percent of the total votes falling on voting shares (contributions and participation interests), which comprise the charter (authorized) capital of the legal entity. The indirect disposal of the votes of the legal entity means the possibility of actual disposal thereof through third parties, with respect to which the first entity possesses the above-mentioned right or power;
 - b) entity or several entities obtained an opportunity under an agreement or otherwise to determine the decisions taken by another entity or other entities including determination of terms and conditions of business activities conducted by the other entity(ies) or to perform functions of executive body of the other entity(ies) under an agreement;;
 - c) entity has the right to appoint a single-member executive body and/or over 50 percent of a collective executive body of a legal entity and/or at the suggestion of entity over 50 percent of a board of directors or an another collective management body of a legal entity has been elected;
 - d) individual perform functions of single-member executive body of legal entity;
 - e) the same individuals, their spouses, parents, children, brothers, sisters and/or individuals proposed by the same legal entity make up over 50 percent of the collective executive body and/or the board of directors (supervisory board) or

²⁸ Article 4 of the Russian Federation Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

²⁹ Clause 1 Article 1020 of the RF Civil Code.

³⁰ Article 4 of the Russian Federation Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

- another collective managerial body of two or more legal entities or over 50 percent of the board of directors or another collective managerial body of two and more legal entities has been elected on the proposal of the same legal entities;
- f) an individual carrying out labour functions in the legal entity or legal entities within the group of entities is simultaneously single-member executive body of another legal entity or individuals carrying out labour functions in the legal entity or legal entities within the group of entities comprise over 50 percent of the collective executive body and/or the board of directors or another collective management body of another legal entity;
 - g) the same individuals, their spouses, parents, children, brothers, sisters and/or legal entities have the right to, either independently or through representatives (attorneys), control in total over 50 percent of the votes falling on the shares (contributions, participation interests) making up the charter (authorized) capital of each of two or more legal entities;
 - h) individuals and/or legal entities have the right, either independently or through representatives (attorneys), to control in total over 50 percent of the votes falling on the shares (contributions, participation interests) making up the charter (authorized) capital of legal entity and at the same time these individuals, their spouses, parents, children, brothers, sisters and/or entities proposed by the same legal entity make up over 50 percent of the collective executive body and/or the board of directors or another collective managerial body of another legal entity;
 - i) legal entities are participants in one financial-industrial group.

The procedure for disclosing information by open joint stock companies on affiliated entities is stipulated by the legal act of the FCSM of Russia³¹ and varies depending on whether the joint stock company's securities are listed on stock exchange or not.

Open joint stock companies emissive securities of which are listed at least on one stock exchange are obliged to disclose information on affiliated entities through:

- a) quarterly submission to the registration body of the list of affiliated entities compiled as of the end date of the reporting quarter indicating all changes to that list during the reporting quarter; and
- b) publication of the list of affiliated entities of the joint stock company with all changes thereto on the Internet web-site.

Other open joint stock companies are obliged to disclose information on affiliated entities only through quarterly submission to the registration body of the list of affiliated entities compiled as of the end date of the reporting quarter indicating all changes to that list during the reporting quarter.

The list of affiliated entities of a joint stock companies shall state:

- a) name (for legal entities), location or full name (for individuals) and place of residence;
- b) date of occurrence of the ground(s) due to which an entity is acknowledged as affiliated entity of the joint stock company pursuant to the Russian law;
- c) ground due to which an entity is acknowledged as affiliated entity of the joint stock company;
- d) stock of the joint stock company's shares of each category owned by its affiliated entity;
- e) date of changing of the list affiliated entities and the nature of such change.

³¹ Regulations on Disclosing Information on Affiliated Entities by Open Joint Stock Companies approved by Resolution of the FCSM of Russia of 01.04.2003 No. 03-19/ps.

Joint stock companies shall submit their lists of affiliated entities to the FSFR within 45 days from the end date of the reporting quarter. The registration body arranges for disclosure of the provided lists of affiliated entities of joint stock companies through the Internet.

The definition of the term "affiliated entities" has certain advantages. One of them is the use of such characteristic as "indirect" disposal of votes, i.e. disposal of votes "through third parties".

This means that the joint stock company's affiliated entities include not only legal entities which can dispose the major amount of votes in the joint stock company but also those entities, which can use this opportunity "through them" (including owners of the major number of votes in that legal entity, entities being able to give orders to such legal entities by virtue of the concluded agreement, officers of such legal entities).

A simplified example allows to refer the following to the joint stock company's affiliated entities:

- 1) entity owning over 50 percent of votes in such joint stock company;
- 2) legal entity owning over 50 percent of votes in the legal entity mentioned in clause 1;
- 3) legal entity owning over 50 percent of votes in the legal entity mentioned in clause 2;
- 4) etc.

Given that, the entity mentioned in clause 1 is considered as the entity having direct control over the joint stock company, while the entities mentioned in clauses 2 and 3 are the entities which perform indirect control over the joint stock company.

Another important advantage of the definition of the term "affiliated entities" is that it includes such characteristic as disposal (direct or indirect) of votes of the legal entity by virtue of transactions (the law mentions such transactions as purchase and sale contracts, trust executive agreements, agreements on joint activity, agency) and other grounds.

Another advantage of the definition of the term "affiliated entities" is that it creates conditions for obtaining information on entities which have obtained control over the legal entity in the result of agreement with it, on participants which have obtained control over the legal entity in the result of agreement between them.

Regardless of these advantages the definition of the term "affiliated entities" remains one of the most disputable in the antimonopoly legislation. Partly it is caused by the fact that this definition is extraneous for the antimonopoly legislation, while its combination with the term "group of entities" is artificial³².

However, the main subject of criticism related to the term of "affiliated entities" is its insufficient clarity, which hinders its use in practice, including in the course of court disputes.

One may state that the definition of the term "affiliated entities" does not allow to include into it beneficiary owners and owners of depositary receipts. This is because neither the first nor the latter has the right of direct or indirect disposal of votes of the trustee – legal entity.

³² Currently the FAS of Russia is drafting new competition law which supposedly will not include the term "affiliated entities".

The major obstacle for successful implementation of the information on affiliated entities is the mechanism of compilation of such lists. The purpose of the mechanism of disclosure of information on affiliated entities is to ensure implementation of the rules on conclusion of the interested-party transactions by business entities. Given that, the joint stock companies shall maintain themselves the lists of affiliated entities as entities whose participation in transactions with the joint stock company would make such transactions as interested-party transaction. At the same time the joint stock companies do not have a real possibility to keep track of their affiliated entities since information on the majority of the affiliated entities must be received from the affiliated entities themselves.

Under the law the joint stock company's affiliated entities are obliged to notify the company in writing on the their owned company's shares no later than 10 days from the date of acquisition of shares.³³ The law imposes on the affiliated entities civil liability for violation of such obligation. However, the affiliated entities themselves are not in the best position, since they may not know about their affiliation as they themselves as well as the joint stock company, which they have to notify on their affiliation, may not know about their affiliated entities, some of which being entities which carry out indirect disposal of votes in the joint stock company.

Another drawback of the requirement for provision of information on the affiliated entities is that the law requires from the entities which become affiliated with respect to the joint stock company to inform the latter accordingly, connecting such obligation with the moment of their acquisition of the stock of shares, thus ignoring in essence other forms of affiliation.

Taking into account all ambiguities of the law as well as almost complete absence of liability for violation of the requirements of the law, the majority of the affiliated entities simply ignore obligation and do not provide information on themselves.

4) Acquisition of major stocks of shares (securities giving the right to get shares)

The owner of shares, bonds convertible into shares as well as options of an issuer shall disclose information on his ownership in the said emissive securities in the following cases:³⁴

- if he has acquired 20 or more percent of the relevant category of emissive securities of that issuer;
- if he has increased his stock of the relevant category of emissive securities up to the level aliquot to each 5 percent over 20 percent of such category of securities;
- if he has decreased his stock of the relevant category of emissive securities up to the level aliquot to each 5 percent over 20 percent of such category of securities.

The securities' owner shall submit information on the said facts, indicating name of the owner, the securities' type and state registration number, the issuer's name, the amount of owned securities to the FSFR within 5 days, which in its turn shall disclose such information.

The aim of this requirement is to provide the market with the information on the substantial changes in control over the joint stock company.

³³ Clause 2 Article 93 of the Federal Law "On Joint Stock Companies".

³⁴ Article 30 of the Federal Law "On Securities Market".

It should be admitted that the requirement for provision of information on acquisition and increase of the major stock of shares is not practically implemented. This is caused by the fact that neither administrative nor criminal liability is established for violation of the said requirement.

5) Obtaining of information and documents in the course of actions subject to antimonopoly control

5.1) Carrying out of control over reorganization in the form of merger or acquisition

The FAS controls reorganization of commercial and non-commercial organizations in the form of merger and acquisition. Merger and acquisition of commercial organizations, the aggregate balance value of assets of which under the latest balance sheet exceeds 20 mln Rubles are conducted with the prior approval.³⁵ If the aggregate balance value of assets of organizations participating in merger (acquisition) exceeds 10 mln Rubles, the FAS has to be informed about merger (acquisition) once it has taken place.

In particular, the following information has to be submitted to the FAS together with the petition for prior approval of merger (acquisition):³⁶

- 1) on all legal entities and/or individuals which directly or indirectly control (or had control over) at least one of the organizations being reorganized:
 - a) name and legal form (name), INN [Taxpayer's Individual Number];
 - b) legal and postal addresses (place of residence);
 - c) form of control (direct, indirect);
 - d) legal entity being under direct control and method of control over it (right or power by virtue of which the control is (was) exercised), including:
 - disposal of more than 50 percent of the total number of votes falling on shares (contributions, participation interests) of the legal entity, with indication of the specific number of votes falling on shares (contributions, participation interests) which are disposed by the controlling entity, including in percentage from the total number of votes comprising the charter (authorized) capital, and type of disposal (ownership, nominal holder, authorized representative, etc.);
 - right to determine the conditions of carrying out business activities of the controlled entity with indication the exact conditions of activities and reference to the agreements;
 - right to appoint a single-member executive body and/or over 50 percent of a collective executive body and/or board of directors (supervisory board) of the legal entity with indication of the body and the number of member (in percentage);
 - e) information on all other entities being directly or indirectly controlled by these entities with indication of:

³⁵ Clause 1 Article 17 of the Russian Federation Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets". With respect to financial organizations the amount of assets, triggering antimonopoly control under the Federal Law "On Protection of Competition at the Market of Financial Services", is determined by the Government.

³⁶ Regulations on the Procedure for Filing with the Antimonopoly Authorities of Petitions and Notifications in Accordance with the Requirements of Articles 17 and 18 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets" approved by Order of MAP of Russia of 13.08.99 No. 276.

- name and legal form;
- legal and postal addresses;
- forms of control (direct or indirect).

If a control is direct, it is necessary to state the methods of control (right or power by virtue of which the control is exercised).

If a control is indirect, it is necessary to name the entity performing direct control and methods of the performed control.

The similar information is submitted with respect to legal entities, which are (were) directly or indirectly controlled at least by one of the organizations being reorganized.

It is clear that in this case the legal acts use terms "direct control" and "indirect control" which are different from the terms "direct disposal of votes" and "indirect disposal of votes" which are used in the term "affiliated entities". Legal acts of the MAP³⁷ of Russia give special definitions of the terms "direct control" and "indirect control"³⁸.

Direct control shall mean the possibility of a legal entity or individual to determine decisions taken by the legal entities through one or several following actions:

- disposal, including jointly with other entities in the result of agreements (concerted actions) of more than 50 percent of the total number of votes falling on the shares (contributions, participation interests) comprising the charter (authorized) capital of the legal entity;
- obtaining of the right to specify, including jointly with other entities, the terms for performing the legal entity's business activity, or to discharge functions of its executive body;
- obtaining of the right to appoint more than 50 percent of members of the legal entity's executive body and/or its board of directors (the supervisory board);
- participation jointly with the same individuals in the executive body and/or in the board of directors (in the supervisory board) of two or more legal entities, while representing more than 50 percent of their executive body members.

Indirect control is the ability of a legal or natural entity to determine decisions taken by the legal entity through third entities with respect to whom the former enjoys one or several of the following rights or powers:

- to dispose of, including jointly with other entities, as a result of an agreement (concerted actions) more than 50 percent of the total number of votes falling on the shares (contributions, participation interests) comprising the charter (authorized) capital of the legal entity;

³⁷ The Ministry for Antimonopoly Policy and Support of Entrepreneurship, functions of which are currently carried out by the FAS.

³⁸ Regulations on the Procedure for Filing with the Antimonopoly Authorities of Petitions and Notifications in Accordance with the Requirements of Articles 17 and 18 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets" approved by Order of MAP of Russia of 13.08.99 No. 276.

- to determine, including jointly with other entities, the terms for performing the business activity of the legal entity or to discharge functions of its executive body;
- to appoint more than 50 per cent of the members of the legal entity's joint executive body and/or of its board of directors (supervisory board);
- to take part jointly with the same individuals in the collective executive body and/or on the board of directors (supervisory board) of two or more legal entities while representing more than 50 percent of their executive body members.
- It is clear that the terms "direct control" and "indirect control" are more narrow than the terms "direct disposal of votes" and "indirect disposal of votes" which are used in the term "affiliated entities".

It should be noted that the information submitted to the FAS is not open to public.

5.2) Carrying out of control over acquisition of shares (participation interests) in charter capital of commercial organizations by an entity (group of entities)

Like in the course of merger (acquisition) there are two regimes for acquisition of shares (participation interests in the charter capital). Acquisition by an entity (group of entities) of voting shares (participation interests) in the charter capital of a business entity, at which such entity (group of entities) obtains the right to dispose more than 20 percent of the said shares (participation interests) requires prior approval of the FAS, if the aggregate balance value of assets of these entities under the latest balance sheets exceeds 20 mln Rubles or if one of these entities is a business entities enlisted into the Register of business entities having the share at the certain commodity market over 35 percent or if the buyer is the group of entities which controls activities of the said business entity. This requirement does not apply to the founders of business entity in the course of its establishment.³⁹ If the aggregate balance value of assets of the above-mentioned entities under the latest balance sheets exceeds 10 mln Rubles, one of these entities is obliged to notify the FAS on the transaction within 45 days from the date of execution of the transaction.⁴⁰

In particular, the following documents and information have to be submitted to the FAS for obtaining prior approval of the FAS:

- 1) information on the entity intending to acquire (having acquired) voting shares (participation interests) of a business entity pursuant to purchase and sale contracts, trust agreements, agency or other transactions (hereinafter the "buyer"):
 - a) name and legal form (for legal entities), full name (for individuals), addresses (place of residence), as well as other information on the buyer;
 - b) information on the buyer's participation in other commercial organizations in which it has the right to dispose over 5 percent of the total number of votes falling on voting shares (contributions and participation interests), which comprise the charter (authorized) capital of the commercial entity (including as the founder), in particular:
 - their names, legal forms, INN;

³⁹ Clauses 1 and 2 Article 18 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

⁴⁰ Clause 6 Article 18 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

- in which capacity the buyer acts (shareholder, nominal holder of the shares, authorized representative of the shareholder or of the nominal holder of the shares; pledger; sharer; contributor, etc.);
- 2) list of all legal entities and/or individuals, who are in direct or indirect control over the buyer with indication of:
- a) name (full name);
 - b) legal form (for legal entities);
 - c) INN;
 - d) legal and postal addresses (place of residence);
 - e) forms of control (direct, indirect);
 - f) legal entity being under direct control and method of its control (right or power by virtue of which the control is exercised), including:
 - disposal of over 50 percent of the total number of votes falling on shares (contributions and participation interests) of the legal entity with indication of the specific number of votes falling on shares (contributions and participation interests) being disposed by the controlling entity including in percentage from the total number of votes comprising charter (authorized) capital and type of disposal (ownership, nominal holder, authorized representative, etc.);
 - right to specify the terms for performing business activity of the controlled entity with indication of the specific terms of activity and on which basis;
 - right to appoint a single-member executive body and/or over 50 percent of the collective executive body and/or board of directors (supervisory board) of the controlled entity with indication of the body and the number of members (in percentage);
 - g) list of other entities, which are directly or indirectly controlled by these entities with indication of:
 - name;
 - legal form;
 - legal and postal addresses;
 - forms of control (direct, indirect).

If a control is direct, it is necessary to state the methods of control (right or power by virtue of which the control is exercised).

If a control is indirect, it is necessary to name the entity performing direct control and methods of the performed control.

- 3) list of all legal entities being directly or indirectly controlled by the buyer with indication of:
- a) name;
 - b) legal form;
 - c) legal and postal addresses;
 - d) forms of control (direct, indirect).

If a control is direct, it is necessary to state the methods of control (right or power by virtue of which the control is exercised).

If a control is indirect, it is necessary to name the entity performing direct control and methods of the performed control.

- 4) list of entities directly or indirectly controlling the buyer as well as entities which are directly or indirectly controlled by the buyer and these entities, which on the date of filing of the petition dispose the votes falling on the shares (participation interests) of the business entity, whose shares (participation interests) are being acquired, with indication of the number of votes including in percentage from the total number of votes falling on the shares (participation interests) comprising the charter capital of the business entity;
- 5) list of the members of the executive body, board of directors (supervisory board) of the buyer – legal entity who together with the similar individuals represent over 50 percent of the executive body, board of directors (supervisory board) of another commercial organization with indication of:
 - 1) full name;
 - 2) INN;
 - 3) occupied position in the management body of the buyer – legal entity;
 - 4) name, legal form and legal address of another commercial entity, in whose management bodies this entity participates, as well as the occupied position;
 - 5) if the buyer is an individual, the following information has to be included:
 - 6) name, legal form and legal address of the business entity, in whose management bodies (executive body, board of directors (supervisory board)) the buyer participates together with the similar individuals representing over 50 percent of the relevant management body;
 - 7) occupied position in the management body of each such business entity;
- 6) information on the business entity whose voting shares (participation interests) are acquired, in particular
 - a) information on entities belonging to the similar group of entities as the business entity, whose shares (participation interests) are acquired:
 - all legal entities and/or individuals directly or indirectly controlling the business entity, as well as entities which are directly or indirectly controlled by those entities;
 - all legal entities which are directly or indirectly controlled by the business entity;
 - b) scope of rights which are available (at filing of the petition) or which were available (at filing of the notification) for the buyer with respect to the business entity whose shares (participation interests) are acquired, prior to the transaction, including:
 - by virtue of the available rights of disposal of votes embodied in the shares (participation interests) of the business entity (number, nominal value of the shares (participation interests) acquired before the transaction, as well as their share in percentage from the total number of the voting shares (participation interests) in the charter capital of the business entity; value of all voting shares (participation interests) acquired before the transaction in the charter capital of the business entity,

whose shares (participation interests) are being acquired; the share of already acquired voting rights embodied in shares (participation interests); number, nominal value of the shares available prior the transaction; non-voting shares (participation interests) and their share in percentage from the charter capital of the business entity; possibility of conversion of non-voting shares (participation interests) into voting shares (participation interests));

- by virtue of rights (obtained through other ways) to determine the terms of carrying out of the legal entity's business activities (under the concluded agreement (with the attached copy of the agreement); by virtue of obtaining powers of the business entity's executive body (with the attached copy of the agreement));

c) scope of rights which the buyer will obtain (at filing of the petition) or have obtained (at filing of the notification) with respect to the business entity, whose shares (participation interests) are being acquired, after the transaction, including:

- number and nominal value of the shares (participation interests) of the business entity, whose votes will be (are) disposed by the buyer after the transaction, as well as their share in percentage from the total number of the voting shares (participation interests) in the charter capital of the business entity and their share in percentage from the charter capital of the business entity;
- number of members of board of directors (supervisory board), executive body of the business entity in percentage to the total staff of these bodies, which can be elected through disposal of the votes embodied in the shares (participation interests) after their acquisition.

5.3) Carrying out of control over acquisition by an entity (group of entities) of rights allowing to determine the terms of entrepreneurial activity by the business entity or to discharge functions of its executive body

There are also two regimes for this type of antimonopoly control – prior approval and subsequent notification. Prior approval of the FAS is required for acquisition by an entity (group of entities) of rights allowing to determine the terms of entrepreneurial activity by the business entity or to discharge functions of its executive body, if the aggregate balance value of assets of these entities under the latest balance sheets exceeds 20 mln Rubles or if one of these entities is a business entities enlisted into the Register of business entities having the share at the certain commodity market over 35 percent or if the buyer is the group of entities which controls activities of the said business entity.⁴¹

If the aggregate balance value of assets of the above-mentioned entities under the latest balance sheets exceeds 10 mln Rubles, one of these entities is obliged to notify the FAS on the transaction (election) within 45 days from the date of execution of the transaction (from the date of election of individuals as executive bodies or members of board of directors (supervisory board)).⁴²

In order to obtain approval of the FAS of execution of such transactions (election of the management bodies) and to notify the FAS the latter has to receive the information and documents which are similar to those required for obtaining of the right to dispose over 20 percent of the shares (participation interests) (see above).

⁴¹ Clauses 1 and 2 Article 18 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

⁴² Clause 6 Article 18 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

5.4) Carrying out of control over election of individuals to executive bodies and boards of directors (supervisory boards)

There is only one regime – subsequent notification – which applies to this type of antimonopoly control. Business entities, the aggregate balance value of assets of which under the latest balance sheets exceeds 10 mln Rubles, are obliged to notify the FAS of election of individuals to executive bodies, boards of directors within 45 days from their election.⁴³ An applicant has to submit to the FAS the following information, in particular:

- 1) information on individual:
 - full name, place of residence, passport details, INN and citizenship;
 - main place of work (with indication of the name of the legal entity, legal form and legal address) and occupied position;
- 2) information on the business entity (business entities), in whose management bodies s/he has been elected and of which the antimonopoly body is being notified:
 - a) name and legal form;
 - b) INN;
 - c) legal address;
 - d) name of the management body, to which the individual has been elected, and occupied position;
 - e) date of election with enclosure of a copy of the document confirming election;
- 3) list of all business entities, into whose executive bodies, boards of directors (supervisory boards) such individual is a member on the date of filing, with indication of:
 - a) name and legal form;
 - b) INN;
 - c) legal address;
 - d) name of the management body, to which the individual has been elected, and occupied position;
 - e) date of election with enclosure of a copy of the document confirming election;
- 4) list of business entities (from those mentioned in clauses 2 and 3) in which such individual together with the similar individuals represents over 50 percent of the executive body and/or boards of directors (supervisory boards).

6. Obtaining of information while counteracting to legalization (laundering) of the criminally received proceeds and to financing of terrorism

Certain organization, which carry out transaction with monetary funds and other property are obliged to identify persons serviced in these organizations. Such organizations include:

- credit organizations;
- professional participants of the securities market;
- insurance organizations;

⁴³ Ibid.

- leasing companies;
- federal postal organizations;
- pawn-shops;
- organizations buying up, purchasing and selling precious metals and precious stones, jewelry made from them and scrap of such products;
- organizations maintaining totalizators and bookmaking offices as well as those organizing and holding lotteries;
- organizations managing investment funds or non-state pension funds;
- organizations rendering intermediary services in the course of purchase and sale of real estate.⁴⁴

These organizations are obliged to identify the following information on their clients:⁴⁵

- with respect to individuals – full name, citizenship, details of document identifying person, address of place of residence (registration) or place of staying, INN;
- with respect to legal entities – name, INN or code of foreign organization, state registration number, place of state registration and address of location.

Moreover, the above-mentioned organizations are obliged to take valid and available measures for identification of beneficiaries.

In case of transactions subject to obligatory control⁴⁶, the organizations carrying out such transactions shall submit to the federal executive authority on counteraction to legalization (laundering) of the criminally received proceeds and to financing of terrorism:

- information necessary for identification of the individual carrying out transaction with monetary funds or other property (details of passport or other identification document), INN, address of the place of residence or place of staying;
- name, INN, state registration number, place of state registration and address of location of the legal entity carrying out transaction with monetary funds or other property;
- information which is necessary for identification of legal entity or individual, on whose commission and on behalf of which the transaction with monetary funds or other property is carried out, INN, address of place of residence or location of accordingly individual or legal entity;
- information which is necessary for identification of representative of legal entity or individual, attorney, agent, commissioner, trustee carrying out the transaction with monetary funds or other property on behalf or in the interest or at the expense of other entity by virtue of authority under a power of attorney, agreement, law or act of the authorized state body or local self-government body, INN, address of place of residence or location of accordingly individual or legal entity;

⁴⁴ Article 5 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

⁴⁵ Article 7 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

⁴⁶ Article 6 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

- information which is necessary for identification of the recipient under the transaction with monetary funds or other property and/or his representative, including INN, address of place of residence or location of the recipient and/or his representative.

It is clear that the organizations carrying out the transactions subject to control are obliged to identify their clients, however, are not obliged to identify entities controlling their clients. This is due to vagueness of the term "beneficiaries". In the context of the Russian law it may hardly include beneficiary owners of clients of such organizations, majority participants and other entities having indirect control over the clients. Nevertheless, it includes beneficiaries under trust management agreements.

2. Proper supervision

2.1. Law enforcement powers and liability for offences

Russian legislation endows the state bodies with certain law enforcement powers in order to ensure obtaining of information on entities performing control over legal entities. Following the above procedure let us discuss such powers of the relevant state bodies.

1. Powers of the FNS in connection with maintaining the register of legal entities

Under Russian legislation the role of the body performing the state registration of legal entities is minimized. Therefore, the FNS does not have any powers on examination and legal evaluation of information presented to it in connection with maintenance of the register of legal entities. At the same time the FNS is entitled to register violations of the procedure for maintenance of the register of legal entities and to apply to court for imposing administrative liability on infringers.

The Code on Administrative Offences stipulates administrative liability for violation of the rules of submission of information for the register of legal entities⁴⁷ in the form of administrative fine (up to 50 minimum wages imposed on officials) or disqualification (up to three years). Such liability can be imposed on entities which have failed to submit (have not submitted in time) the information or which have submitted inadequate information to the register of legal entities.

2. Powers of the FSFR and the Bank of Russia in the course of the state registration of the securities' issues and information disclosure by the issuers

The FSFR and the Bank of Russia in the course of the state registration of the securities' issues and information disclosure by the issuers have the right to examine authenticity of information submitted for the state registration of issue (additional issue) of emissive securities, including information on the issuer's shareholders (participants) indicated in the issuer's questionnaire. For the purposes of performance of such examination the FSFR (the Bank of Russia) can request the issuer, professional participants of the securities market (registrars and depositaries) to submit necessary information.⁴⁸

The right of the FSFR and the Bank of Russia to conduct examinations and obtain necessary information is supported by the criminal liability. The Criminal Code establishes liability for persistent evasion from submission of information on the issuer, its financial and commercial activities and securities, transactions and other operations with securities if such deeds caused

⁴⁷ Article 14.25 of the Code on Administrative Offences.

⁴⁸ Clause 7 Article 44 of the Federal Law "On Securities Market".

major damage (exceeding 1 mln Rubles) to individuals, organizations or the State (fine up to 300000 Rubles or salary for the term of up to 2 years, compulsory works for up to 240 hours or corrective works for up to 2 years).⁴⁹ Such liability is imposed on entities which are obliged to provide the said information to the controlling body.

In case of registration of a securities prospectus (including if such registration is performed in connection with registration of the securities issue), absence in the submitted prospectus of the required information including on the issuer's participants or inadequacy of such information will be the ground for refusal in the state registration of issue (additional issue) of securities or securities prospectus.⁵⁰ If afterwards there will be found out that the securities prospectus contains deliberately inadequate information or that the securities prospectus containing deliberately inadequate information is approved, thus causing a major damage, then the persons, who are guilty in that, will be criminally liable.⁵¹

Issuer's violation of the information disclosure rules (including in the form of quarterly reports and notifications on material facts) is an administrative offence⁵² (with sanctions for officials – fine up to 40 minimum wages, for legal entities – fine up to 400 minimum wages). The same offence causing major damage to individuals, organizations or the State is a crime⁵³. The sanction depends on the gravity – fine up to 500000 Rubles or in the amount of salary or other income for the period of up to 3 years, compulsory works for up to 240 hours or corrective works for up to 2 years, or deprivation of liberty for up to three years.

The FSFR considers administrative offences and imposes administrative liability. To impose criminal liability the FSFR and the Bank of Russia shall apply to the Ministry of Internal Affairs or the Prosecutor's Office.

3. Powers of the FSFR in the course of disclosing information by open joint stock companies on their affiliated entities

In the course of disclosing information by open joint stock companies on their affiliated entities the FSFR has the same powers and joint stock companies bear the similar liability as in the course of the state registration of the securities issues and information disclosure by the issuers (see above).

4. Powers of the FSFR in the course of disclosing information on acquisition of the major stock of shares

The FSFR does not have any law enforcement powers with respect to disclosing information by buyers on acquisition of major stock of shares and the law does not establish any liability for violation of the relevant requirements.

⁴⁹ Article 185.1 of the Criminal Code.

⁵⁰ Article 21 of the Federal Law "On Securities Market".

⁵¹ Article 185 of the Criminal Code.

⁵² Article 15.19 of the Code on Administrative Offences.

⁵³ Article 185.1 of the Criminal Code.

5. Powers of the FAS in the course of conducting actions subject to antimonopoly control

The law entitled the FAS to perform examinations within its competence as well as to obtain necessary documents and information, explanations in oral and written forms⁵⁴. At the same time the law obliges legal entities and individuals to submit upon request of the FAS authentic documents, oral and written explanations and other information necessary for the FAS⁵⁵.

The law stipulates administrative liability for violations conducted while carrying out actions subject to antimonopoly control. In case of filing with the FAS of petitions, notifications (applications), information containing deliberately inadequate information (including cases of submission of inadequate information on entities controlling legal entities) the infringer can be subject to administrative fine (depending on the offence and status of the infringer; on individuals – up to 50 minimum wages, on legal entities – up to 5000 minimum wages)⁵⁶.

The FAS considers administrative offences and imposes administrative liability. To impose criminal liability the FAS shall apply to the Ministry of Internal Affairs or the Prosecutor's Office.

6. Powers of the FSFM in the course of implementation of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism"

The FSFM has the right to impose administrative liability on organizations carrying out transactions with monetary funds or other property, which have violated the rules of registration, storage and submission of information on operations subject to obligatory control as well as the rules of organization of internal control stipulated by the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism" (for officials – up to 200 minimum wages, for legal entities up to 5000 minimum wages)⁵⁷. The FSFM itself considers such administrative offences and imposes administrative liability.

Interaction of bodies

It should be noted that the Russian state bodies interact with each other in the performance of their functions and can provide each other with information subject to certain restrictions.

Information and documents comprising the register of legal entities are publicly available. Therefore the FNS is obliged to provide such information to all interested parties, including other state bodies.

The same case is with information disclosure at the securities market. The FSFR provides available information disclosed by the issuers as well as other entities. With respect to information, which is not subject to disclosure, there are some restrictions. Under the law the FSFR⁵⁸ is obliged to ensure confidentiality of the information submitted thereto. Given that, the information, which has been obtained by the FSFR in the course of examination and is not included into revealed information, cannot be transferred to other bodies.

⁵⁴ Article 12 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets". Article 9 of the Federal Law "On Protection of Competition at the Market of Financial Services".

⁵⁵ Article 14 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

⁵⁶ Ct. 19.8 of the Code on Administrative Offences.

⁵⁷ Article 15.27 Of the Code on Administrative Offences.

⁵⁸ Article 44.1 of the Federal Law "On Securities Market".

With respect to the FAS the law establishes restrictions on disclosing commercial and service secrets⁵⁹.

The FSFM has broad powers for obtaining information from other bodies – under the law⁶⁰ the state power bodies are obliged to submit to the FSFM information and documents necessary for performance of its functions. Information on private life of individuals is excepted from such information.

A separate issue is the international informational exchange. When a case relates to foreign organization or individual the Russian state bodies have to apply to foreign authorities.

There are more detailed rules on international informational exchange for the FSFM which is authorized under international treaties of the Russian Federation to cooperate with the competent authorities of foreign states at stages of collection of information, preliminary investigation, court proceedings and enforcement of court verdicts⁶¹.

Therefore, the FSFM and other bodies, carrying out activities connected with counteraction to legalization (laundering) of the criminally received proceeds and to financing of terrorism, provide necessary information to the competent authorities of foreign states upon their requests or independently, as well as may request such information on the procedure and under the grounds stipulated in international treaties of the Russian Federation.

Transfer of information to the foreign authorities is performed in case it does not harm interests of national security of the Russian Federation and can allow the competent authorities of that state to initiate investigation or to formulate inquiry.

With respect to the information obtained from the foreign authorities the law requires from the FSFM and other Russian bodies to ensure its confidentiality and use only for the purposes indicated in the inquiry, on the basis of which such information has been provided.

There are certain impediments imposed on the FSFR with respect to provision of information to the foreign authorities. Under the law the FSFR shall maintain confidentiality of the provided information unless such information is not subject to disclosure. The Russian law restricts importation of documented confidential information requiring the Governmental approval for each case of importation of such information⁶². Taking into account that informational exchange between the authorities of different states is normally built on the principles of reciprocity such restriction hinders the FSFR to perform its functions.

Conclusion

As the conclusion it can be noted that Russian legislation stipulates for provision the state bodies with information allowing to identify only certain entities performing control over legal entities.

Let us consider the problems which prevents from obtaining of such information.

⁵⁹ Article 15 of the RSFSR Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

⁶⁰ Article 9 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

⁶¹ Article 10 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

⁶² Article 8 of the Federal Law "On Participation in the International Informational Exchange".

The first group of problems is connected with determination of entities which can perform control over legal entities.

1. The problem of identification of beneficiary owners

Russian corporate and securities legislation ignores trust relations, i.e. such relations in which the owner exercising ownership right acts not in its own interests but in the interests of other entities – beneficiary owners. Another similar institution is trust management with difference that in comparison with trustee a trust manager [trustee] does not have ownership right to the property being managed. Conditions of trust agreement (trust deed) can stipulate any alternatives of mutual relations between trustee and beneficiary, including (as it is usually the case) obligation trustee's obligation to consult with beneficiary or even act in accordance with its instructions.

The advantage of trust relations for the purposes of hiding entities performing control over Russian legal entities is that trustee appears as the owner of shares (it is mentioned as the owner of shares in the shareholders register and in this capacity it exercises all rights on shares). The fact, that it exercises ownership rights in the interests and in accordance with instructions of other entity, is ignored. The law does not require to submit information on entities in the interests of which the owner acts, therefore it does not allow to obtain such information both for the purposes of information disclosure and for the purposes of law enforcement actions.

The problem of identification of beneficiary owners is one of the key problems in obtaining information on entities performing control over legal entities. Absence of its solution at obvious simplicity and prevalence of use of trust makes identification of entities performing control over legal entities senseless, - in the shareholders register or in the end of chain of nominal holder there will be trustee.

2. The problem of identification of founders of trust management and beneficiaries of trust management

The problem which is close to the issue of beneficiary ownership is the issue of absence of information on founders of trust management and beneficiaries on trust management agreements. Under the rules of maintenance of securities registers trust managers are registered as such. The nominal holders, whose clients are trust managers, conduct registration of rights in the same way. Therefore, from the register of nominal holders it is clear that the securities are registered in the name of entity not being the owner, however, there is no information on the securities' owners.

3. The problem of identification of owners of depository receipts (DR)

Russian legislation has not clarified itself with respect to the status of DR owners. With respect to DR the law uses the term "securities certifying the rights with respect to" Russian securities⁶³ and does not specify the exact rights certified by such securities – ownership or liability rights.

Taking into account that Russian legislation does not give another option to DR issuer or its agent, they are registered as owners of shares with respect to which DR are issued. This, in its turn, results in acknowledgement of them owners of such shares⁶⁴.

In case with DR like in case with beneficiary ownership Russian legislation ignores the nature of relations between the issuer of DR and their owners. Meanwhile, in accordance with the traditional model

⁶³ Article 62 of the Federal Law "On Securities Market".

⁶⁴ Article 2 of the Federal Law "On Securities Market".

of relations between DR owners and their issuer the latter is obliged to act in the interests and in particular to vote in accordance with their instructions⁶⁵. Taking this into account as well as the rules of voting under DR adopted in Russia, namely DR owners perform control over Russian joint stock company.

4. The problem of identification of clients of nominal holders

In the context of information disclosure by nominal holders there are at least two problems.

- 1) Under Russian legislation the clients of nominal holders can be both the securities' owners (entities having the status of the securities' owners) as well as other nominal holders. Currently the number of levels of nominal holders of shares is unlimited. This creates one more impediment for identification of real owners. Frequently, plurality of levels of nominal holders is created deliberately in order to hinder identification of real owners.
- 2) Pursuant to the Russian Law "On Joint Stock Companies" for the purposes of exercising of rights on shares, rights to get dividends, preemptive rights on acquisition of additional shares, there are compiled lists of entities with relevant rights. For the purposes of compilation of such lists the law obliges nominal holders to disclose information on entities, in the interests of which they perform relevant functions. However, in practice, there is a widespread opinion, that such information is submitted only at consent of the client of nominal holder. It is unlikely that this problem is substantial, since the owners of share, which are hiding, deprive themselves of the possibility to exercise rights on shares, while the joint stock company does not have an opportunity to obtain more full information on its shareholders.

5. The problem of identification of participants of business entities and limited (additional) liability companies

It has been noted above that Russian law does not allow to rely on information from foundation agreements and the register of legal entities in the course of identification of participants of business entities and limited (additional) liability companies.

This happens because the law connects the transfer of participation interest in the charter (authorized) capital neither with amending the agreement nor the register of legal entities, thus making this possible only on the basis of the agreement on transfer. In the result there is uncertainty with respect to the structure of participants of such legal entities.

6. The problem of identification of entities having established control over legal entity by virtue of agreement

Russian law, except antimonopoly legislation, does not allow to identify entities which have established control over legal entities by concluding with it an agreement of subordination (i.e. the agreement, pursuant to which such legal entity undertakes to obey instructions of another entity in the course of carrying out its entrepreneurial activities).

Another alternative of establishment of control can be an agreement between participants of a legal entity, which have agreed on concerted actions in the course of management of that legal entity. At the same time none of these entities can independently determine decisions of the legal entity, but can do this together, agreeing their actions. Such case can be stipulated only by antimonopoly legislation.

⁶⁵ It should be noted that further the Federal Law "On Securities Market" (Article 16) takes this condition into account, obliging DR issuer to stipulate in depository agreement only one option for voting – in accordance with instructions of DR owners. The same is reflected in the Regulations "On Additional Requirements for the Procedure of Preparing, Convening and Holding of General Meetings of Shareholders", approved by the FCSM Resolution of 31 May 2002 No. 17/ps, pursuant to which at voting under shares, on which DR have been issued, it is allowed to vote differently using one voting ballot – according to different instructions of DR owners.

The second group of problems includes problems connected with the mechanism of obtaining information and powers of the state bodies.

1. The problem of absence of the system of permanent informational support

Russian law establishes obligation to notify about changes in information which is contained in the register of legal entities as well as obligation to register changes in foundation documents of legal entities, which allows to maintain updated information on certain entities performing control over legal entities (for example, single-member executive bodies). Given that, as well as public availability of the register, it can be the source of information on the majority of entities controlling legal entities, however, it fulfils this role only to a minor extent.

The problem of maintenance of the register is not only that the law does not stipulate submission of information on many entities controlling legal entities to the register, but also that in practice the register misses adequate information even on those entities, for which such obligation is established under the law. It is unlikely that the disadvantage of the register is lack of information on shareholders of open joint stock companies, however, absence of information on participants of partnerships and limited (additional) liability companies, number of which should not exceed 50 under the law, is obviously a disadvantage.

The second source of updated information is the information disclosure system available at the securities market. Its capabilities to be the source of information are limited by several factors: it deals only with the issuers of securities, whose securities are publicly (and privately among over 500 buyers) placed and traded; it has periodical nature; as well as the law does not oblige the issuers to identify entities hiding behind nominal holders, which much more narrows its capabilities on obtaining information on entities controlling legal entities.

The third permanent source of information on entities controlling legal entities should be the list of affiliated entities of joint stock companies. The law requires that similar lists are maintained by limited (additional) liability companies, but requires [*does not require?*] their disclosure.

In other cases the information is presented ad hoc (at registration of the securities issues, at issuing approval on merger/acquisition, at acquisition of the major stock of shares in the capital, etc.).

2. The problem of insufficient powers of the state bodies

The law enforcement bodies and the FAS have the most extensive powers and these authorities can obtain information on the widest range of entities controlling legal entities.

The FSFR, which is responsible for combating with manipulation, insider trade, ensuring information disclosure, has obviously insufficient powers.

In the first place, this is connected with the limited range of entities, whose obligation to submit information is stipulated in the law or which under the law can be held liable for offences connected with the subject of control of the FSFR. This limits possibilities of the FSFR to perform examinations with respect to such entities. Moreover, the FSFR authority on performance of examinations is limited to the issuers and professional participants of the securities market. Given that, the FSFR cannot obtain information from other entities.

One of the problems connected with implementation of powers by the state bodies is the low level of their interaction, which in some cases is limited by the law. In fact, in some cases the law assigns

confidentiality status to the information, which is obtained by the state body in the course of performance of its supervisory functions, thus prohibiting its further distribution⁶⁶.

Another bigger problem for some of the Russian state bodies is their limited possibility in international cooperation. Information on entities controlling foreign entities, which in their turn control Russian legal entities, can be obtained only through addressing of the Russian state body to the foreign authorities or organizations possessing such information or authorized to receive it. Sometimes such cooperation is carried out on the mutual basis, however, the vagueness of Russian legislation with respect to the right of the Russian state bodies to exchange with information with the foreign authorities hampers the Russian state bodies to be equal partners with the foreign authorities and organizations. The FSFM is in better position, since its powers on interaction with the foreign authorities and exchange with information therewith are described in the law in detail.

3. The problem of absence of liability or light liability

The problem of absence of liability or light liability for provision of information on entities controlling legal entities is closely connected with the problem of insufficiency of law enforcement powers of the state bodies..

In the first place, it relates to the administrative liability which does not exceed 500000 Rubles⁶⁷ for legal entities. Such administrative fines can be imposed by the FAS and the FSFM. At the same time one may notice obvious inequality of powers, since the FSFR can impose fine on legal entities only up to 40000 Rubles.⁶⁸

Another problem is imperfection of the procedure for imposition of administrative liability, and the main issues are insufficient terms for investigation of offences, and requirement for signing of the protocol on offence by the infringer, which make the possibility of imposition of administrative liability improbable.

Given that, it can be concluded that Russian legislation sets some elements of the **up-front disclosure system**. However, this system is incomplete.

The positive characteristic of Russian legislation is that it does not stipulate such mechanisms as bearer shares and nominal directors, which strengthen anonymity of control. At the same time it should be acknowledged that Russian legislation provides for broad possibilities to hide entities performing control over Russian legal entities and insufficient powers for the state bodies to identify such persons.

POSSIBLE RECOMMENDATIONS

1. It is necessary to broaden the range of entities, information on which is necessary for identification of entities performing actual control over legal entities.

⁶⁶ Article 44.1 of the Federal Law "On Securities Market".

⁶⁷ Note. 14300 EURO.

⁶⁸ Note. 1140 EURO.

The following entities shall be added in addition to the existing ones:

- 1) entities having the right to act on behalf of the legal entity by proxy. It would be advisable if such entities are recorded in the register of legal entities;
- 2) entities performing control over the legal entity on the basis of the agreement with it. It would be advisable if such agreements are recorded in the register of legal entities;
- 3) participants having established control over the legal entity on the basis of the agreement between themselves. It would be advisable if such agreements are recorded in the register of legal entities;
- 4) Beneficiary owners. It would be advisable if trustee name themselves as such and upon request of the issuer or the state body submit information on entities, in the interests of which they exercise ownership rights;
- 5) Founders of trust management. There should be a requirement for trust managers on submission of information on the founders of trust management upon request of the issuer or the state body, and also to register founders of trust management in the register of rights when such activity is carried out without a license taking into account that currently the law does not allow to conduct such activities without a license⁶⁹.
- 6) DR owners. While registering the rights to securities with respect to which DR have been issued, it would be advisable to assign a special status to agent of the DR issuer and to oblige it to submit information on DR owners upon request of the securities issuer or the state body.

2. It is necessary to solve the problem of uncertainty with respect to the structure of participants of partnerships and limited (additional) liability companies.

It should be noted that at the present time Mineconomrazvitia of Russia has prepared the amendments to that federal law changing the significance of the foundation agreement for limited (additional) liability companies and stipulating that transfer of equity shares in limited (additional) liability companies is connected with registration of the relevant changes to the register of legal entities. In accordance with these changes, which may be supported, participants of limited (additional) liability companies have to apply to the register of legal entities for transfer of their equity shares and such transfer can take place only after its registration in the register of legal entities.

3. It is necessary to decrease the number of levels of nominal holders to the amount, which is justified by the conditions of activities at the securities market. At the present time the number of levels of nominal holders is aimed at complication of identification of actual shareholders. Meanwhile, the number of levels of nominal holders can be limited to 2 (without settlement depositary) or to 3 (without settlement depositaries) levels.

4. It is necessary to oblige nominal holders to disclose information on their client regardless of their consent;

5. It is necessary to broaden law enforcement powers of the state bodies, activities of which require obtaining of the relevant information;

⁶⁹ At the present time the legal acts of the FCSM of Russia require that for the registration of securities in the name of trust managers there should be a license on activities on the securities' trust management. Given that the majority of registrars and depositaries are not allowed to register securities in the name of trust managers, which do not have license, although the law allows such trust management. If such registration is performed, the FSFR will not be able to obtain information on the founders of trust management, since its powers are limited only to licensed institutions.

6. It is necessary to create conditions for the international informational exchange with participation of the Russian state bodies.

7. It is necessary to strengthen administrative and criminal liability for violation of the rules of information disclosure.

II. IMPOSING AN OBLIGATION ON CORPORATE SERVICE PROVIDERS TO MAINTAIN BENEFICIAL OWNERSHIP AND CONTROL INFORMATION

1. Possibility of obtaining and maintaining of information

Russian legislation does not stipulate any requirements for involving into the process of establishment of legal entities of company formation agents, notaries, lawyers and other persons, even though they may participate in their establishment.

Individual entrepreneurs⁷⁰ and legal entities (managing organizations) performing functions of sole [executive] bodies of legal entities as well as professional participants of the securities market – securities trust managers, registrars and depositaries are more close in essence of their activities with the entities rendering services connected with management of legal entities and participation therein.

Below we will consider categories of these entities.

- 1) Russian legislation⁷¹ allows to appoint an individual entrepreneur or legal entity as single-member executive body of business entities. However, it does not stipulate any special requirements to such entities (in particular, they are not subject to special licensing, there are no qualification requirements for employees of managing companies). Individual entrepreneurs and managing companies are considered by Russian legislation as single-member executive body and all requirements for such single-member executive bodies would apply to these entities.
- 2) Professional participants of the securities market, which are securities trust managers, registrars and depositaries, play an important part in the system of corporate relations. It has been mentioned about their role above, however, the similar issues have to be discussed in more detail.

Under Russian legislation the rights to registered securities, which include shares, are subject to registration in their owners' registers. Pursuant to Russian law registration of the rights to shares in register is performed either by the shares' issuers or registrars⁷². Besides them registration of the rights to shares

⁷⁰ Status which is obtained by an individual at registration with the Unified Register of Legal Entities and Entrepreneurs in order to conduct entrepreneurial activities.

⁷¹ Cl. 3 Article 103 of the Civil Code, Article 42 of the Federal Law "On Limited Liability Companies", п. 1 Article 69 of the Federal Law "On Joint Stock Companies".

⁷² Maintenance of a register by registrar is obligatory, if the number of owners of such securities exceeds 500 (Cl. 1 Article 8 of the Federal Law "On Securities Market"). The Federal Law "On Joint Stock Companies" establishes a special rule for shares – maintenance of a register by registrar is obligatory only if the number of shareholders exceeds 50 (Cl. 3 Article 44).

can also be performed by depositaries. Each of these institutions has its own role, whereby the first ones are the issuer's agents, while the second ones are the agents of the securities owners.

A registrar is the issuer's agent – it is chosen by the issuer and transfer of functions on maintenance of the shareholders register by the issuer does not release the latter from liability connected with performance of such functions by the registrar⁷³. Registrars must have licenses of the FSFR (former FCSM). Russian legislation obliges the registrars not only to maintain the shareholders register but also to conduct certain corporate actions – to compile lists for participation in the general meeting⁷⁴, lists for payment of dividends⁷⁵, lists for exercising of preemptive rights to acquire shares⁷⁶, to carry out functions of returning board – examination of powers of participants of the general meeting and summing up of voting at the general meeting⁷⁷.

The structure of relations between a registrar and an issuer allows not to make the issuer liable for non-submission or non-disclosure of information even when the issuer itself did not have such information, however, the information was available with the registrar.

In contrast to the registrar the depositary is the agent of the securities owner – the latter chooses the agent if the owner does not want to be registered directly with the registrar.

As one can see from legal acts and court practice, the registration being performed by registrars and depositaries have constitutive role. In other words, only those entities, which are registered by the registrars and depositaries in certain capacity, have the rights to securities. In this case, the alternatives of registration stipulated by law are of importance. Currently there are three alternatives – owner of securities, trust manager and nominal holder⁷⁸. Let us analyze each of them.

- 1) Owner of securities – under Russian law an owner or possessor of other corporeal rights (right of operative management and right of economic jurisdiction) on securities⁷⁹;
- 2) Nominal holder – a person which is the owner but is registered first of all for facilitation to operations of the securities' owners – their clients⁸⁰.

In fact, all securities owned by the clients of nominal holder are usually (unless the client agreement stipulates otherwise) registered at one account (so called "omnibus"). This allows to release a registrar from transactions between the clients of nominal holders and to make the

⁷³ Cl. 4 Article 44 of the Federal Law "On Joint Stock Companies".

⁷⁴ Cl. 1 Article 51 of the Federal Law "On Joint Stock Companies".

⁷⁵ Cl. 4 Article 42 of the Federal Law "On Joint Stock Companies".

⁷⁶ II. 2 Article 40 of the Federal Law "On Joint Stock Companies".

⁷⁷ Cl. 1 Article 56 of the Federal Law "On Joint Stock Companies".

⁷⁸ It should be noted that the Federal Law "On Securities Market" stipulates only two alternatives of registration of rights on securities – owner and nominal holder, which determines the wording of definition of each that term (accordingly owner and non-owner). Trust manager as the third alternative of registration of an entity in the register or in depository registration was introduced by the FCSM legal acts.

⁷⁹ Owner – an entity to whom the securities belong on the ownership right or other corporeal right (Article 2 of the Federal Law "On Securities Market").

⁸⁰ Nominal holder of securities – an entity, which is registered in the register, including as deponent of depositary, and which is not the owner of such securities (Article 8 of the Federal Law "On Securities Market").

institution of nominal holder convenient for depositaries carrying out settlements on the results of transactions at auctions of trade institutors (i.e. settlement depositaries).

The status of nominal holder is also convenient for the brokers, which are registered as such with respect to securities of their clients (therefore, the brokers are custodial depositaries). It should be noted that Russian legislation differs from laws of those countries which do not require special status for registration of someone's securities in its own name and in which countries the securities are identified on the basis of information from the broker's internal registration data. Pursuant to Russian law, which stipulates constitutive nature for the registration, it is visible from the securities registration, whether or not the particular securities are owned by the person in whose name they are registered. This simultaneously allows to segregate the broker's own securities and the securities of its clients in order not to allow their recovery or arrest for the broker's debts.

Under Russian legislation nominal holders can be only professional participants of the securities market, which have license to perform depository activities (depositaries).

Status of nominal holder is also characterized by the fact that the law deprives of its right to dispose (including to transfer these securities to another person) the securities registered in its name other than in accordance with its client's instructions as well as of its right to implement rights associated with securities without special authorization of the securities owner⁸¹. The latter means that in order to allow a nominal holder to implement the rights on shares (voting right at the general meeting, right to get dividends and others), it shall obtain from its client a power of attorney, which in its turn means that it shall disclose information on its client to the issuer in order to prove to the issuer that the given power of attorney is issued by the shares' owner. For these purposes in the Russian joint stock company law there is a mechanism of preparation of the lists of entities having the right to implement the rights on shares. In order to prepare such lists the law obliges nominal holders to present information on entities, in whose interests they act as nominal holders. At the same time such obligation is often interpreted so that nominal holder is not entitled to present information on its clients without their approval, whereby nominal holders refuse to disclose such information to the issuer.

The law and legal acts of the FSFR (former FCSM) impose requirements for registration of securities of their clients. The clients of nominal holders may be securities owners (their securities are registered on deposit accounts of the owners) or other nominal holders (while the securities are registered on deposit accounts of the nominal owners or "interdeposit accounts"). The law does not limit the number of levels of nominal holders, which theoretically allows to create from them an unlimited chain;

- 3) Trust manager – a person, who is not the owner but exercises in the owner's interests all or some of its powers. Introduction of such institution at the securities' registration can be explained by practical considerations that usually trust managers dispose the securities, which have been transferred thereto, and exercise the rights on securities which distinguishes them from nominal holders and at the same time they like nominal holders are not the securities owners. So the FCSM legal acts have deliberately simplified relations of trust management, since the law allows to stipulate any combination of rights of trust managers, including a possibility to stipulate the right of trust manager only to vote with shares but not to sell them or vice versa the right to sell shares but not to vote with them. Under the FCSM legal acts trust managers themselves are included into the lists of entities having the right to vote with shares.

⁸¹ Cl. 2 Article 8 of the Federal Law "On Securities Market".

Currently the law provides that trust management of securities can be carried out both by entities having license to carry out trust management of securities or license of managing companies of joint stock and unit investment funds⁸², and entities which do not have such license⁸³. As of 2002⁸⁴ it became possible to carry out trust management without a license in cases when the essence of trust management is only exercising of rights on securities (but not their disposal). Meanwhile, so far the FCSM requirement that the status of trust manager can be obtained only by duly licensed entities has not been abolished, which does not allow other entities to be registered in the shareholders register.

Securities managers having the FSFR license can manage monetary funds and securities of certain entities but can also consolidate monetary funds and securities of several entities, creating accordingly a fund and to manage such monetary funds and securities like a fund.

Managing companies of joint stock and unit investment funds occupy a special place among trust managers. Their clients – founders of trust management and beneficiaries are joint stock investment funds (duly licensed joint stock companies) and owners of investment equity shares of unit investment funds.

Given that, as institutions rendering corporate services may include:

- registrars;
- depositaries; as well as
- trust managers.

It is necessary to make the following important note. The above-listed entities can be the source of information only on those entities, whom they have registered or which are their clients:

- registrars – on owners of shares registered directly in the register;
- depositaries – on shares owners – their clients;
- trust managers – on their clients – founders of trust managers and on beneficiaries (including on the owners of investment equity shares of unit investment funds).

The law does require from them to identify entities performing control with respect to entities whom they have registered or which are their clients. Given that, the state authorities, including the FSFR, can count on obtaining information only on the entities which are registered by the registrar and are the clients of the depositary and trust manager. Therefore, none of them is the source of information:

- on beneficiary owners of the entities registered by them (their clients);
- on controlling participants of the entities registered by them (their clients);
- on other persons controlling the entities registered by them (their clients).

⁸² Cl. 2 Article 38 of the Federal Law "On Investment Funds".

⁸³ Article 5 of the Federal Law "On Securities Market".

⁸⁴ Federal Law of 28 December 2002 No. 185-FZ "On Amending the Federal Law "On Securities Market" and on amending the Federal Law "On Noncommercial Organizations".

2. Proper Oversight

1. Control over activities of registrars, depositaries and trust managers is performed by the FSFR (former FCSM). Such control includes:

- issue of licenses on carrying out of the relevant types of activities⁸⁵;
- right to examine such activities⁸⁶. The Law "On Investment Funds" contains the most detailed rules on carrying out examinations. Pursuant to these rules the authorized officials of the FSFR in the course of performance of their official duties have the right to freely access the premises of joint stock investment funds, managing companies, ... and upon written request to get acquainted with necessary documents and information indicated in the submitted request. Managing companies ... are obliged to submit to the federal executive authority on the securities market documents, other information and to provide written and oral explanations which are necessary for the FSFR activities⁸⁷;
- right to suspend or annul a license in case of violation of the rules of carrying out of activities⁸⁸ (it is possible to annual licenses of managing companies of joint stock and unit investment funds only on the basis of court verdict⁸⁹).

Such FSFR powers apply to provision of information by these institutions on the entities registered in the register of the securities owners, on the clients of depositaries and trust managers.

2. Employees of registrars, depositaries and trust managers have to include specialists which have the FSFR (FCSM) qualification certificate, which is issued upon passing of qualification exams and confirms their compliance with the qualification requirements established by the FSFR (FCSM)⁹⁰.

Currently Russian law establishes requirements for officials of professional participants of the securities market with respect to their reputation and qualification. Pursuant to the law⁹¹ the following persons cannot act in the capacity of a single-member executive body of a professional participants of the securities market:

- persons who have been acting in the capacity of a single-member executive body or being a member of a collective executive body of the managing company of joint stock investment funds,

⁸⁵ Article 39, Cl. 6 Article 42 of the Federal Law "On Securities Market", Cl. 2 of the Regulations on Licensing Activities on Management of Investment Funds, Unit Investment Funds and Non-State Pension Funds approved by the Russian Federation Government Resolution of 4 July 2002 No. 495.

⁸⁶ Item 6 Article 44 of the Federal Law "On Securities Market", Cl. 2 Article 55 of the Federal Law "On Investment Funds".

⁸⁷ Cl. 3 Article 55 of the Federal Law "On Investment Funds".

⁸⁸ Item 4 Article 44 of the Federal Law "On Securities Market".

⁸⁹ Article 13 of the Federal Law "On Licensing of Certain Types of Activities".

⁹⁰ Cl. 14 Article 42 of the Federal Law "On Securities Market", item "d" Cl. 8 of the Procedure for Licensing of Professional Activities at the Russian Federation Securities Market, approved by Resolution of the FCSM of Russia of 15 August 2000 No. 10, Cl. 2 Article 55 of the Federal Law "On Investment Funds", Cl. 4 of the Regulations on Licensing Activities on Management of Investment Funds, Unit Investment Funds and Non-State Pension Funds approved by the Russian Federation Government Resolution of 4 July 2002 No. 495.

⁹¹ Article 10.1 of the Federal Law "On Securities Market", Cl. 1 Article 8 of the Federal Law "On Investment Funds".

unit investment funds and non-state pension funds, specialized depository of joint stock investment funds, unit investment funds and non-state pension funds, joint stock investment fund, professional participant of the securities market, credit organization, insurance organization, non-state pension fund at the moment of annulment (revocation) of licenses on performance of the relevant types of activities for violation of the licensing requirements or at the moment of adoption of decision on implementation of bankruptcy procedures, if less than three years have passed from the moment of such annulment or completion of the bankruptcy procedures;

- persons who have previous conviction for crimes in the field of economic activities or crimes against the state power.

Moreover, such persons are prohibited from being members of the boards of directors (supervisory boards) and collective executive body of professional participants of the securities market, as well as to perform functions of the chief of controlling department (controller) of professional participants of the securities market.

Pursuant to the FCSM legal acts obtaining of license is conditional on employment by the licensee of at least one controller (an official who is similar to compliance officer)⁹². The FCSM imposes qualification requirements to such person as well as to chiefs and specialists of professional participants of the securities market, observance of which is required for issue of license⁹³. The FSFR has similar powers, established by its own legal acts⁹⁴, with respect to issuers, registrars, depositories and securities trust managers.

The FSFR (former FCSM) using the powers granted to it regulates activities carried out by the registrars, depositories and trust managers⁹⁵. At that for the registrars the key elements are the rules of maintenance of the register of the securities owners, which are established by the FCSM and govern the rules of execution of transactions in the register – opening and closing of accounts, writing off and recording of the securities, compilation of lists, etc.⁹⁶. There are also rules for depositories regarding opening and maintaining of deposit accounts as well as carrying out of transactions⁹⁷.

⁹² Resolution of the FCSM of Russia of 02.09.99 No. 6 "On Approval of the Regulations on the System of Qualification Requirements for Chiefs, Controllers and Specialists of Organizations Carrying out Professional Activities at the Securities Market as well as for Individual Entrepreneurs – Professional Participants of the Securities Market".

⁹³ The Procedure for Licensing of Professional Activities at the Securities Market of the Russian Federation, approved by the FCSM Resolution of 15 August 2000 No. 10. The FCSM Resolution of 02.09.99 No. 6 "On Approval of the Regulations on the System of Qualification Requirements for Chiefs, Controllers and Specialists of Organizations Carrying out Professional Activities at the Securities Market as well as for Individual Entrepreneurs – Professional Participants of the Securities Market".

⁹⁴ The procedure for examination of issuers, professional participants of the securities market, self-regulating organizations of professional participants of the securities market and other organizations licensed by the federal commission for the securities market, approved by Resolution of the FCSM of Russia of 24 September 2003 No. 03-40/ps.

⁹⁵ Item 3 Article 42 of the Federal Law "On Securities Market", Cl. 2 Article 55 of the Federal Law "On Investment Funds".

⁹⁶ The Regulations on Maintenance of the Register of Owners of Registered Securities, approved by Resolution of the FCSM of Russia of 2 October 1997 No. 27.

⁹⁷ The Regulations on Depository Activities in the Russian Federation, approved by Resolution of the FCSM of Russia of 16 October 1997 No. 36.

The FSFR can obtain information on entities registered by the registrar as well as on the entities, which are the clients of the depositaries and trust managers, including their documents, in the course of examinations or by issuing injunction on information disclosure⁹⁸. In this case the term during which the information has to be disclosed is stated in the injunction, non-performance of which results in administrative⁹⁹, criminal liability¹⁰⁰, suspension or annulment of the license.

3. Conclusion

Given the above, it can be concluded that the Russian system does not require from the entities, which render services connected with participation in legal entities, to identify the entities, which control their clients. In fact, the rule "know your client" does not work.

This problem is closely connected with the problem of defining the group of entities controlling legal entities as described in Section 1. Without solution of these problems fixing an obligation to identify such entities will be deliberately insufficient.

4. Possible Recommendations

It is necessary to stipulate a requirement that the depositaries (at least custodial ones) and securities trust managers would have to identify the entities controlling their clients. Such requirement is a condition for establishment of an effective mechanism of fight with manipulation – custodial brokers and trust managers have to be liable for manipulation performed at their intermediation with their clients. It is not a secret that the brokers and trust managers often do not know about entities controlling their clients and also organize schemes for hiding the real participants of transactions behind men of straw or hide their own transactions behind their clients' transactions.

It is obvious that simultaneously with that there should be broadened a range of entities performing control with respect to the client, on which entities the depositaries and trust managers should obtain information.

III. PRIMARY RELIANCE ON AN INVESTIGATIVE MECHANISM

1. Ability to Obtain and Maintain Information

Russian legislation allows various state power bodies to obtain information, which may contain data on entities controlling legal entities. Let us consider each of them.

⁹⁸ The FSFR Injunction on provision of information on founders of trust management – owners of investment equity shares of unit investment funds is addressed to the registrars, which maintain the registers of owners of investment equity shares.

⁹⁹ Article 19.7 of the Code of Administrative Offences.

¹⁰⁰ Article 185.1 of the RF Criminal Code.

1. Powers of the FNS [Federal Tax Service] to Request Information

Pursuant to Russian legislation the FNS performing the state registration of legal entities does not have a right to request any documents other than those listed in the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs".¹⁰¹ This means that the FNS cannot obtain from applicants any information other than stated in the application for the state registration of legal entity and its foundation documents.

In particular, this relates to the information which is necessary for examination of authenticity of the stated data. Moreover, among the grounds for refusal of the state registration of legal entities there is no such ground as inauthenticity of information stated in the documents submitted for the state registration¹⁰². The FNS does not check authenticity of the information stated in the documents submitted to it.

Therefore, the FNS has neither opportunity nor incentive to obtain any other information in addition to the facts stated in the documents submitted for the state registration of the legal entity, including information on beneficiary owners and entities controlling such legal entity.

With respect to other entities submitting documents for the state registration of legal entities, the FNS also does not have any powers to request information. And vice versa, other state power bodies do not have any powers to request information on applicants filing the documents for the state registration of legal entities.

Therefore, it can be concluded that in the course of the state registration of legal entities it is impossible to obtain information in addition to the facts stated in the application for the state registration of legal entity and its foundation documents (which, as it has been previously discussed, is substantially incomplete), and also the documents allowing to check authenticity of such information.

2. Powers of the FSFR to Request Information in the Course of Control over Issuers and Professional Participants of the Securities Market

The FSFR performs control over observance by the issuers, professional participants of the securities market, self-regulating organizations of professional participants of the securities market of the requirements of the Russian Federation legislation on securities, standards and requirements approved by the FSFR (previously – the FCSM of Russia)¹⁰³.

The Russian Federation legislation on securities also contains a general norm which entitles the FSFR to request the issuers and professional participants of the securities market as well as their self-regulating organizations to submit the documents which are necessary for settlement of issues within the FSFR competence¹⁰⁴. However, the FSFR competence does not include the issues of identification of entities being beneficiary owners of the issuers or performing control over them. Therefore, this general norm is not practically important from the standpoint of obtaining of information on the said entities.

¹⁰¹ Пункт 4 Article 9 ФЗ "О государственной регистрации юридических лиц и индивидуальных предпринимателей".

¹⁰² Article 23 ФЗ "О государственной регистрации юридических лиц и индивидуальных предпринимателей".

¹⁰³ Пункт 10 Article 42 ФЗ "О рынке ценных бумаг".

¹⁰⁴ Пункт 7 Article 44 ФЗ "О рынке ценных бумаг".

Moreover, as mentioned in Section 1 above, the FSFR is obliged to ensure confidentiality of information submitted thereto. Hence the above-mentioned norm does not allow the FSFR to request from the issuers information on their beneficiary owners and entities controlling them also at requests of the foreign state authorities performing control at the securities market.

It should be noted that pursuant to the Russian legislation on the securities market the FSFR performs control only over observance of the procedure and term of information disclosure by the issuers and professional participants of the securities market, as well as over completeness of the information being disclosed. The FSFR does not perform control over authenticity of the disclosed information and does not have the right to require disclosure or submission of additional information.

Moreover, the said controlling powers of the FSFR do not apply to the securities owners. Therefore, effectiveness of the requirement for information disclosure by the owner of 20 or more percent of shares (securities giving the right to obtain shares) is undermined not only by absence of administrative and criminal liability for its violation but also by absence of the mechanism of control over its observance.

3. Powers of the FSFR and the Bank of Russia to Request Information in the Course of the State Registration of Issues (Additional Issues) of Emissive Securities and the Registration of the Securities Prospectuses

As already mentioned in Section 1 above, the state registration of issues (additional issues) of emissive securities and the registration of the securities prospectuses in the Russian Federation are performed by the FSFR and the Bank of Russia (with respect to the securities issues of credit organizations).

The documents submitted for the state registration of issues (additional issues) of emissive securities or the registration of the securities prospectuses shall contain the following information:

- on shareholders (participants) of the issuer, which own not less than 2 percent of the charter capital or not less than 2 percent of common shares – in the issuer's questionnaire;
- on shareholders (participants) of the issuer, which own not less than 5 percent of its charter (authorized) capital or not less than 5 percent of its common shares (these may be nominal holders), as well as on participants (shareholders) of the issuer's participants, which own not less than 20 percent of the charter (authorized) capital (share fund) or not less than 20 percent of their common shares – in the securities prospectus.

While considering the documents submitted for the state registration of issue (additional issue) of securities the FSFR is entitled to request documents confirming authenticity of information containing in the documents, which have been submitted for the state registration of issue (additional issue) of emissive securities¹⁰⁵. The Bank of Russia has the similar authority¹⁰⁶.

If upon request of the FSFR or the Bank of Russia an applicant fails to submit all necessary documents within 30 days, this shall be the ground for refusal of the state registration of issue (additional

¹⁰⁵ Clause 3 Article 20 of the Federal Law "On Securities Market".

¹⁰⁶ Article 57 of the Federal Law "On the Central Bank of the Russian Federation (Bank of Russia)" and Clause 1.7 of the Instruction of the Bank of Russia of 22.07.2002 No. 102-I "On the Rules of Issue and Registration of Securities by Credit Organizations on the Territory of the Russian Federation".

issue) of securities¹⁰⁷. Moreover, as mentioned in Section 1 above, the right of the FSFR and the Bank of Russia to perform examination and obtain necessary information is supported with criminal liability for non-submission of such information.

However, the above-mentioned authority allows the FSFR and the Bank of Russia to obtain only information which is necessary for checking whether the information in the issuer's questionnaire and the securities prospectus represents the facts¹⁰⁸. This authority does not allow to obtain information:

- on shareholders if the issuer in a joint stock company, whose securities are registered in the name of nominal holders;
- on persons acting on behalf of the issuer on the basis of the power of attorney;
- on beneficiary owners of the founders (participants) of the issuer;
- on owners of depositary receipts for the issuer's shares;
- on persons having established control over the issuer under agreement with it;
- on persons having established control over the issuer under agreement with other participants or other entities.

4. Power of the FAS to Request Information

As mentioned in Section 1 above, the Law entitles the FAS to conduct examinations on issues within its competence as well as to obtain necessary documents and information, explanations in oral and written forms¹⁰⁹. At the same time the law obliges legal entities and individuals to submit upon request of the FAS authentic documents, oral and written explanations and other information necessary for the FAS¹¹⁰.

Failure to submit the said information is subject to administrative liability: administrative fine on individuals ranging from 10 to 15 minimum wages; on officials – from 20 to 30 minimum wages; on legal entities – from 500 to 1,000 minimum wages¹¹¹.

However, the said powers of the FAS are limited only to the issues which fall under its competence. In other words the FAS is entitled to request submission of documents and information only for the purposes of identification of entities which exercise control over legal entities as provided in the law. This means that the FAS has no right to request submission of documents and information for identification of beneficiary owners of legal entities or other persons controlling legal entities besides those listed in Section 1.

¹⁰⁷ Article 21 of the Federal Law "On Securities Market" and Clause 13.10 of the Instruction of the Bank of Russia of 22.07.2002 No. 102-I "On the Rules of Issue and Registration of Securities by Credit Organizations on the Territory of the Russian Federation".

¹⁰⁸ Pursuant to Clause 2 Article 44.1 of the Federal Law "On Securities Market" the FSFR is obliged to substantiate the necessity of request for the information, when sending inquiries to the issuers, professional participants of the securities market and their self-regulating organizations for submission of information.

¹⁰⁹ Article 12 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets". Article 9 of the Federal Law "On Protection of Competition at the Market of Financial Services".

¹¹⁰ Article 14 of the Federal Law "On Competition and Restriction of Monopolistic Activities at Commodity Markets".

¹¹¹ Clause 2 Article 19.8 of the Russian Federation Code on Administrative Offences.

5. Powers of the FSFM in the course of counteraction to legalization (laundering) of the criminally received proceeds and to financing of terrorism

In the course of counteraction to legalization (laundering) of the criminally received proceeds and to financing of terrorism the FSFM has the right to request information and documents on operations (transactions) with monetary funds or other assets subject to obligatory control, as well as on operations (transactions) with monetary funds or other assets, which in the course of implementation of internal control programs give a rise to suspicions with respect to performance of such operations (transactions) for the purpose of legalization (laundering) of the criminally received proceeds and to financing of terrorism¹¹².

The FSFM can send inquiries on provision of such information to:

- organizations conducting operations with monetary funds or other assets (list of which is given in clause 6 Section 1);
- state power bodies of the Russian Federation, state power bodies of the Russian Federation constituent members and local self-government bodies.

Organizations, which conduct operations with monetary funds or other assets, shall submit information and documents listed in the inquiry within 5 working days from the date of receipt of the relevant inquiry¹¹³. Failure to proceed with inquiries may result in administrative liability measures: administrative fine on officials ranging from 100 to 200 minimum wages; on legal entities – from 500 to 5,000 minimum wages¹¹⁴.

However, the scope of information, which has to be forwarded by those organizations to the FSFM, is limited to the information, which has to be collected under the law¹¹⁵. As mentioned in Section 1 above, such organizations are not obliged to identify the entities controlling their clients. Accordingly, the FSFM also cannot obtain information on these entities from such organizations.

The FSFM has to right to request from the state power bodies and local self-government bodies other information (besides the information which is received from the organizations conducting operations with monetary funds or other assets) for the purpose of:

- checking information received by the FSFM from the said organizations;
- ensuring interaction and informational exchange between competent bodies of the foreign states in the field of counteraction to legalization (laundering) of the criminally received proceeds and to financing of terrorism and fulfillment of undertakings under the relevant international agreements of the Russian Federation (in the presence of an international inquiry or written request).

¹¹² Clause 1 Article 7 and Article 9 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

¹¹³ Clause 12 of the Regulations on Submission of Information to the Russian Federation Financial Monitoring Committee by Organizations Conducting Operations with Monetary Funds or Other Assets, approved by the Russian Federation Government Resolution of 17.04.2002 No. 245.

¹¹⁴ Article 15.27 of the Russian Federation Code on Administrative Offences.

¹¹⁵ Article 7 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

At the same time the law establishes one limitation on the structure of the said information and documents – they shall not relate to private life of individuals¹¹⁶.

The requested information and documents have to be submitted to the FSFM within 10 working days from the date of receipt of the relevant inquiry by the state power body or local self-government body¹¹⁷.

It should be noted that the state power bodies can submit to the FSFM only those documents and information, which are available at their possession or which they can obtain. Given the above, it is obvious that in the majority of cases neither the FNS, nor the FSFR or the Bank of Russia, nor the FAS can supply the FSFM with information on beneficiary owners or entities controlling legal entities, which are suspected for participation in operations connected with laundering of the criminally received proceeds or with financing of terrorism.

6. Powers to Obtain Information in the Course of Consideration of Cases in the Courts of Law and Arbitration Courts

In the course of consideration of cases in courts of law and arbitration courts each party has to prove the facts to which it refers as the grounds of their claims and objections, with the exception of cases stipulated by the law¹¹⁸. Evidences can be explanations of the parties and third persons, evidences of witnesses, written and material evidence, audio and video recordings, expert conclusions¹¹⁹. In the course of consideration of cases in arbitration courts evidences may also include other documents and materials¹²⁰.

Under general rule, evidences are supplied by the parties and other persons participating in the proceedings. However, if presentation of necessary evidences for these persons is difficult, upon their request the court of law (arbitration court) provides assistance in collection of and request for evidences¹²¹.

A court of law issues to a party an inquiry for obtaining of evidence or requests the evidence independently. If the court's request to provide the evidence is not fulfilled for no valid reason as deemed by the court, the guilty officials or individuals, which are not the parties participating in the proceedings, are subject to the fine: on officials – up to 10 minimum wages, on individuals – up to 5 minimum wages. Imposition of fine does not release the relevant officials and individuals possessing the required evidence from obligation to provide such evidence to the court.

An arbitration court request an evidence independently from a person, which has it (there should be issued a ruling). If the court's request to provide the evidence is not fulfilled for no valid reason as deemed by the court or if the court is not notified of impossibility to provide the evidence in general or within the specified time period, the person, from which the evidence has been requested, is subject to a court fine imposed by the arbitration court. The amount of the court fine imposed on individuals cannot exceed 25 minimum wages, on officials – 50 minimum wages, on organizations – 1,000 minimum wages. Imposition

¹¹⁶ Article 9 of the Federal Law "On Counteraction to Legalization (Laundering) of the Criminally Received Proceeds and to Financing of Terrorism".

¹¹⁷ Clause 7 of the Regulations on Submission of Information to the Russian Federation Financial Monitoring Committee by the State Power Bodies of the Russian Federation, the State Power Bodies of the Russian Federation Constituent Members and Local Self-Government Bodies, approved by the Russian Federation Government Resolution of 14.06.2002 No. 425.

¹¹⁸ Article 56 of the RF Civil Procedural Code, Article 65 of the RF Arbitration Procedural Code.

¹¹⁹ Article 55 of the RF Civil Procedural Code.

¹²⁰ Article 64 of the RF Arbitration Procedural Code.

¹²¹ Article 57 of the RF Civil Procedural Code, Article 66 of the RF Arbitration Procedural Code.

of fine does not release the person possessing the required evidence from obligation to provide such evidence to the arbitration court.

It should be noted that the evidences must be imputable, i.e. should be important for consideration and settlement of the case. In other words, the evidences, which are presented in the course of proceedings on the case, are determined by the requirements, which apply to judicial consideration.

At the same time the events when the state bodies appeal to courts of law (arbitration courts) are limited by law.

The state power bodies and local self-government bodies can appeal to the courts of law in order to protect rights, freedoms and lawful interests of other entities at their requests or to protect rights, freedoms and lawful interests of an indefinite scope of entities,¹²² in cases stipulated by the law. Moreover, in cases stipulated by the law the state power bodies and local self-government bodies have the right to join the case on their own initiative or at the request of the entities participating in the case in order to give a conclusion on the case for the purpose of fulfillment of the imposed obligations and protection of rights, freedoms and lawful interests of other entities or interests of the Russian Federation, the Russian Federation constituent members, municipal formations¹²³.

The state power bodies and local self-government bodies can appeal to the arbitration courts with claims or petitions for protection of public interests only in cases stipulated by the federal laws¹²⁴.

The federal laws provide the following cases when the federal executive power bodies participate in the civil or arbitration proceedings.

1. The FNS has the right to appeal to a court with claim on liquidation of the legal entity in case of gross violations of laws or other legal acts, which have occurred in the course of establishment of such legal entity if such violations cannot be remedied as well as in case of repetitive or gross violations of laws or other legal acts on the state registration of legal entities¹²⁵.
2. The FSFR is entitled to appeal to a court of law (arbitration court) on any issues within its competence (including invalidity of the transactions with securities)¹²⁶.

The law also establishes the FSFR right to file a claim on liquidation of legal entity, which has violated the requirements of the Russian Federation legislation on securities, and on imposition of sanctions on the infringers as stipulated by the Russian Federation legislation¹²⁷.

Moreover, in the course of consideration of disputes on claims or petitions on protection of rights and lawful interests of investors by court the FSFR is entitled to join the proceedings in order to

¹²² Article 46 of the RF Civil Procedural Code.

¹²³ Article 47 of the RF Civil Procedural Code.

¹²⁴ Article 53 of the RF Arbitration Procedural Code.

¹²⁵ Clause 2 Article 25 of the Federal Law "On the State Registration of Legal Entities and Individual Entrepreneurs".

¹²⁶ Clause 8 Article 44 of the Federal Law "On Securities Market".

¹²⁷ Clause 20 Article 42 of the Federal Law "On Securities Market".

give a conclusion on the case for the purposes of fulfillment of the imposed obligations and protection of rights of the investors – individuals and the State interests¹²⁸.

3. The FAS can appeal to a court (arbitration court) with petitions on violation of antimonopoly legislation, including:

on recognition as invalid (in full or in part):

- of acts, agreements of the federal executive bodies, state power bodies of the Russian Federation constituent members, local self-government bodies or other bodies or organizations empowered with functions or rights of the said state bodies, as contradicting to antimonopoly legislation;
- of agreements and other transactions, which do not comply with antimonopoly legislation;
- on obligatory conclusion of an agreement with a business entity;
- on liquidation of commercial and non-commercial organizations.

С исками о признании сделок недействительными ФАС вправе обращаться в случае нарушения правил получения предварительного согласия или уведомления при приобретении акций (долей) в уставном капитале коммерческих организаций и прав, позволяющих определять условия ведения хозяйствующим субъектом его предпринимательской деятельности либо осуществлять функции его исполнительного органа.

The FAS can file claims on liquidation of legal entities in case of violation of rules of obtaining of prior approval or submitting notification in the course of reorganization of commercial organizations in the form of merger and acquisition.

The FAS also has the right to participate in court or arbitration proceedings on cases connected with implementation and violation of antimonopoly legislation.

The analysis of the mentioned cases of participation of the federal executive bodies in civil and arbitration legal proceedings allows to conclude that they cannot file claims, for consideration of which it would be necessary to identify beneficiary owners and entities controlling legal entities besides the entities which are defined by Russian law (see Section 1). This fact as well as absence of characteristics in Russian law, which should be used for identification of the said entities, currently does not allow considering courts of law and arbitration courts as state power bodies, which could have facilitated to identification of the said entities.

7. Powers to Request Information in the Course of Criminal Proceedings by the Prosecutor's Office and the Federal Security Service

The following facts have to be proved in the course of criminal proceedings:

- 1) fact of crime (time, place, method and other circumstances of the crime);
- 2) guilt of person in committing of crime, form of guilt and motives;

¹²⁸ Clause 1 Article 14 of the Federal Law "On Protection of Rights and Lawful Interests of Investors at the Securities Market".

- 3) circumstances characterizing personality of the accused;
- 4) nature and scope of damage caused by the crime;
- 5) circumstances which exclude criminality and punishability;
- 6) mitigating and aggravating circumstances;
- 7) circumstances which may result in exemption from criminal liability and sanctions.

Besides that, there should be identified the circumstances which have facilitated committing of crime¹²⁹.

Evidences on criminal case may include any information, on the basis of which a court, prosecutor, investigator identify availability or absence of circumstances subject to substantiation on criminal case, as well as other circumstances which are important for the criminal case.

The following can be used as evidence:

- prejudicial evidence of suspect, accused;
- prejudicial evidence of victim, witness;
- conclusion and prejudicial evidence of expert;
- conclusion and prejudicial evidence of specialist;
- material evidence;
- protocols of investigatory and court actions;
- other documents¹³⁰.

In the course of prejudicial inquiry an investigator (agency of inquiry) performs necessary investigatory actions, in particular, interrogation, search, seizure of items and documents, arrest of postal and telegraph communications, control and recording of communications, etc. The procedure for performance of investigatory actions is regulated by the Criminal Procedural Code of the Russian Federation. Refusal of witness or victim to give evidence as well as for perjury, deliberately false conclusion of expert or specialist, incorrect translation are subject to criminal liability¹³¹. The requirements, orders and inquiries of prosecutor, investigator, agency of inquiry presented within their competence as stipulated in the Criminal Procedural Code of the Russian Federation, are obligatory for implementation by all institutions, enterprises, organizations, officials and individuals¹³². Therefore, prosecutor, investigator and agency of inquiry have broad powers to request any information which is important for the case, including information on beneficiary owners and on entities controlling legal entities.

The Prosecutor's Office conducts supervision over observance of the Russian legislation¹³³. For these purposes prosecutors are entitled to request necessary documents, materials, statistical and other information from the chiefs and other officials of the federal executive bodies, representative (legislative) and executive state power bodies of the Russian Federation constituent members, local self-government bodies, military management bodies, controlling bodies, as well as management bodies and chiefs of commercial and non-commercial organizations. Moreover, prosecutor is entitled to summon officials and

¹²⁹ Article 73 of the RF Criminal Procedural Code.

¹³⁰ Article 74 of the RF Criminal Procedural Code.

¹³¹ Articles 307 and 308 of the RF Criminal Code.

¹³² Clause 4 Article 21 of the RF Criminal Procedural Code.

¹³³ Article 1 of the Federal Law "On the Prosecutor's Office of the Russian Federation".

individuals for explanations regarding violations of law¹³⁴. Therefore, the Prosecutor's Office has broad powers in obtaining information necessary for performance of its functions.

For the purposes of implementation of its functions the Federal Security Service has the right to obtain information on gratuitous basis from the state bodies, enterprises, institutions and organizations regardless of ownership forms with the exception of cases when it is prohibited to transfer such information to the Federal Security Service¹³⁵.

At the same time it is impossible to use these powers for identification of beneficiary owners and entities controlling legal entities since the law does not define characteristics allowing to identify the above-mentioned entities.

2. Conclusion

Given the above, it is possible to conclude that the approach, which is based primarily on the mechanism of examinations, is not accomplished in Russia. There are certain impediments for this. First of all, it is necessary to note the problem of narrowness of the scope of entities controlling legal entities, as earlier mentioned in Section 1. However, apart from this problem, which has to be settled, there are other special problems:

1. The scope of information which can be requested by the FSFR, FAS and FSFM is limited to the issues related to their competence. Here one can see a close connection of the mechanism of obtaining of information with the purposes of its obtaining. From this standpoint such problem is not the problem with obtaining of the information in the strict sense – impossibility of obtaining of the information is connected with absence of certain reasons for its obtaining (if an action is not considered as offence then there is no need in obtaining the relevant information). For example, it can be manipulation – taking into account that only professional participants of the securities market can be held liable for price manipulation, the FSFR cannot conduct examinations of such entities. Similarly the abilities of law enforcement bodies are limited to the narrow scope of offences, for which administrative and criminal liability is established, or to drawbacks of definition of the scope of possible subjects of such offences.
2. In some cases the law directly indicates the entities, from which the information can be requested. While determining the FSFR competence the law stipulates that the FSFR is entitled to request information from the issuers and professional participants of the securities market, thus excluding the possibility of obtaining from legal entities (which are neither the issuers nor the professional participants of the securities market) information on entities controlling such legal entities, even though information obtained from such entities can be useful in the course of actions against the issuers and professional participants of the securities market.
3. It should be noted that one of the problems is an excessive nature of certain measures available for the state bodies, which they can use as sanctions for offences (recognition of transactions as invalid, liquidation of legal entities, etc.). On the one hand, absence of more flexible measures forces the state bodies to resort to excessively strict measures, but, on the other hand, when disproportion with the offence becomes obvious, this would force the state body to refuse from imposition of sanctions.

¹³⁴ Article 22 of the Federal Law "On the Prosecutor's Office of the Russian Federation".

¹³⁵ Article 13 of the Federal Law "On the Federal Security Service".

4. Absence of adequate liability is one of the most vivid problems of law enforcement. It has already been noted in Section 1 above about the problem of absence or lack of liability.

A symbolic amount of administrative fines for many offences (for certain entities – up to EUR 1,140, for others – up to EUR 14,300) allows the infringer to "ransom" themselves from the state bodies, instead of fulfillment of obligations, which require more significant costs. Another problem, which is connected with the problem of the level of administrative liability, as it has been already mentioned in Section 1, is the problem of imperfection of the procedures of imposition of administrative liability, which makes the possibility of imposition of even minor administrative sanctions unlikely.

The above-mentioned problems are of purely legal nature. However, for effective operation of the mechanism of obtaining information through the state bodies it is necessary to have institutional development of the relevant bodies, which is not limited to their authorities but also with growth of quantity and qualification of employees of such bodies.

3. Possible Recommendations

- 1) It is necessary to improve criminal and administrative legislation in order to stipulate the grounds for implementation of law enforcement measures towards offences at the financial market, including by conducting examinations, investigatory actions. The range of subjects of such offences has to be defined, which is closely connected with the task relating to broadening of the scope of entities controlling legal entities.
- 2) It is necessary to empower the state bodies with the authority to obtain from any entities the information, which is necessary for settling the issues within the state bodies' competence, so that the formal determination of the scope of entities would not impede obtaining of such information.
- 3) It is necessary to toughen liability for disobedience or counteraction to the examinations performed by the state bodies;
- 4) It is necessary to develop measures, which can be used by the state bodies.