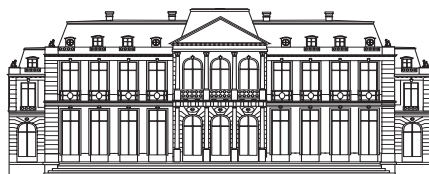


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<sup>1</sup> The views expressed in this paper are those of the author and do not necessarily reflect those of the OECD.

## **1. Introduction. Preliminary methodological comments**

The crystallizing structure of property rights and corporate governance is important both for the post-privatization development of enterprises and for the economy in general due to a whole range of considerations:

- The optimal organization of the property rights system in a corporation (as well as the delegation of those rights) provides an incentive for the restructuring and upgrading the efficiency at the micro-level;
- The historically (or traditionally) formed structure of the distribution of ownership in a corporation defines the specific national models of corporate governance and, respectively, the concrete legislative concepts and models of the government regulation;
- “Transparent” (clearly defined) model of corporate governance where the rights of all types of investors (shareholders, creditors) are protected is one of the key conditions which are to be complied with in order to attract investment at the micro-level;
- The model of the corporate governance and the structure of the capital market (operating through the specific types of the market economy) stipulate the differences in the forms of organization and financing of the corporations, structure of the branches of industry and the relationship between the employers and employees;
- At the micro-level, the model of the corporate governance is one of the major institutional components of economic growth.

From the standpoint of the market economy’s operation it’s the clearly – defined property rights and not the changes in their distribution which are crucially important (Coase, 1960). In the present day economic writings the clarity, stability and predictability of the property rights are regarded as a major factor of the economic growth and are closely linked to the successful economic development (Demsetz, 1967; North, 1978, 1981; others). Nevertheless, the role of the clearly defined property rights may vary depending upon the size of entities, whether they are public or private, the access to information etc. (Arrow, 1974; Stiglitz, 1994; World Bank, 1998; others).

The importance of this element of the institutional environment for the transitional model of the corporate governance and the respective government regulation can’t be overrated. Thus, under the socialist economic system there was a system of legal sanctions and enforcement for the protection of the public property. In the transitional Russian economy the zone of uncertainty in the field of the property rights has become wider since the system of protection of the public property is eroded and a new clear system of the private property rights is yet non-existent (Shleifer, 1994; Radygin, Entov, 1999). The erosion of the property rights also leads to the paralysis of the corporations’ investment activity because the better defined are the property rights the less are the risks at the capital market (Grossman, Hart, 1986; Hart, Moore, 1990). At the same time there are still no clear economic and legal boundaries between the public and private property with all the resultant problems (including the protracted absence of the bankruptcies as the mechanism of the corporate control). The problems in the field of ownership relations stemming from the imperfect information are also apparent.

If we interpret a firm as an institution, organization or network of contracts (Alchian, Demsetz, 1972; North, Thomas, 1973; Williamson, 1985, and others) and apply a corresponding approach to the corporate governance we can also make broad practical conclusions for the transitional economy. In particular, the absence of the developed system, long-standing culture and clear standardized mechanism of contract implementation as the channels for the transfer of the authority (property rights) clusters leads to the mass-scale violations of the shareholders' rights, a single case-tailored enforcement for the political purposes, development of the non-market relationships between the economic players, growth of the rent-seeking activity, corruption.

Conflicts between the managers and outside shareholders (both large and small) within the framework of the "principal-agent" relationship become very sharp. Problems related to the monitoring of managers by the shareholders (Hart, 1995), and consequences thereof, are aggravated by the fact that the managers, either directly or through proxy, are acting both as insiders and outsiders of the corporation in accordance with all possible interpretations of these terms.<sup>2</sup> The problem of the issuer's transparency becomes a crucial one not only for the potential investors but also for the de-facto outside shareholders of the corporation.

The corporate governance problem is no less important from the standpoint of the financial system which is understood as the certain institutional arrangements providing for the transformation of savings into investments and allocating resources among alternative users within the industrial sector (Tobin, 1984). Under the conditions of the transition economy it's the development of an efficient system of financial institutions, primarily banks, within the overall framework of the financial system, which becomes especially important for the shaping of the national model of the corporate governance and financing of industrial corporations.

Their weakness in Russia became especially apparent during the financial crisis of 1998 and the theoretical discussion about the principal character of the national model of the corporate governance (the American model versus the German one) became groundless. Correspondingly, the potential role of banks as an alternative mechanism of the corporate control under the conditions when the other mechanism which may force the managers to act not only in their own interests are of limited use (Stiglitz, 1994, pp. 77-78, 189-190) also turns out to be of little relevance

From the standpoint of the applied analysis of the corporate control issues the situation in the transitional economy is ambiguous. On the one hand, according to the tradition of the "manager's revolution" concept known since 1930s (Berle, Means, 1932) there are reasons to put the managers outside the framework of the real authority relationships involving control and management in the Russian joint

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<sup>2</sup> We mean the numerous interpretations of "insiders" and "outsiders" existing in the literature: (a) internal (employees, managers) and external (banks, funds, other corporations) investors of a corporation; (b) from the standpoint of their involvement in the system of inter-corporate ownership (in holdings or in crossownership schemes); (c) from the standpoint of the diffusion of the ownership (insiders as large controlling shareholders and outsiders as the small portfolio shareholders); (d) as "internal executives" and "independent" directors in the unitary or two-chamber governing body. Some researchers of the Russian legislation include into the "insiders" category all the board members, members of the collegiate executive body of the company, the person performing the function of single-person executive boy, and majority shareholders who can shape the decisions made by the company.

stock companies. This is especially typical for the first post-privatization years before the law “On joint-stock companies” was enacted. On the other hand, there are also reasons to claim that there is such a link as “ownership – corporate control – corporate governance”. The latter makes sense in the cases when it’s possible to identify different types of the “hard cores” of the shareholders exercising the direct control or affiliated structures (“coalitions” in the terms of the organizations theory). In this connection the key problem is to identify the hubs of real control (Aghion, Tirole, 1996) in a corporation under the formally dispersed ownership structure.

It should also be pointed out under the conditions of the non-liquid market the problem of choice between the mechanism of “vote” and the mechanism of “exit” loses its dichotomic nature (Hirschman, 1970, pp. 15-54) since in essence there is no alternative: if it’s impossible to sell one’s shares than it’s necessary to upgrade the role of the “vote” mechanism. One of the potential ways of this mechanism’s implementation in the transition economy is offered by the self-enforcing model of the corporate governance (Black, Kraakman, Tarasova, 1997; Black, Kraakman, Hay, 1996).

In the end it’s necessary to make several methodological conclusions of a more general nature. The term “institutional changes” is usually applied to the specific “institutional arrangements (institutions)” but, as a rule, never to the whole “institutional structure” as the totality of the “institutional arrangements” (Lin, Nugent, 1995, p. 2307).

The specific character of the transitional economy is such that the “institutional changes”, as opposed to the generally accepted approach, not only can but should be analyzed comprehensively, i.e. within the framework of the overall “institutional structure” of the economy. Such an approach to the same extent also applies to the problem of the emergence of the corporate governance model and control in the transition economy.

The specifics of the emerging model of the corporate governance and control as an independent “institutional arrangement” may be understood only within the framework of the whole totality of the “institutional changes” in the transition economy. At the same time the problem is that it’s impossible to analyze globally all the “institutions” (in one study) even in respect of a relatively narrow issue of the corporate governance and control development.<sup>3</sup>

It’s obvious that the two above-mentioned conclusions to some extent contradict each other. It was exactly due to this reason that the author limited the analysis to the singling out of the key aspects taking into consideration the Russian specifics. Below we would attempt to review two major blocks of the problems in their interrelationship.

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<sup>3</sup> In general to compare the progress in the institutional changes in the transition economies as a rule we review privatization, legislation, status of the banking system and the role of the government (the World Bank, 1996) which under certain conditions can be also applied to the evaluation of the corporate governance and control model in the transition economy.

First, the analysis of the present-day (post-crisis) stage of the ownership rights redistribution, its specific features and instruments. The key feature here is the conclusion about the growing uncertainty (instability) in the field of the ownership rights and rights of the shareholders. This, in its turn, leads to the conservation (at least, in the medium-term perspective) of the unstable and intermediate nature of the national model of the corporate governance and control in Russia. This conclusion is also important in the context of the previous one concerning the objective needs to strengthen the government regulation (law and enforcement) in this field.

Second, the evaluation of the major stages in the ownership rights redistribution in Russia as the basis for the understanding of the emerging national model of the corporate governance.

The present study mostly focused on the open joint-stock companies set up in the industrial sector of Russia on the basis of the medium and large state-owned enterprises in the course of their corporatization and privatization. The actual data used for the analysis of the specific to-day's trend was taken as of March 1, 1999.

The author is grateful to the chairman of the Federal Commission on the Securities Market (FCSM) D.V. Vassiliev, member of the Russian Academy of Sciences prof. R.M. Entov and the director of the Russian branch of the 'Salomon Brothers' in 1994-1998 V.V. Kuznetsov for their valuable advice and comments.

## **II. Financial crisis of 1997-1998 and the specifics of to-day's redistribution of the property rights**

The 1997-98 financial crisis has led to a serious shift in the redistribution of ownership and control. A part of investors may become attracted by the extremely sharp devaluation of corporate papers. Some of the shareholders, including the issuers, on the contrary, tried to improve their financial situation by dumping the stocks. Many commercial banks and financial groups, which found themselves on the verge of bankruptcy or in the process of it already, considered the possibility of ceding their stakes in the real sector or attempted to cede the non-liquid shareholdings. Within the framework of the privatization sales some of the stakeholders attempted to consolidate their holdings in the interests of control at minimum cost.

At the same time the crisis brought about more active use of the additional issues of shares and derivatives, debt schemes (securitization of debt), the mechanism of bankruptcy and company's reorganization. Under such conditions the attempts by the regional elite to establish control over the major enterprises of their regions became more noticeable and successful. At the federal level the idea of employee ownership and large state holdings as the main structural unit of the Russian economy were reanimated.

These tendencies are going to continue into 1999-2000, which may increase the instability of property rights and would demand a tighter policy of the investors (shareholders) rights protection. The practical experience of 1998-1999 allow us to single out the following, sometimes conflicting with each other, trends which determine the specifics of the crisis stage in the ownership redistribution in Russia (see also Section 3).

## **2.1. The status of the privatization process**

The financial and political crisis of 1998 highlighted the ambiguous policy which, somewhat artificially, is usually referred to as "cash privatization" in Russia. The total sales revenues in 1998 were formally in accordance with what was required by the law on the budget for 1998 and the adjusted target figures of the government. However, the bulk of that amount was received from the sale of 2.5% of the Gazprom' shares (Table 1). As in the previous years the standard privatization transactions didn't bring any tangible income to the budget while none of the planned sales actually took place. At the same time in 1998 the situation was aggravated by the new factors linked to the financial crisis.

First, the devaluation of the rouble and general drop in the capitalization of the Russian stock market deprived even the leading Russian issuers of any price landmarks. Under such conditions the state as the seller is tempted to overstep the boundaries of the formal legal field. A good example of this is offered by the cancellation of the results of sale that involved 15% of the Oil Company "NAFTA-Moskva" shares in September of 1998, which were used as collateral in 1995. It was explained by the inconsistency between the offered price and the hard currency equivalent of that period (although in the tender conditions, which weren't changed by the commission, the price was fixed in roubles).

Apparently, the possibility of the deal's cancellation became the incentive for the actual commissioner (MFK "Renaissance") to keep the old currency equivalent while setting the price for 14.84% of shares of the Novolipeztky metallurgical plant (NLMP). During the loan-for-shares auction of 1995, the amount of the loan extended to the government was 24.2 mln ECU. In December 1998, it was used as collateral in loans-for-shares schemes with the starting price of 25 mln ECU was sold for 26.1 mln ECU (or 30.8 mln dollars while the market price of this shareholding at the time of transaction was about 8 mln dollars). Of course, it's difficult to suspect the group "MFK-Renaissance" of having philanthropic motives: according to the agreement the starting price simply couldn't be lower than the amount of the loan. There was another, more serious reason: the threat that the control over NLMP might be overtaken either by TWG (36% of NLMP shares) or by the former ally in the struggle against TWG and managers of NLMP – the investment fund Cambridge Capital Management (about 25% of NLMP shares).

Second, there is a change in the conditions under which the struggle for the redistribution of ownership is undertaken. Since the October 1997 chronic crisis of financial markets in Russia, the mobilization of financial resources (both own and borrowed) in order to establish control over the new objects becomes more and more problematic even for the largest domestic financial groupings. As regards the potential foreign investors, their appraisal of the situation is best demonstrated by the massive withdrawal from the corporate securities market in 1998.

This situation is very unfavorable from the standpoint of the budget revenues. However, it may stimulate the privatization sales in those cases when the sharp drop of the market prices allows the process of corporate control consolidation with the minimum costs to be completed. Thus, if at the stage when the market was growing rapidly many stock holders had to limit themselves to portfolio investments, blocking or in the best possible case controlling interest, it's logical that during the crisis share capital is further concentrated.

The existing situation means that the mass-scale dumping of the remaining shareholdings is going to continue and, maybe, accelerate. In general, according to the Ministry of State Property data it was envisaged to sell during 1998 about 2,000 of the former state shareholdings now allowed for sale and many of them, apparently, still remain in the government's hands. The shareholdings of less than 25% would be dumped without any conditions. As the experience of the previous years demonstrated (especially under the conditions of the deepest crisis of financial market) it might not be so much a sale but an actual handing over of these holdings to some private or institutional shareholders.

As a result, the privatization process is returning to its initial stage of its spontaneous non-economic development. This may result from on the one hand, the government's lack of interest in organizing standard transactions within the framework of residual privatization and on the other hand, because of the low cost of assets and, correspondingly, disappearance of the market criteria for transactions. This could result in the potential strengthening of legal nihilism involving the participants of the privatization process, which could then lead to the further destabilization of property rights. The destabilizing effect of certain legal decisions in the field of the shareholders rights is of crucial importance in terms of the reestablishment of the overall investment climate<sup>4</sup>.

Apparently, such an uncertain situation is going to continue in 1999 as well. As of January 1999 the new forecasting list submitted by the Ministry of State Property to the government includes 7 companies: Sviazinvest (25% minus 2 shares, 14 bln rubles), Gazprom (2.5%, 13 bln rubles), LUKoil (9%, 4 bln rubles) as well as holdings in the Balashikhinsky bread products plant, AO "Bor", designing bureau for the automatic production lines "Rotor", Moselektrofolga. There is another list as well. According to the statement made by the Russian federal property fund it's envisaged in 1999 to sell the shares of 6 companies: Gazprom, Sviazinvest holding, ONAKO, Sovkomflot, Aeroflot, Moscow river steamship company. It is also unlikely that a comprehensible government concept of the rejuvenation of privatization policy in 1999 will appear.

At the same time, from the standpoint of the medium-term objectives, first priority should be given to the optimization of the existing ownership structure both at the macro- and micro-levels (accompanied by the clear industrial policy) in the interests of the economic growth. The budgetary goals, given all their political importance, should have a subordinate role. At the same time, they should take into account the current financial and political situation, nearing parliamentary and presidential elections we should hardly have any illusions.

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<sup>4</sup> In January of 1999 upon the proposal of the RF Procurator General's Office the government suggested to the Ministry of State Property to review the legality of sale of 8.5% of shares of RAO UES of Russia at the special money auction in 1996.

### 3.2. The crisis of financial-industrial groups

Seventy-five financial-industrial groups were registered with the state Register by the end of 1998 (about 1.500 enterprises and organizations, about 100 credit and financial institutions). In reality, there are about 150 amalgamations of the business units (banking-industrial holdings) which, although not always being the financial industrial groups, officially on the basis of formal criteria, might aspire to be called so. Among the major activities according to which the assets are consolidated in such amalgamations the following may be singled out:

- Transactions at the secondary corporate securities market;
- Transformation of debt into the share ownership;
- Acquisition of the assets of enterprises liquidated during the bankruptcy;
- Cross ownership of shares;
- System of personal participation in the boards of directors;
- Control through the credit policy and keeping of accounts;
- Participation in the standard transactions in the course of the “residual” privatization;
- Use of quasi-privatization instrument (loans-for-shares schemes etc.);
- ***Access to the management of the state shareholdings (through trust management, government holding companies etc.) etc.***

The formation of Russian financial-industrial groups in 1993-1999 and the crisis many of them find themselves in today has many aspects.<sup>27</sup> According to some estimates, the first institutional crisis in the Russian economy was connected with the disappearance of trade in the beginning of 1990s; the second institutional crisis – with the sharp decrease of the number of banks in mid-1990s; the third institutional crisis is the crisis of management in the giant financial-industrial groups in 1998-1999.

At the same time it's necessary to take into account also the whole set of the macroeconomic problems of 1998-1999, the level of the world prices for raw materials, government regulation, specifics of the corporate relations in Russia. Below is a review of only those aspects of the crisis of the Russian financial industrial groups, which has bearing on the prospect of property rights redistribution for the industrial sector companies.

It's well-known that even during the pre-crisis period the role of banks in corporate governance caused many complaints from outside shareholders (YUKOS' transfer prices in the “Menatep” bank group, transfer of funds from SIDANKO in the group of ONEXIMbank, monopolization of commodity flows in the subsidiaries by the owner-banks-Incombank and others)<sup>5</sup>.

The 1998 banking crisis sharply aggravated the problems of liquidity and insolvency in connection with the default on GKO, forward contracts, debt under the eurobonds, and foreign loans etc. At the time of default the holdings of GKO-OFZ in the Russian banks' assets were about 40 bln roubles (without the RF Sberbank (Savings bank). The losses of the Russian banks, which were hedging the exchange rate risks of the foreign investors, as a result of the downfall of the rouble, according to different estimates, were between 6 and 22 bln dollars. The debt of the 17 largest borrowers against the foreign commercial loans was about 1.3 bln dollars. This crisis brought forth the clear tendency towards the contraction of the ownership share of a number of the largest formal and informal groups at the core of which were the commercial banks. The following trends should be singled out in this connection:

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<sup>5</sup> Here and below we indicate the actual hierarchical links between banks, enterprises and groups and not their formal allegiance.

- Enforced sale of shares of those enterprises which traditionally formed the core of the group's investment portfolio (for the group of the "Rossiysky Kredit" shares of the mining and reduction plants, for the Incombank group – shares of the confectionery, metallurgical and defense companies<sup>6</sup>);
- Attempts to get rid of the non-liquid and non-profitable assets purchased earlier within the framework of larger corporate entities or grabbed in the process of privatization or spontaneous post-privatization redistribution. For example, ONEXIMbank suggested to the government to transfer the shares of the Angarsk petrochemical company to the state free of charge which is still better than the bankruptcy of this company;
- ***Proposals concerning the nationalization of part of the group's assets as a way of temporary protection against corporate raiders while retaining a part of shares, managers and control over the financial flows (see para. 2.5.);***
- Voluntary settlements using the shares of industrial companies to pay back the debt. For example, in the end of 1998 there was a proposal to settle part of debt of ONEXIMbank to the oil company Surgutneftegaz using the shares of the RAO "Norilsky Nickel"<sup>7</sup>. This possibility was also discussed during the negotiations between the committee of foreign creditors and ONEXIMbank in 1998;
- At present many banks are unable to pay back the loans they've taken using as collateral the shares of different enterprises. Thus, approximately 30% of shares of the Oil Company YUKOS and 24% (before 34%) of the Oil Company SIDANKO were used as collateral for loans. The National reserve bank used 8.5% of the RAO UES shares as collateral in order to obtain foreign loans and in the autumn of 1998, 7% of the shares were transferred to repay the debt;
- ***Arrest of shareholdings because of debts or sale of the individual stakes within the framework of official bankruptcy procedures.***

At the same time it should be pointed out that some of the Russian banks which didn't actively participate in the corporate expansion by March 1999 reached an understanding with the Western creditors concerning the restructuring of their debts (without the forward contracts). Among them are banks such as : Avtobank, Konversbank, National Reserve Bank, Poseximbank, Promstroibank-St.Petersburg (this latter with the debt under the forward contracts).

In general, the situation in 1998-1999 has the following specific features. First, as early as in the beginning of 1998 the leaders of the largest Russian financial groups which actively participated in the redistribution of property during 1990s declared that their groups were entering the stage of "putting their business in order" and efficient management of the assets they acquired. Now the conditions have changed

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<sup>6</sup> According to the available data these shares (Sukhoy designing bureau, Magnitogorsk steel plant, confectionery companies Rotfront and Babaevskaya) were resold to the affiliated entities and then – to outside companies. In this context so far it's difficult to say whether it was really a double sale for the purpose of stabilizing the bank's finances or a transfer of assets to the new replica-banks (entities) or simply withdrawal of assets serving purely private objectives. Nevertheless similar developments are typical for all banks undergoing a crisis.

<sup>7</sup> For details see: Arnold, 1999.

and we can only speak about the transition from the stage of grabbing the property to the stage of asset dumping and survival tactics under the crisis thus bypassing the strategy of the group's corporate reorganization in order to increase the overall corporate efficiency.

Second, the weakening of the former leaders means an increasing possibility of aggression from their smaller but better off competitors as well as from the regional authorities which previously could not afford to engage in a tug of war with the "Muscovite" financial groups. This creates potential grounds for a new spectrum of corporate conflicts.

Third, the reorganization of the large business in 1999-2000 could also be connected with the fact that the financial-industrial groups to a considerable degree lost the opportunity to work with government money and would have to enter the private capital market in order to look for new sources of financing<sup>8</sup>. This, in particular, would lead to the new redistribution of ownership in exchange for financial resources.

Fourth, this crisis situation faced by some of the largest banks and financial groups may result in an increase of power of the federal natural monopolies and those "autonomous empires" which were initially oriented towards "self-sufficiency" and didn't suffer so much in the course of the financial crisis. Of course this strengthening may to a considerable degree proceed at the expense of the assets and influence of the former rivals.

In the end of 1998, RAO Gazprom considered different options for setting up the new metallurgical holding "Gazmetall" purchased from the Rossiysky Kredit group controlling stakes in Lebedinsky, Mikhailovsky and Stoilensky mining and reduction plants as well as the shareholdings in the Oskolsky electrical-metallurgical plant and, probably, Novolipetsky metallurgical plant. This may signify the simultaneous end of a few scandal-ridden corporate wars of many years of duration (struggle for the Lebedinsky, Novolipetsky plants, etc.).

Among the 12 vertically integrated oil companies probably LUKoil and Surgutneftegaz are in the best shape and during 1998-1999 they considered different options of expansion. Another example is the attempts of the Tyumen Oil Company (TOC) from the "Alpha Group"; these attempts were stepped up in 1998-1999. This method was already tested by the group of raiders during the takeover of the Achinsk bauxite plant or West Siberian metallurgical plant. In the case of SIDANKO, the company itself (which may be recognized as fictitious) initiated the bankruptcy and the major creditor and owner – the group of ONEXIMbank - did it as response to the corporate raider.

Fifth, the growing "regionalization" of the ownership redistribution is the natural trend:

- Establishment of regional holding entities under the protection of the local authorities (in Bashkortostan – the Bashkirian fuel and energy company was set up; in Vladimir oblast – 4 holdings in the glass-making, linen, cotton and defense industries, in Moscow – the Central Fuel Company, etc.);

- Attempts to revise the results of the privatization transactions where the representatives of the Center (all-federal groups), other regions or foreign investors have won. For example, in 1999 "Philips" under pressure from the Voronezh region authorities sold 89% of shares in the Voronezh TV tube company for the price of 1 rouble to the financial-industrial group "Rossiyskaya electronica". In 1998, there was a conflict between the German company Knaub which purchased the Kuban cement plant and the local authorities and managers which, nevertheless, was resolved in favor of investors, etc.);

- Withdrawal of shareholdings in the regional companies previously transferred into the trust management (Tatarstan – the decision of 1998 to withdraw 9 shareholdings in large companies from the management of the Moscow-based investment company "Tatinvest-Ross");

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<sup>8</sup> The assessment by the president of "Troyka-Dialog" R.Vardanyan (from Internet Securities Inc.).

- Attempts to cancel the new stock issues which resulted in the change of the ownership of the regional corporation in favor of the “aliens” (Moscow, Samara) etc.<sup>9</sup>

The active attempts to establish regional control (often together with the “victim” competitors) in 1998 were actively begun by the authorities of the oil-producing regions. Among them were the conflicts between the Irkutsk regional authorities and SIDANKO over the ANHK, demand to transfer under the control of the Samara region authorities the local enterprises of YUKOS, conflict between the Yamalo-Nenetsky autonomous district and Rosneft over Purneftegaz, conflict between the Nenetsky autonomous district and Komineft, etc.

Sixth, it’s the attempt to reanimate the state holding companies in the strategic branches of the economy (see para 2.5.). To a considerable extent it can be possible only on the basis of redistribution of the ownership shares in large Russian corporations.

And, finally, we may witness a series of mergers and friendly alliances between companies from the crisis-ridden financial groups as a possible adequate reaction to the growing momentum of these processes. At the same time such merger would most probably be aimed at the strengthening of their overall defensive positions or restoration of the past lobbying clout and not at the achievement of the economic efficiency of the involved corporations and production operations. This also explains why all such intentions are very shaky.

The prospects of development of those industrial companies, which still remain under the control of problem-ridden banks, can be estimated as negative in the same degree. The latter would probably resort to the tools of corporate control in order to alleviate their own financial situation.

Thus, given the otherwise unchanged conditions during 1999-2000 we can expect formation of the new large financial entities and, in general, change in the disposition of forces at the financial-industrial Olympus. The consolidation of financial resources, for the purpose of the election race in 1999-2000, would play an important role in the acceleration of these developments. In any case it’s still premature to speak of any stabilization of the ownership structure in the Russian economy.

### **2.3. Non-payments and the debt restructuring**

The problem of the enterprise arrears as regards their payments to the budgets of all levels is one of the key links in the chronic fiscal crisis in Russia. At present out of 2.7 mln enterprises on the list of taxpayers 30% are in arrears. The attempts to restructure these tax arrears, which took place in 1996-1998<sup>10</sup> didn’t bring about the desired results. This was explained both by the deficit of the necessary political will and by the insufficiently detailed procedure of restructuring.

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<sup>9</sup> It’s necessary to point out one more trend typical both for the federal and regional levels in 1998: formation of family (clan) relationships within large corporations or within the system: regional authorities – regional company.

<sup>10</sup> Decree No 65 of the RF President of January 19, 1996 “On granting a deferment to the enterprises and organizations in respect of their arrears of payment of taxes and fines for the violation of tax legislation accumulated until January 1, 1996”, Decree N 685 of the RF President of May 8, 1996 “On the major guidelines of the tax reform in the Russian Federation and measures to strengthen the tax and payment discipline”, Presidential Decree No 1203 of August 17, 1996 “On the issue of bonds by organizations for the purpose of restructuring their arrears of mandatory payments to the federal budget and the state extrabudgetary funds”, Decision of the State Duma of the Federal Assembly of the Russian Federation No 1171-11 ГД of February 21, 1997 “On measures for the restructuring of the organizations arrears of mandatory payments”, the RF Government Decision No 254 of March 5, 1997 “On the terms and procedure of restructuring of the arrears of payments to the federal budget”, etc.

This problem is to the same extent valid also as regards the relations between enterprises. According to the data of the Federal Service of Revenue and Taxes (1998) out of the total arrears the share of the commercial banks is 4-6%, more than 50% - the share of the commodity credit and more than 42% - arrears of mandatory payments.

In this situation the different mechanisms of debt restructuring (its transformation into property rights) may be used as an efficient means of strengthening or establishing control in a corporation. Here are several examples.

(1) By the RF President Decree No 1057 of July 20, 1996 "On measures to eliminate the companies' arrears of wages and taxes" enterprises with state shareholdings of 25% and more were allowed to issue new stocks in order to repay their debt to the budget. Correspondingly there was an alternative: either the government share is going to increase after the new stock issue (that is, the shares would be accepted to offset the debt), or the government's stake is going to be diluted in favor of other shareholders. The first (and apparently the only) experience of that type was when the oil company YUKOS placed the stock issue for the amount of 499 bln roubles among the shareholders and through an open subscription (but among "friendly" entities). By the time of issue the Menatep group owned 33% of the company's shares (as the result of an investment tender) and held as collateral 45% of shares. The authorized capital thus increased by more than 30% (by 2.3. bln roubles) and amounted to 8.9 bln roubles. The state shareholding in this company decreased from 45% to 33.3% (and was subsequently bought out by the group).

(2) It's worth mentioning certain measures of Gazprom taken in order to settle it's problems of arrears payable to it (RAO Gazprom's internal order of January 22, 1997 "On organization of sale of debtor's arrears of the consumers for the natural gas delivered by the enterprises of RAO Gazprom). Actually taking into account the amount of debt of different enterprises to RAO Gazprom only this natural monopoly is capable of organizing the independent "market of corporate control" in Russia. It's also obvious that these debtor's arrears are very heterogeneous and there are different kinds of options (apart from the absolutely hopeless ones). First, to keep the debt in order to subsequently convert it into the property rights or second, to sell it back to the debtor under the threat of potential resale to hostile entities etc.

The Gazprom expansion through the securitization of debts also applies to the privatization plan of Tatenergo (as of July 1998), which plans to hand-over 10% of its shares to Gazprom as repayment of debt.

It was presumed that FDC was going to sell large debtor' arrears while the smaller chunks would be sold through the regional exchanges. As opposed to Gazprom, which prefers to have a debt market of its own, another large holder of such debt, RAO UES of Russia, may resort to the FDC services.

(3) The RF Government decision No 254 of March 5, 1997 "On the terms and procedure of the restructuring of enterprise debt in respect of their payments to the federal budget". According to some experts, this decision was drawn up specifically to address some of the needs of the ONEXIMbank group (although in the end it was its competitor, the Menatep group which used it with the maximum effect). The restructuring of the debt was to be effected through the securities issue (controlling shareholding to be used as collateral or bonds secured by the property of the issuer or by guarantees of the third parties).

In accordance with this scheme in October of 1997, the subsidiaries of YUKOS- Yuganskneftegaz and Samaraneftgaz – issued bonds for the amounts of 1.63 trillion roubles and 365 bln roubles, respectively guaranteed by YUKOS. The bonds of these oil companies were of extremely high

par value and didn't conform to a number of criteria applied to securities. Thus only 8 bonds were issued for the total amount of debt with the individual yields and maturities. As a result of the obvious unattractiveness of such an issue for foreign portfolio investors, the whole issue offered at the auction organized by the Russian Federal Property Fund was purchased by the insider, YUKOS (actually the sole participant in the auctions) with the discount of about 35%.

By the end of 1997, only 6 Russian companies obtained permission for restructuring according to this scheme: the above-mentioned subsidiaries of YUKOS which used this permission as well as Noyabrskneftegaz, AvtoVAZ, Norilsk mining and metallurgical plant and closed joint-stock company "Mezhdurechye". The minimal interest generated by this scheme can be explained both by the fact that the managers didn't believe that any serious sanctions would be taken against them in connection with the arrears to the budget and by the fear to lose the corporate control once this scheme is launched.

(4) Similar fate awaited the procedure of "accelerated bankruptcy" which was approved by the RF Government decision No 476 of May 22, 1998 "On measures to increase the efficiency of the bankruptcy procedures". It was envisaged that on the basis of the debtor's property, an open joint-stock company would be set up and the shares of this new joint-stock company would replace this property in the debtor's assets. The shares of the new company are to be sold and the proceeds would be used to offset the creditors' claims.

According to the Federal service of revenues and taxes similar procedures were already used in several dozen enterprises within the framework of the old bankruptcy law. As the example of how this procedure was used within the framework of the new decision the case of the Volzhsky pipe plant controlled the Rosprom group (bank Menatep) can be described. In May 1998, in anticipation of the start of the bankruptcy procedure, two new entities were set up: AOOT "VTZ" (the debts of the plant) and PO "VTZ" (with clean balance sheet). Nevertheless, in May 1999 the monitoring of the managers' activity was begun in connection with the premeditated bankruptcy: 5 subsidiaries of AOOT "VTZ" in April of 1998 (before the bankruptcy) bought up 80% of the plants' assets paying for them in unsecured drafts of an unknown company. Subsequently those assets were used as a contribution to the authorized capital during the setting up of these companies (Гидас , 1999). We would also point out that the scheme with the bills of exchange was also used by the bank Menatep during "paying up" of its investments into VTZ after the privatization investment tender (loans against the drafts of VTZ as a collateral).

In general the restructuring of the debt through establishment of the subsidiaries with the clean balance sheet is a widely used method. In such cases the problem arises when the major objective of such restructuring is a very trivial move: to hand over the liabilities to the creditors while the assets would go to the subsidiaries or new companies.

(5) In general, the restructuring of debt in 1998 could proceed on the basis of the RF Government decision No 395 of April 14, 1998 "On the procedure of the restructuring of the legal persons arrears to the federal budget in 1998" (for more details see: аиа , 1998). The issue and pledge of the securities (for which the decision of the general meeting of shareholders was necessary) were not envisaged by this decision. The use of the property as collateral (for which a decision of the general manager or the board of directors was sufficient) or the bank guarantee were to serve as a security under this scheme. It should be mentioned in this connection that the threat of losing corporate control became less valid however the possibility of securing the restructuring with non-liquid assets remained very relevant. This increased the chances of the practical use of this scheme.

The case of Purneftegaz, one of the largest oil producing companies of Russia, a subsidiary of the oil company Rosneft, may serve to illustrate the use of the bills of exchanges and sales of the debtor's assets in order to take over control. The shares of Purneftegaz (38% of its authorized capital or 51% of the voting stock) were arrested on June 1, 1998, under the summary enforcement order to repay the debts of

the parent company Rosneft to several banks and companies including some liabilities under the bills of exchange. The shares could be sold at any time, however, the sole shareholder of Rosneft, the RF Ministry of State Property, didn't do anything to prevent this transaction from taking place. In August 1998, an friendly settlement was reached with the creditors: the enforcement order was recalled and the agreement on the restructuring of the accumulated debt reached.

Nevertheless, in September 1998, in accordance with the decision of the Moscow arbitration court the authorized bank of court bailiffs, Dialog-Optim, sold the controlling interest in equal shares to 4 small companies for 10 mln dollars. Actually, the annual turnover of the company is estimated to be around 600 mln dollars, the value of the controlling interest (according to the RF Audit and Control Chamber) is between 680-760 mln dollars. The sale was effected within the framework of the federal law "On executive procedure" (which means outside of the bankruptcy procedure). Although the final buyer remained in the shadows until the end, among the potential parties which might have initiated this procedure LUKoil, SIDANKO and some others are mentioned. In November and December 1998, under the lawsuit initiated by the Procurator's office of Moscow, all 4 transactions were deemed to be invalid and the controlling interest was returned to Rosneft<sup>11</sup>.

However, the problems of Purneftegaz were not over yet. In December 1998, the Arbitration Court of the Yamalo-Nenetsky autonomous district instituted the position of the provisional manager of the company in anticipation of the bankruptcy (the debt of the company was 2 bln roubles). The bankruptcy procedure was initiated by the autonomous district administration, which intended to establish its full control over the company. In February 1999, after the compromise was reached between the administration of the district and the management of Rosneft, the creditor's council aborted the bankruptcy procedure and extended the period of debt repayment. Nevertheless, if the balance of power between all the interested parties shifts the new aggravation of the corporate conflicts around Purneftegaz is unavoidable.

There was another case when the shares of the Oil Company Komineft and its subsidiary Komiarcticoil were arrested and subsequently sold to repay the debts. This was initiated by the administration of the Nenetsky autonomous district and the buyers were the Baltic financial and industrial group and Oil Company Rosseverneft. In this case there was a problem with the chosen method of defense. In 1999, Komineft after a long delay, produced the loan contract with EBRD signed in 1996 according to which the arrested shares were used as a security.

In March of 1999, the shares of Mosenergo (actually amounting to the controlling interest) were arrested in connection with its debts even at the time of arrest the value of controlling interest was estimated about 750 mln dollars. Prior to this, the shareholding belonging to RAO UES was used as collateral for a loan.

There are also schemes of the debt restructuring involving the change of the property rights within the framework of the individual procedures. In November 1998, the joint-stock company KAMAZ (with the aggregate debt of about 1 bln doll) suggested the following scheme: the tax arrears were to be exchanged for bonds with the subsequent conversion into the shares of the company. The following advantages were mentioned in this respect: the balance sheet would be cleared of debt and the threat of bankruptcy would be removed (because the creditors would be transformed into shareholders). Although

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<sup>11</sup> In the opinion of the RF General Procurator's Office in this case there were violations of the law on executive procedure; signs of collusion; there was no open bidding; prices were undervalued, the sanctions were unlawfully applied against shares only and not against monetary and other assets. This case demonstrated that "the new mechanism of the court's orders enforcement involving the court's bailiffs doesn't provide a guarantee against abuses" (see: Бурцев, 1998).

the majority of creditors (governments of Russia and Tatarstan, investment company KKR, banks) had to agree with the transformation of debt into shares there is still the special position of EBRD. The latter extended to KAMAZ the loan secured by the property of the company (100 mln dollars in 1995) and would prefer splitting up the plant with the subsequent sale of individual pieces within the framework of bankruptcy. One of the most well-off among the car-making plants in RUSSIA, AO GAZ, also has to engage in the discussions concerning deferment of repayment of the investment loans. In February 1999, its debts to the foreign banks amounted to about 82 mln dollars.

The decisions of the Government in connection with the restructuring of the GKO-OFZ related debts may become an important additional factor of the ownership structure change in some Russian corporations. The total nominal value of GKO-OFZ held by non-residents is 83 bln roubles. The adopted scheme of restructuring envisaged the possibility to hand over to investors the special securities which may be used as a contribution to the authorized capital of Russian banks (20% of the debt). 10% of the debt are to be paid in money and during one year are to be blocked at the special transit accounts. Apparently, this solution has not been very attractive.

As a result, in 1998 there was a discussion of the possible acquisition by the non-resident-holders of GKO of the Russian blue chip stocks with two different options. First, purchase the corporations' shares with the part of the rouble amounts received during the settlement for the GKO or second, exchange part of the GKO for the stocks. At the end of 1998, some of the conditions of such investments were clarified. Only the open marked transactions were allowed (without participation of the state shareholdings), the maximum amount of investment shouldn't exceed 3.3% of the total debt (2 bln roubles), and the money is to be paid in 3 installments during 6 months.

Among the remaining problems are the choice of the allowed trading floors (probably, the Moscow Interbank Currency Exchange and the Russian Trading System), fears of the destabilization of the currency and OFZ markets, etc. The possibility of issuing the bonds of Gazprom and LUKoil arrears being considered so that they would be exchangeable for the debt paper held by non-residents. Besides giving an impetus to their own stock markets, these issuers might be motivated by more prosaic reasons for demonstrating their loyalty to the government. On March 1, the term of the trust management of 35% of RAO's stocks by the head of Gazprom expired, while LUKoil is interested in some specific versions of the ownership redistribution in the oil industry. At the same time the potential funds of non-residents may themselves become a lucrative target of competition among the professional players of the securities markets and any interested parties.

#### **2.4. Violations of the shareholders rights within the framework of corporate procedures**

We have already reviewed above the most typical violations of the shareholders rights. Here it's necessary to mention the tendencies, which became the most typical for the crisis conditions of 1998-1999.

According to the existing data, Russian issuers continue floating new securities notwithstanding the crisis. However, this is being done not in order to attract the capital but for the new redistribution of property. The growth of the number of new issues in 1998 resulted exactly from the stepping up of the process of the property rights redistribution when the mechanism of the new issues was used to the detriment of the "alien", small and medium shareholders.

It's very significant that in the autumn of 1998, the overall volumes of the re-registration of share transactions by the registrars didn't decrease but the share of the professional market players went down considerably while the share of the out-of-exchange transactions sharply grew. Most likely, this means that there was a considerable growth of the number of transactions involving large shareholdings within the framework of the post-crisis redistribution of ownership.

Although in 1998 there was a sharp increase of the number of new issues of corporate securities (19.941 issues out of which 19.848 -shares, 93 – bonds, 2.617 – refusals to register the issue), we should not attach too much importance to these figures (FCSM, 1999). Most of these issues were the so-called “technical” stock issues and didn’t pursue the objective to attract additional investments. Their function was primarily to increase the nominal value of shares or distribute the additional shares among the shareholders. This was done to increase the value of company’s assets (revaluation of fixed assets as a result of which no investments are attracted and the shares are distributed free of charge and pro rata among all the shareholders). Sometimes it was done for the purpose of consolidating or fragmenting the shares.

Thus, out of 73 stock issues registered by the head office of FCSM, 51 issues (69.9%) were in connection with the conversion (increase of the par value) and distribution among the shareholders, only 3 were floated under the open and 5 – under closed subscription.

The problem is that the documents which are necessary in order to register the issues of stocks and bonds are quite often balancing “on the brink between abiding by the law and completely ignoring it”<sup>12</sup>. Because of the existing drawbacks in the Russian corporate and privatization law often this, in essence unlawful, ploy is implemented in legal forms.

In 1998-1999, the violations of the shareholders rights in connection with the reorganization of joint-stock companies became widespread. First of all, it’s the attempts to push individual shareholders into the new companies with unfavorable financial situation. In order to prevent such violations, the new version of the Standards for the issue of stocks and bonds and their prospectuses during the reorganization of commercial organization adopted by FCSM in 1998 includes : the requirement that all shareholders are to receive the stocks (shares) in all commercial organizations established during the reorganization of joint-stock companies pro rata the number of shares they own in the companies being reorganized.

There is a whole range of other problems typical for 1997-1999, which are directly linked to the violations of the rights of shareholders (investors):

- Conflicts of interest during the exercise of the professional activity at the securities market (when the priority of the client’s interest is ignored because of the pursue of own interests, unlawful use of the client’s money);
- Activity of the regional authorities (attempts to cancel the new issues of securities);
- Failure to comply with the transparency requirements by the issuers and professional market players which also affects the rights of the shareholders (investors);
- Infringements on the part of registrars (lack of the necessary information about the issuers and full information in the transmission orders, failure to make the necessary entries in the register on time, overcharging for their services). There were also situations (typical in cases of corporate conflicts in the companies) when the registers were maintained by two registrars<sup>13</sup>;

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<sup>12</sup> Evaluation by deputy Chairman of FCSM Mr. A.Kolesnikov (from “Internet Securities Inc”).

<sup>13</sup> During the check of the “Magnitogorskaya Stal” financial and industrial group in 1998 it was found out that 2 registers were maintained: one – by the company itself and another – by the registrar at the request of the Board of Directors. Two registrars maintained the register of the stocks of the Kachkanar mining and reduction plant “Vanadiy”. During the examination of the registrar ZAO “RK-Reestr” serious violations of one shareholders rights were uncovered (OAO Moskovsky zavod Sapfir”). The stocks were written off its account without the formalized transmission order.

- Infringements on the part of depositaries (transactions on the depot accounts of clients without the necessary orders, possibility of unsanctioned access to and loss of data bases etc.).

## **2.5. Reanimation of the state holdings**

The history of the establishment of holding companies in Russia actually became the history of the perpetually generated conflicts and violations of the shareholders' rights. This situation can be explained by the sequence of establishment and privatization of many largest holdings entities, primarily, vertically-integrated.

Thus, in the oil industry the process of institutional transformations began with the establishment of individual production corporations and their privatization in 1992-1993. Later on the state shareholdings were brought together in the respective holdings and the new privatization of these newly established entities took place in 1995-1997. The buyers of the "second wave" who obtained the majority control in these holdings inevitably entered into a conflict with the minority shareholders – buyers of the "first wave". According to some estimates this delayed the emergence of the "efficient owners" in the oil industry by 3 years as a minimum. Apparently, there was some exception in case of LUKoil, which made transition to a single share as early as 1995. This conflict of "two privatizations" became one of the symbols of the corporate battles in Russia in 1997-1999 and provided the permanent source of the destabilization of the property rights.

A similar story happened with the holding "Sviazinvest". Initially regional telecommunications companies were established and privatized (as well as Rostelekom), then the controlling stakes (38%) were transferred to "Sviazinvest". As a result, now the improvement of the situation with corporate governance in the holding "Sviazinvest" is of crucial importance in order to overcome the disintegrating trends and avoid the possible sale of shares in 1999. To strengthen the control over the transfer of assets of the subsidiary companies to the third parties it's envisaged, in particular, to include the representatives of the largest shareholders (first of all consortium Mustcom Ltd.) into the Boards of Directors of the subsidiary regional telecommunications companies. It's also possible that the most profitable activities would be consolidated within individual subsidiaries. The holding's shareholders already discussed in 1998-1999 the possible option for the merger between the holding "Sviazinvest" itself and its subsidiary company "Rostelecom" (50.67% of shares belong to the holding)<sup>14</sup>. Still under the conditions of the chronic financial crisis and low market capitalization the attraction of sizable funds from a strategic investor (consortium) may pose a problem even with the highly efficient reorganization of holding.

Similar problems also exist in the power generation holding RAO UES of Russia. Here among the key problems (besides the non-residents quotas in the authorized capital), is the necessity to point out the control over regional companies and relationship between the holding and the local authorities. During the 1990s, many subsidiaries of this holding provided an example of the shareholders' rights discrimination. In this connection, it's necessary to mention the proposal that RAO UES made to 45 (out of more than 80) subsidiaries to bring individual provisions of their charters into conformity with the law "On joint-stock companies" (October 1998).

In particular, there is one unlawful and discriminatory act against the shareholders provision in accordance with which an increase of the stake of one shareholders by more than 1% of the voting stock needs to be preliminarily approved by the Board of Directors.

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<sup>14</sup> One of these options is the takeover of Sviazinvest by Rostelekom or vice versa through an exchange of the additional issue for the shares of the company being taken over; another one envisages Sviazinvest paying for part of the shares of Rostelekom with the shares of its subsidiaries and the shareholders of Sviazinvest would exchange the shares of Sviazinvest for the shares of Rostelekom.

By 1998, there were more than 100 officially established holdings with government participation. Apart from the above-mentioned corporate conflicts, two major trends became typical for 1997-1998. As regards the development of the government holdings: liquidation of certain entities established during the period when the ownership structure was amorphous immediately after the privatization and simultaneous emergence of the new holding-type powerful corporations under the government control.

One of the typical examples of this was the establishment in 1995 of the OAO "Rossiyskaya metallurgiya". The authorized capital of this holding was formed by 10% shareholdings in 9 Russian metallurgical enterprises and some other property. It is widely believed that the real objective of this holding's establishment was to preserve these shareholdings in order to avoid their purchase by the "alien" shareholders.

At the same time, the liquidation of the holding (by the Presidential Decree of November 24, 1997) provides one more example of the inefficient privatization strategy (an attempt to sell 49% of the holding's shares) under the conditions of the already relatively congealed structure of ownership (control) at the majority of metallurgical enterprises. It's obvious that the shareholdings of a number of these companies would be joined to the already relatively large stakes accumulated by some of the Russian financial and industrial groups. One more example of the holding being liquidated is the joint-stock company Posugol ("Russian coal") which was in essence a substitute of the former ministry.

There is also a reverse trend, primarily in such branches as telecommunications, high-tech industries and/or military-industrial complex. Among the examples, there is the already mentioned establishment and strengthening of "SVIAZINVEST" in 1995-1997. It has the mixed objective of retaining the control over the branch and providing the revenues for the budget through privatization; 38% of the shares of companies, which joined the holding, were transferred to it. A decision to set up the holding "Rossiyskaya electronica" ("Russian electronics") in July 1997, 10% of the shares of the newly established companies are to be transferred to it, while the others would be retained by the state. And finally, the project of establishing the Russian aircraft instrument-building corporation (the holder of the controlling or blocking stakes in 10-12 enterprises of the relevant production profile), the holding on the basis of the construction enterprises of the Ministry of Defense (1998), etc.

This process was a relatively important phenomenon in 1997 – the first half of 1998, however, at that time it could be regarded first of all as a protective centripetal reaction of the micro-level in individual non-competitive or depressed branches of the Russian real sector. In the end of 1998-1999 we can speak about a larger-scale process of the strengthening of the role of the state – both the federal center and the regional authorities.

In the military-industrial complex the idea to organize the sector in the form of several state concerns is currently predominant. One of the first steps in this direction taken in 1999 was the merger of the two existing holdings for the production of military aircraft: VPK MAPO (of which ANPK "MiG" is a part) and AVPK "Sukhoy" with the issue of single share. The government of Moscow has been actively trying to get a share in this holding and in general it's been very active lately in its policy of establishing control over the state shareholdings in the export-oriented branches of the Russian military-industrial complex.

In the oil industry in the end of 1998-1999 active discussion has been going on concerning the establishment of a large public company on the basis of Rosneft (100% of shares owned by the government), ONAKO (89%) and Slavneft (75%). The public company Zarubezhneft (100%) and pipeline

operator Transneft may be added to this list. There are also numerous counterproposals from the existing oil companies which are not interested in the appearance of a powerful competitor or are simply trying to get something for themselves during the redistribution of ownership in the branch.

*Thus, proposals were made to include into this state holding. ANKH from SIDANKO, TNK from the Alpha-Group, Vostsibneftegaz from Sibneft. The Alpha-Group, allegedly has offered interesting terms: instead of TNK (where the government already has 49%) Alpha wanted to get the blocking interest in the new holding, the right to appoint to managers, the right to develop all the financial and technological flows in the holding, transfer of all the accounts of all companies in the holding to the “Alpha-Bank” and, correspondingly control over the financial flows. LUKoil (26% of shares belong to the government) on the contrary, suggested to exchange a part of publicly-owned assets (ONAKO and Slavneft) for its own shares providing guarantee, in particular, that the fuel will be supplied to the northern territories. YUKOS, also in exchange for the part of its own shares, expressed its willingness to take Rosneft and ONAKO. TNK also considered the option of merging with Rosneft and SIDANKO (in the latter case, presumably, by taking over the control in advance).*

All these proposals may be regarded as a sort of the “Trojan horse” since in the final analysis they may come down to the dumping of illiquid assets or to the search for non-trivial ways to establish their influence in the new holding or simply the desire to use the government-owned assets to improve their own financial situation (as, for example, new objects to be pledged against loans). Taking into account the number of issues which need to be resolved and extremely controversial interests of the participants of this process we can hardly expect that the holding would be established in 1999.

In general the establishment of large public holdings may, apparently, become an important trend within the framework of the continuing redistribution of ownership. It’s worth mentioning that formation of the new entities of such type is possible only to the detriment of the existing corporations, established ownership relations and rights of shareholders. Thus the degree of importance of this trend would depend exclusively on the pragmatism and common sense of the executive authorities.

## **2.6. “People’s enterprises”**

Among the novelties of 1998-1999, we should also mention the attempts to reanimate the ideology of pseudo-ownership of labor collectives (employees) which most often in reality serve the interests of the enterprises’ managers<sup>15</sup>.

In 1998 federal law No 115-FZ of July 19, 1998 “On the specific features of the legal status of employee’s joint-stock companies (people’s enterprises)” was enacted which is rather exotic for the realities of to-day's Russia. The first version of this law which was approved by the Federal Assembly, was rejected by the President in May of 1998. This was a result of it unjustifiably introducing a new type

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<sup>15</sup> It looks like a direct analogy of the American ESOP schemes as the way of corporate managers’ protection against hostile takeovers (Williamson, 1985). It’s interesting that the amendments

of a joint-stock company different from both the open and closed companies envisaged by the RF Civil Code and also because of the number of inconsistencies with the labor law.

As a result, according to the adopted new law the provisions of the law “On joint-stock companies” pertaining to the closed joint-stock companies are applicable to the people’s enterprises. There is only one way to establish such people’s enterprises, i.e., transformation of any commercial organization with the exception of the public unitary enterprises, municipal unitary enterprises and open joint-stock companies the employees of which own less than 49% of the authorized capital. The basic (and difficult to fulfill) conditions of such a transformation are the following:

- Consent of the participants of the commercial organization (i.e. qualified majority of the general meeting is needed to adopt the decision about the transformation);
- The right of participants who voted against such a move to claim their shares (stocks) and redeem them in full or in part;
- Consent of  $\frac{3}{4}$  of employees of the commercial organization (as per the staffing table of the organization);
- Agreement of participants and employees of the commercial organization concerning the terms of establishment of the people’s enterprise;
- Upon the expiration of 5-10 years after the transformation the employees of the people’s enterprise should own such a number of the enterprise’s shares that their nominal value should exceed 75% of its authorized capital. Otherwise the people’s enterprise would have to be transformed into another form or liquidated.

The above-mentioned requirements allow us to draw a conclusion about the predominance of the ideological motives in the adoption of this law. As regards the practical aspects the experience of the redistribution of ownership in Russia during 1990s provides arguments in favor of maintaining or strengthening the positions of the enterprises’ directors (at least for the small enterprises which, formally, are at the focus of this law). This means that such a form may be used primarily in those cases when the administration, for whatever reasons, would find it expedient in order to change the already existing pattern of control. This could serve to alleviate (formally) social tension, or as the last argument during the defense against corporate raiders, etc.). But in general there are no practical reasons whatsoever to believe that this form may be viable.

### **III. BACKGROUND: Major stages and results of the redistribution of the property rights in the present-day Russia**

The complex and controversial formative process of the post-privatization structure of ownership in Russia had as its general positive outcome the gradual stabilization (streamlining of the structure) of the property rights. From an amorphous and dispersed structure to the appearance of the apparent (formal, based on the title to the property) or hidden (informal, based on the real authority within a corporation) hubs of the corporate control. According to the FCSM estimates in 1996 the struggle for control was over in 25% of the Russian corporations, in the beginning of 1998 – in 50%. Although it's impossible to speak about the real economic effect of such stabilization even in 1997-1998 (especially since the redistribution was still going on and the system in general remained unstable), nevertheless, we believe that there were some preconditions for that. The financial crisis of 1998 significantly changed the situation. (see section 2).

#### **3.1. Post-privatization redistribution of the property rights (1993-1998)**

Major features, stages and tools of the establishment of corporate control.

A. First of all it's necessary to single out the major ways of the post-privatization redistribution of property which were identified in 1993-1998:

- aggressive or “coordinated” buying off of the shareholdings of different sizes at the secondary market (from employees, investment institutions, brokers, banks);
- lobbying of specific transactions with the stocks remaining under the ownership of the federal or regional authorities (residual privatization, trust management etc.);
- voluntary or administratively enforced joining of holdings and financial and industrial groups.

During the first years of the post-privatization redistribution of ownership (1993-1996) the most widely used were different methods involving transactions at the primary (privatization) and secondary markets. Although during 1997-1999 we still can't speak about any significant improvement as regards the protection of shareholders rights, it was during the period of 1993-1996 when the violations of the corporate legislation resulting from the struggle for control were taking their most “savage” forms (undesirable shareholders were deleted from the registers, the voting during the general assembly was done by raising hands and not according to the principle “One share – one vote” etc.).<sup>5</sup>

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<sup>16</sup> Let's give some examples of the violations of the shareholders rights typical for the managers of the Russian joint-stock companies in 1994-1996: the minimum size of a shareholding was introduced which allowed to its owner to pretend to be elected into the governing bodies of the company; the information about the general shareholders meeting was either withheld or delayed on purpose; different high charges and commissions were introduced (for the participation in the meeting, for the registration of transactions, for the purchase and sale of stocks,

It should be pointed out that these processes were typical mostly for that part of the Russian enterprises where, first, was a potential for competition between insiders and outsiders (that is, profit-making or those with good prospects) and, secondly, the managing board itself had concrete strategic plans for the future. If the managing board continued to lead a passive existence paying little attention to the future of the company, then, such a company in the best possible case could only expect a takeover by an outsider and in the worst – the use of its assets by the managers for their personal needs.

Actually the key conflict of all these years was the conflict between the old managers trying hard to defend their positions and the newcomers who could potentially seize control. This was true in case of the majority of the Russian enterprises although for different reasons (financial flows and profits, accounting, export orientation, the site or other real estate, segment of the market or branch specialization which is of interest to a foreign company with the same production profile etc.).

In Russia the managers in their fight for control resorted to the following methods (apart from the purely criminal ones):<sup>17</sup>

- options for 5% of the stock and closed subscription (1<sup>st</sup> type of benefits) or closed subscription (2<sup>nd</sup> type of benefits) in the process of privatization<sup>18</sup>;
- buying the shares of joint-stock companies during privatization tenders and auctions;
- purchase of the stock by the firms (funds) belonging to the management;
- redemption of the company's stocks by the company itself, in particular for the subsequent sale to the employees and administration (or companies under the administration's control) in order to increase the share of "insiders" as opposed to the outside shareholders;<sup>19</sup>
- control over a part or all the stock belonging to the employees (through a collective trust in the closed joint-stock companies etc.);
- trust for the management of the government shareholding;

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for the provision of the copies of documents etc.); instead of voting according to the principle "one share – one vote" voting by raising hands was introduced; "special" (different from the envisaged by the law privileged stocks) shares were issued entailing the right to "special" dividends; "pocket" boards of directors were set up consisting of the director (manager), chief accountant and other top people of the company; sales of the stocks to the outsiders were obstructed, these stocks were bought up at the expense of the company from small shareholders at a low price, new issues were floated and placed with the persons serving as fronts without informing the shareholders and at a low price; there were manipulations with the register of the shareholders before the shareholders meetings, registration was denied; the assets of the company were sold through persons (companies) serving as fronts without notifying the shareholders

<sup>17</sup> It should be remembered that some of the methods lost their usefulness with the completion of privatization procedures and the others became impossible to implement in practice in 1996-1998 due to the appearance of legal restrictions.

<sup>18</sup> According to the poll conducted by FCSM (ФКЦБ, 1996b) in 1995 out of 172 polled joint-stock companies 41% of respondents mentioned buying up their own shares. 62% of the companies which were buying their own shares indicated that the shares were subsequently sold to their employees and administration. According to the official figures of the RF Goskomstat as of January 1,

1997 5.474 surveyed joint-stock companies (only with the government stake, including RAO UES of Russia and Rostelekom) issued 67.6 bln shares out of which 0.02% (16.8 mln shares) were redeemed by the company from the shareholders, 1% (656 mln shares) were transferred into a trust or holding, 0.005% (3.5 mln shares) (used as a collateral (K , 1997).

- control over the register of shareholders (especially in case of the joint-stock companies with less than 500 shareholders) as well as limiting the access or manipulating the register;
- change in the capital of the company, in particular, through the targeted dilution of the share of specific “outsider” shareholders through the placement of newly issued shares on preferential terms among administration and employees as well as “friendly” outsiders and pseudo-outside shareholders;
- general strategy of dispersion of the share capital in order to make a potential take-over through buying up the shares more difficult;
- buying of “residual” shareholdings in the course of money privatization (many managers were increasing their stakes even if there was no competition from the outsiders);
- applying different material and administrative sanctions against the employee-shareholders if they were going to sell their shares to outsiders;
- forming an alliance between managers-shareholders and “friendly” outsiders;
- involvement of local authorities in introducing administrative limitations for the operation of “alien” middlemen and firms which were buying up employees’ shares;
- lawsuits “supported” by the local authorities;
- introducing limitations (quotas) for the size of a shareholding in the company’s charter;
- setting up control over the market of shares of this particular company (through infrastructure etc.);
- using asymmetrical information in the fight against “raiders” or already existing outside shareholders;
- organizing the placement of additional issues on the basis of the “bottleneck” principle (at inaccessible places within a limited period of time);
- fictitious bankruptcies with the subsequent buy-up of assets.

Obviously the strategy and motives may differ significantly depending upon who is interested in this particular shareholding. For example even in case of a few largest Russian oil and gas companies the strategies they resorted to at the initial stage in order to cut off outside shareholders were completely different: LUKoil tried to disperse the issued shares to the maximum possible extent with the subsequent buy-up through the affiliated and friendly companies, RAO Gazprom introduced rigid limits for outsiders and organized a dual (domestic and foreign) market for its stocks, Surgutneftegaz used its own pension fund for the “self-buy-out” and tried to dilute the outsiders’ stakes through new issues, oil company YUKOS resorted to a “friendly” take-over by the bank with the subsequent legalized dilution of the government stake using the debt restructuring schemes as regards its arrears to the federal budget.

Most of the described above ploys were also similarly used by the outsiders interested in taking over the control. If from the issuers’ standpoint the securities market first of all offers an opportunity to consolidate their own control the outsiders’ motivation may be considerably varied. For example, the

motives for investment into the corporate securities of the commercial banks in 1992-1998 (given all known legal and financial limitations) can be grouped as follows:

- establishing control over the concrete perspective enterprise being privatized (usually for the purpose of bookkeeping, control over the financial flows and expert revenues etc.);
- purchase of shares in order to create footholds for the expansion into certain branches;
- buying up the stocks of the privatized enterprises on behalf of the large foreign and domestic investors (in order to get the commission or the price margin during the sale of the stocks);
- takeover policy for the purpose of the minimum restructuring and resale;
- obtaining a stake in the company as repayment of debt;
- redistribution in their own favor of a part of the proceeds from the sale of the governmental shareholdings;
- ownership of a peculiar “insurance fund” (since the government would not allow bankruptcy of the industrial giants and would even resort to subsidies or some other benefits which may be used by an outside shareholder as well);
- ownership of the stocks of the largest companies in order to create an image of a serious investor<sup>20</sup>.

As regards the other institutional investors, the corporate securities didn't constitute a significant part of their investment portfolios.<sup>21</sup> Insurance companies and pension funds (except for the affiliates of some large insurance companies) were traditionally oriented towards the government securities. The voucher investment funds offered some exception since due to their origins they became the holders of rather large stakes in privatized enterprises. Mostly these funds performed the brokers functions; they resold stocks specifically to the managers of the enterprises or handed the shares over to them in trust, structured the portfolios for foreign investors. Some of the funds acted as speculatively – oriented portfolio investors. Only a very small proportion of these funds which were also set up by large corporations were the long-term holders of a stake in the parent company in order to conserve the control over the corporation. The mutual funds and the bank managed mutual funds as a relatively new type of collective investors so far can hardly be regarded as an institution playing a serious role in the context of the property rights redistribution.

Against the background of the overall process of the control consolidation in the Russian corporations and within the framework of this process at least two significant sub-stages can be singled out.

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<sup>20</sup> For more details see: Radygin, 1997. According to the data of the Russian Central Bank in the beginning of 1998 3.9% of the commercial banks total assets were invested into the corporate securities and equity of the other organizations. It's impossible to precisely estimate the investments made through the subsidiaries of the banking holdings (first attempts to introduce consolidated statements were made in July of 1998). The most serious problems are encountered when a bank is not the parent company of the holding but just one of the members of the financial-industrial group at some level of control.

<sup>21</sup> For more details see: ФКЦБ, 1997.

First, the end of 1995-1997 period was a very specific stage in the post-privatization redistribution of property when reshaping of the ownership structure in a number of key Russian companies was already finished. In some of them the agreements between the major centers of influence were already reached and the consolidation of control was painless (like in the oil companies LUKoil and Surgutneftegaz). In other companies the final stage of control consolidation was protracted because of the continuing struggle between the interested parties (federal and regional authorities, natural monopolies, largest banks and industrial enterprises), intensive lobbying as well as continued ownership of the state over the large shareholdings. It was because of this that some of the largest transactions of this period were accompanied by big scandals (Sviainvest, “Norilsky nickel”, large oil companies).

In practical terms this process manifested itself in the loans-for-shares schemes of 1995 and in the buying back the stocks used as collateral in 1997-1998; in the “oligarchs” wars of 1997, legalized dilution of the governmental stakes, trust schemes, buying up the drafts, manipulation of dividends on privileged shares etc.<sup>22</sup> Both the presidential elections (1996 and 2000) and more long-term financial and economic interests of the rival groups acted as catalysts for these developments.

Second, when the law “On joint-stock companies” went into force and a whole number of other legislative and regulatory documents were enacted and the situation in law enforcement somewhat changed for the better<sup>23</sup>, in 1996-1999 the purely procedural methods began to be used more and more often including those which constitute a violation of the corporate law:

- shareholders are either not getting notified at all about the shareholders meetings or are not notified on time or are not notified about the substantive issues on the agenda of the meeting;
- boards of directors are not elected at the general meeting as is required by the law;
- outside investors under different pretexts are not allowed to become members of the board, which are “closed” to outsiders;
- there is an opposition to the independent audit of the financial activity of the company although outside shareholders insist on it;
- the procedural requirements concerning the voting during the general meetings are not observed;
- the rights of small shareholders are infringed upon during the distribution of dividends;
- the rights of shareholders are violated during the exchange of shares (when shares of the holding solely are introduced).

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<sup>22</sup> For more details see: IET, 1998; Radygin, 1997.

<sup>23</sup> In this context we do not have in mind any real achievements in the field of enforcement or positive shifts in the judicial system but rather the declarations about turning the screw on the violators and the use of demonstrative measures (because of the objective impossibility to control all the violations).

Nevertheless the most widely used way to get rid of outsiders is still the dilution of the outsider's share (both in the Board of Directors and in the issuer's equity) in favor of the majority shareholders (of a holding).

The derivative mechanisms may also be used for this purpose: convertible bonds, fractionalization or consolidation of shares, transition to a single share etc. In the holding companies in case if an outsider has the veto right (more than 25% of the voting stock) and can block the additional issues the so-called transfer prices are used and the assets are redistributed between the parent company and affiliates without taking into account the interests of minority shareholders.

The more widely known conflicts of 1997-1998 took place in the oil companies YUKOS (transfer of funds from the subsidiaries) SIDANCO (an attempt to issue convertible bonds at the price lower than the market one and place them with the friendly entities), Sibneft (transfer of assets to the holding and discrimination of the minority shareholders of subsidiaries during the transition to a single share).

Among the violations of the shareholders rights are the widely-spread practices when the managers unrestrainedly "pump over" the assets of the company they work for into their own companies and their accounts both in Russia and abroad or, in the best possible case, fix exorbitantly high salaries for themselves (while the rank and file employee-shareholders are not being paid their wages and /or dividends for months and months).Such behavior is primarily explained by the unstable situation in the corporate control which provides an incentive to the management to prepare the "golden parachutes" for themselves.

B. Structure of the stocks ownership, tendency toward concentration and myth of "an efficient owner"

In general the present process of the ownership redistribution is characterized by two parallel basic trends: strengthening of the managers (in their capacity as shareholders or as persons who exercise real control over the enterprise) and the growing "invasion" of outsiders. All this redistribution is taking place against the background of the further concentration of property.

It would make sense to apply in the Russian practice (in the spirit of the US SEC interpretation of insiders transactions) the following categories:

- "insiders" (internal shareholders) – "managers" and "large shareholders" – "small shareholders" (up to 10% of the stocks, hence, they can't exert procedural pressure and, therefore, the managers and large shareholders can simply ignore them).

One of the nuances of the Russian situation is that the monitoring of the large transactions (involving large stakes in companies' equity) is exercised with low efficiency only for the purpose of the antimonopoly regulation.

At the same time such monitoring (or transparency of participation) is no less important in order to prevent the insiders' transactions detrimental to the "external"/"small" shareholders who (as opposed to the managers and large shareholders) do not have access to the information about the company which is not publicly disclosed.

From the standpoint of changes in the equity structure the following key trends should be singled out (Table 2):

- the decrease of the employees' share, the rate of which slowed down in 1995-1998;<sup>24</sup>
- stabilization or growth of the administration (management)' share;<sup>25</sup>
- significant increase of the share of the outside majority investors (which in 1996-1998 nevertheless was growing slower than in 1994-1995);
- stabilization or decrease of the share of external minority investors (individuals);
- consistent decrease of the government's share.

In general we can draw the conclusion that the aggregate share of the internal shareholders was going down (due to the decrease of the employees' interest) while the share of external and pseudo-external shareholders in the companies' equity was growing.

The stock ownership structure of the largest Russian companies is, of course, different from the typical one (Table 3 of the Addendum). It's characterized by the following features:

- large participation of the financial and industrial groups and holding including the public ones;
- considerably smaller (as compared with the typical) share of the employees of all kinds;
- relatively large share of the non-residents of different types.

Of course any quantitative estimate would be rather artificial if you take into account the fact that among the formally external shareholders of the companies there is a considerable number of those which are directly or indirectly owned by the managers of this particular company or are friendly towards them. It's indirectly confirmed by the fact that among the holders of large or controlling stakes a considerable proportion consists of the commercial enterprises and holdings. In practice such commercial enterprises or holdings are often nothing but companies set up by the management as trade intermediaries and created for the mobilization of the company's profits which are being used, among others, for the buying out of the company's shares during the privatization and at the secondary market. Similar mechanisms are well known, for example, in Slovenia and other countries.

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<sup>24</sup> The increase of the employee's share in 1995-1996 indicated in the poll (3) (Table 2 of the Addendum) was probably the result of the policy consciously pursued by the management in order to disperse the additionally issued shares among the employees to prevent the establishment of an outside control.

<sup>25</sup> The tendency towards the formal decrease of the managers' share pointed out in poll (1) (Table 2 of the Addendum) most probably is also connected with the dispersion of equity in 1995-1996. We can also presume that part of the stakes obtained by the managers under the closed subscription or at the secondary market was "transferred" to other companies in order to avoid social tension (or in part was really sold to the outside shareholders). However, in general that doesn't mean that the managers lost control.

As regards the foreign investors (both in the typical and largest companies) the major problem here is to identify the real origin of investment. In many cases it's in reality the repatriation of the capital which was taken out of Russia.

In general, notwithstanding the gradual concentration of stock ownership and the increase of the outside stockholders' share in the capital of the companies their role in the management of the companies is so far inadequate to their growing proportion of equity. Of course, with the growth of the outsiders' share in the capital their positions (including the opportunities provided by the mechanisms of the legal protection) would be strengthening.

It's also important to take notice of one more principal trend. The second half of 1990s is characterized by a very specific process of merging between the functions of managers and outsiders in the Russian corporations. The managers gradually become stockholders in corporations while the outsiders, consolidating their control, start function as managers. This is a conflict-ridden process and so far it doesn't play a decisive role but in perspective it's very important as regards its potential for smoothing over of so far very bitter corporate conflicts and further stabilization of the property rights in corporations.

The data about the changes of managers in 100 largest Russian corporations provide some indirect confirmation of this fact (Хорошев, 1998). Thus, 50% of general managers of these companies assumed this position after 1992, moreover, 25% of them – in 1997. Before assuming the office they either didn't work at these companies at all (36.4%), or were deputy general managers (45.5%) or held other positions with the same company (18.2%). The average age of general managers was between 50 and 65 years, 19% of them were younger than 40.

The state shareholdings in the equity of the majority of enterprises (with the exception of the strategic branches of economy and largest companies) are not, in fact, playing any key role. If the management and a part of the large outside shareholders can be included into the "active" groups of stockholders the most "passive" group actually include the government and the rank-and-file employees of enterprises.

There was an example when the state in its capacity as a shareholder of the company was used in the corporate conflict in a coordinated way: the case of the additional stock issue by the Sayansky aluminum plant (SaAP). Although the problems of the corporate control in the aluminum industry are multi-faceted and have financial and political dimensions in this case it is the technology of the action itself which is of interest. In the spring of 1998 the capital of SaAP was increased 2.5 times (through the open subscription) which led to the decrease of the state's share from 15 to 6.15% while the share of the private company Trans-World Group (TWG) went down below the blocking level.<sup>26</sup> The additional issue was bought up by the companies belonging to the "Sibirsky Aluminiiy" ("Siberian Aluminum") of which SaAP is also a part.

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<sup>26</sup> According to the existing expert estimates the real purpose of the issue was exactly to dilute the shares of the state and of TWG. The SaAP managers who initially were appointed by TWG (which altogether controlled more than 50% of shares) nevertheless also acted against the company, although, it seems, they also purchased a part of TWG shares (not "diluted" them).

The Khakass property fund supported the group and voted with its stocks for this issue. The court proceedings initiated by TWG didn't change the situation since SaAP subsequently handed over to the state a part of the shares free of charge in order to reestablish the 15% stake of the government (after that 6.15% of that stake were sold during the privatization tender).

If the concentration of ownership takes place then, sooner or later (as the legislative basis develops), a relatively transparent system of corporate control is shaped with the predominant "cores" of shareholders. In this connection the role of the concentrated ownership in upgrading the efficiency of the corporation and corporate governance during the post-privatization period becomes the issue of the utmost importance.

Very often it's exactly the concentrated ownership (concentrated control) in different forms which is indicated as the major economic mechanism of the corporate control; it provides the basis for the investors' real influence, which by itself strengthens the legal protection and allows to minimize the need for seeking solutions through courts. The majority of the transition economies were oriented towards the concentrated ownership model; with different degree of success; legislatively or ideologically; through the application of mandatory schemes or spontaneously. At the hypothetical level it was presumed that the corporate relationship model based on a more concentrated structure of ownership and insignificant role of insiders (both employees and managers) would also stimulate the financial progress and economic efficiency. This hypothesis established the link between the corporate governance (control) model, efficiency of such governance and efficiency of the enterprise itself.

As the practice demonstrated<sup>27</sup> the results of this ideology implementation were extremely controversial and the preliminary assessments can't be true at the generalization level.

On the one hand the existing data of the Leontieff Center (St.Petersburg) allow us to speak about higher level of efficiency of the privatized enterprises in the Russian industry (Table 4 of the Addendum). The following traits can be identified on the basis of the data: (1) "deeply-privatized enterprises" are more efficient than "medium-privatized" and both groups of privatized enterprises are more efficient than the public ones; (2) the efficiency indicators of the enterprises privatized in 1993 are higher than those of the enterprises which underwent this change in 1994-1995. If we presume that the degree of concentration of the stock ownership is higher at the enterprises which became involved in the privatization process earlier

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<sup>27</sup> The theory also doesn't give any single answer to this question. According to some existing evaluations the results of the study of correlation between the concentration of ownership, control over the management and the growth of the prices of company's stocks even in the countries with the stable market economy are very ambiguous (Грей, , 1994). Some of them confirm that the concentration of ownership results in the better operation of corporations in the developed branches with relatively simple technologies. The other researches who study the presumed cause and effect relationships put forward the hypothesis that the structure of ownership is rather a dependent than independent variable. There is also a supposition that in some branches of industry the highly concentrated ownership is useful while in the others vice versa but the market would always push the company towards the optimum solution. There are also certain nuances, which depend upon the size of a corporation (Demsetz, Lehn, 1985). At the same time there are drawbacks to the concentration of ownership in a corporation as well which we connected to the potential conflicts of interest between the large and small shareholders (the problem of general and particular interest described in literature). Thus we can hardly draw any unambiguous conclusion especially as regards the unstable transitional economy.

(which is general corresponds to the trend observed all over Russia), then, with a certain degree of presumption, we can maintain that the enterprises with the concentrated ownership are more efficient.

Another indirect confirmation of the fact that the enterprises with the highly-concentrated ownership are more efficient can be found in the comparative figures supplied by a number of researchers representing the operation of enterprises with different types of predominant owners in 1995-1997. In many cases the best economic performance was demonstrated by those small and medium enterprises where the ownership was concentrated in the hands of managers and by large enterprises with the ownership in the hands of certain types of outsiders, although, there are the figures showing the opposite situation (See Aukutsionek, Kapeliushnikov, Zhukov, 1998; Клепач, е , ча , 1996; Earl, Estrin, Leshchenko, 1995).

The numerous facts when the majority shareholders (both managers and outsiders) acted against the interests of their corporations development are also well-known. There is an almost standard set of accusations which can be equally used against the owners in other transition countries: desire to control only the financial flows and export transactions; unjustified splitting of an enterprise, selling off or leasing out the assets to the detriment of shareholders and the enterprise itself; free rider's attitude during the search for strategic solutions; treatment of their stake as an object of speculation or using it as a collateral against the loans etc. It was especially relevant in case of the financial institutions which became the stockholders in the course of and after privatization.

Among the explanations of this situation, at least in respect of Russia, the following considerations may be mentioned. If the "amorphous" system of corporate control (that is, the absence of any visible signs of control even if there is an informal one) is preserved that may bring about the loss of objectives as regards the medium-term development and the lack of investors. The problem is that with the amorphous system (even if the real control is concentrated in someone's hands) both the responsibility for the current situation in the corporation and the control on the part of shareholders over those who bear this responsibility simply disappear. At the same time there are no external mechanisms of control as well (legal and market) in order to provide for such a responsibility. The well-known mechanisms of the investors' rights protection, which are so important in order to attract investment, are also non-existent.

Correspondingly, as regards the further institutional changes the problem of the "efficient (responsible) owner" who during the last years became one of the mythological figures of many official programs and concepts needs to be resolved.

In general the problem of an "efficient owner" to a large degree is connected with the macroeconomic conditions, taxation, effective system of implementation of contractual obligations etc. It's paradoxical that in a number of the transition economies including Russia a dualistic attitude towards the notion of "efficient owner" has developed.

The most primitive interpretation (which is typical, for example, to the official ideology of governmental departments) is to identify “efficient owner” with the “owner (private) of a large or controlling interest in a company”. Hence, a clear and simple bureaucratic task: to “mechanically construct” new responsible owners. At a certain stage of this construction it turns out that the “efficient owner” (whether the owner of a certain interest or the manager who retained his position of control) is not efficient from the standpoint of the formal governmental logic: he doesn’t pay wages to the employees, doesn’t pay taxes, is not interested in the enterprise’s development, establishes subsidiaries in order to “pump out” the assets while leaving only the legal shell of the company, etc.

At the same time the very same owner (holder of the controlling function) is efficient as the specific economic agent in the specific environment where he has to operate (exorbitant and very complicated taxes, barter, cash settlements, criminal environment, desire of the potential “outside shareholders” to seize control only for the purpose of controlling the financial flows of the company, etc.). In this case he is efficient because he maximizes the profits acting as the owner (holder of the controlling function) under the specific conditions imposed on him and protecting the company from the external destabilizing factors.

Of course the picture won’t be full without taking into account the personal financial ambitions of the subject who retained or established control over the company. The degree of criminalization of his behavior depends upon many economic, legal as well as social and psychological factors. The range of different types of behavior is extremely wide: from the setting up the “profit centers” outside of the company but for the purpose of its development and up to the different schemes of pumping out the corporation’s fund for their subsequent transfer to his personal accounts abroad. In this context it becomes clear that in order to implement in real life the official governmental ideology of “efficient owners” the adequate measures on the part of the state are needed touching upon practically every aspect of the economic reform.

In connection with the problem under review it would be also interesting to know the results of the comparison between the legal systems of 49 countries from the standpoint of the investors’ rights protection conducted in Harvard (La Porta, Lopez-de-Silanes, Shleifer, Vishny, 1997, pp. 32-35, 40-43). The authors came to the conclusion that the concentration of ownership was at the same time reaction (or adaptation) to the weak legal protection of investors within the framework of the national model of corporate governance. High accounting standards, legal mechanisms of investors’ protection and the level of the legislation enforcement have a very negative correlation with the concentration of ownership.<sup>28</sup> At the same time the high level of concentration signifies the weak operation of the capital market. The conducted analysis linked this to the fact that the weak legal protection of investors denies to the companies the opportunity to mobilize the necessary capital.

This conclusion is also valid for the Russian situation. Bearing this in mind we may presume that the problem of attracting investment to the privatized enterprises won’t be resolved even when the struggle for control in the new corporations is over. The concentration of ownership typical for the process of

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<sup>28</sup> Of course certain limitations of this study should be taken into account: in each country only 5 or 10 companies with the largest capitalization were analyzed, only nominal ownership of shares was considered and not all the mechanisms of control taken together, etc.

struggle for control may be regarded as the method of the new owner's adaptation but it doesn't offer any guarantees to the new potential investors under the conditions of weak legal regulation.

Another crucial conclusion is that the attempts to have accelerated development of the corporate segment of the securities market in Russia and other transition economies (as well as development of its infrastructure) wouldn't be very effective until they are based on the on-going improvement of the investors' protection mechanisms and the system of law enforcement.

## CONCLUSION

*The most general conclusion which can be drawn from this study is that Russia has not become a unique exception from the rules which are valid for the majority of the transition economies. All more or less typical trends accompanying the emergence of the corporate control and governance model including the problems of the fight for control are in one way or another characteristic for Russia as well. We believe that Russia, all its problems notwithstanding, is among the pioneers and, compared to the other transitional countries, a significant progress has been achieved in Russia in this field.*

All the above-mentioned means that in terms of the further objectives in formation and regulation of the national model of the corporate governance a very "simple" idea can be formulated: there are neither "special obstacles" nor "special recipes" for the formation and emergence of such a national model. All the transition economies encounter the majority of these problems. Both the major problems and the mechanisms of their resolution are well known in the international experience. The formation of the national model of the corporate governance presumes that it's necessary (first of all for the state) "only" to recognize the need for the following requirements (preconditions) to be satisfied:

- understanding of the special role of the state in a transition economy (as a "creative destroyer");
  - understanding of the long duration of this process comparable with the whole transition period;
  - need for the political will in order to develop and enforce efficient legislation to "screen" any narrow interests of any group of any type (political, populist, criminal etc.);
- and, finally, the need not for radical interventions but for the daily regulatory operation of a single body capable of pursuing rigid centralized policy.

In many transitional countries the privatization didn't result in any sizable investments for the enterprises. This means a heavier press on the emerging model of corporate governance, however, in the legislation of many countries the necessary mechanisms are insufficiently developed so far (problem of additional issues, transparency, protection of different categories of shareholders etc.).

At the same time in the majority of these countries at present the "external" mechanisms of the corporate governance do not work (control on the part of the financial market, takeovers, bankruptcies). Such a situation is typical both for the countries with the well-defined concentrated ownership and for those with an amorphous (non-transparent) structure of the corporate control. This means that the active control by shareholders (voting) should become the predominant form (as compared to the passive control through the sale of shares). This also creates a special burden for the "external" legislative and "internal"

(boards of directors) mechanisms of the corporate control and the problems of enforcement become especially relevant.

The progress in overcoming of many of these problems to a large degree depends on the volumes, efficiency and intensity of the institutional regulation. Sharp stepping up of the activity for the protection of investors' rights (including infrastructural measures) is necessary under the current conditions of the financial crisis and the new stage in the redistribution of the property rights as a crucial factor in restoring the investment attractiveness of the country. It's obvious that the real effect can be achieved only in conjunction with the other anti-crisis measures of the macroeconomic and institutional character.

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## Tables

Table 1. Privatization revenues of the federal budget, 1995-1998

	1995*	1996	1997	1998***
Approved budget	4,991 trln	12,3 trln	6,525 trln	8,125 bln****
Actual	7,319 trln	1,532 trln	18,654 trln	14,005 bln*****

\*-approved budget was adjusted in December of 1995, 70,8% of actual revenues received under loans – for

shares schemes.

\*\*-including 1.875 bln dollars from the sale of shares of Sviazinvest holding.

\*\*\*-only from the sale of assets.

\*\*\*\*-adjusted to 15 bln roubles in April 1998 (at the level of the government).

\*\*\*\*\*-including 12.5 bln roubles from the sale of 2.5% of the shares of RAO GASPROM.

Table 2. Stock ownership structure in Russian joint-stock companies in 1994-1999 (data obtained in different surveys, %)

s, %)\*

	1			2			3			4		
	results	1994	1996	1994	1995	1996	1994	1995	1996	1995	1997	1999
	of priv.											
1. Insiders (total)	66	66	58	62	56	56	65	55	58	58,5	51,6	51,3
Employees	47	44	43	53	43	40	56	39	40	48,5	39,5	36,3
Administration	19	22	12	9	13	16	9	16	18	10	12,1	15
collective trust	-	-	-	-	-	-	-	-	-	-	-	-
2. Outsiders (total)	10	16	33	21	33	34	22	33	33,6		41,3	45,3
2.1. Legal persons total			23	11	21	25	-	23	24,5	20,7	23,6	22,8
Banks	-	-	2	-	1,5	-	-	1	1,6	1,6	1,2	1,7
Investment funds	3	5	5	-	6	-	-	6	5	7,2	4	5,2
suppliers, buyers, other firms												
holdings, fin.-ind. Groups	-	-	3	-	1	-	-	1	2,6	3,5	4,9	3,4
Others	-	-	10	-	9,5	-	-	10	12,3	0,3	0,6	0,7
2.2. Individuals	3	6	8	10	11	9	-	9	6	9,6	13,2	15,6
2.3. Foreign	-	-	2	-	1	-	-	1	1,6	1,7	5,1	7,6
3. The state	20	12	9	17	11	10	13	13	9	9,5	6,5	2,7
Total*	100	100	100	100	100	100	100	100	100	100	100	100

(1)The survey of 1994 covered 88 privatized enterprises of Moscow, St.Petersburg, Urals and Nizhny Novgorod. The survey of the fourth quarter of 1995-first quarter of 1996 covered 312 privatized enterprises (from 12 branches of industry) of Moscow, St.Petersburg, Urals and Nizhny Novgorod. Collective trust was not mentioned in other surveys for other years as well. The data of the University of Nottingham. Source: Афанасьев, невн, 1997, с. 87.

(2)The summary evaluation of the author on the basis of the results of 1994-1996 surveys conducted by the RF State Property Committee (400 enterprises), FCSM and the securities market monitoring group of FCSM (250 and 889 enterprises), IET (174 enterprises) which together covered all the

regions of Russia. In the lines “legal persons” and “individuals” the real data on large and small outside shareholders are shown. It should be remembered that in 1994 and 1995 “small shareholders” meant less than 5% of the equity; in 1996 – up to 1% of shares. The figures in the table were calculated as non-weighted arithmetic average but the absence of weights should not, presumably, play any significant role since the size of the enterprises in the sample is about comparable (no small and largest companies were included). For more details see: Радугин, ни , агин , 1995; Radygin, 1996b).

(3) Surveys of the Blasi group of 1994 (143 enterprises), 1995 (172 enterprises), 1996. Sources: , 1996b; Blasi, Kroumova, Kruse, 1997, p. 193. Data for 1995 differ according to the quarters, here the fourth quarter data are shown: see FCSM, 1996b.

(4) Surveys of the Russian Economic Barometer in 1995 covered 138 industrial enterprises (conducted upon request of IET), in 1997 – 139 (out of which 46 were present in both surveys), 1999 – the respondents’ forecast. Source: Aukutsionek, Kapeliushnikov, Zhukov, 1998.

\*Strictly speaking many of the figures are not consistent from the standpoint of analysis of the annual changes of ownership structure since even the annual data are based on different (in survey (1)) data bases or data bases with little repeated coverage (surveys (2) and (4)). As regards survey (3) there is no exact information about the used annual samples.

Nevertheless considerable coincidence of the results for one and the same period in different surveys allows us to draw a conclusion about a high degree of reliability of these figures summarized in the table from the standpoint of the general trends in the changes of ownership of stocks at the large and medium privatized enterprises in Russia. It also important that all the above-mentioned surveys focused mainly on the “typical” Russian industrial enterprises (medium and large) which also allows us to extrapolate (with some reservations) these trends to the whole Russian industry.

Table 3. Stock ownership structure of 100 largest Russian companies, %, 1997\*

Types of shareholders	%
All employees of the company	22
including employees	20
Administration	2
share of managers of all levels among all employees	5
including general manager	0,5
Shares sold to the employees during last 12 months	6
Issuer (issuer's representatives)	21,8
All outside shareholders	57,6
including the state or state holding	20,6
including the state	6,5
state holding	14,1
Average shares of all large outside shareholders (including the one out of all outsiders) (from large to small)	
Russian commercial enterprises, total	16,7(10,5)
Russian investment funds, total	11,7(10,5)
Foreign companies, total	11,7(11,1)
Out of which (individual types):	
Russian enterprises-suppliers of the company	10,0(22,8)
Russian fin.-ind. Groups or non-state holdings	10,0(33,0)
Russian commercial banks	6,7(17,0)
Foreign banks	6,7(9,3)
Russian enterprises-buyers of the company's output	3,3(16,4)
Foreign investment/pension funds	3,3(14,0)
Russian pension funds	1,7(1,0)
ADDITIONAL DATA	
Percentage of companies with a large outside shareholder (more than 5%)	88
Average number of large outside shareholders	2,5
Average share of the large outside shareholder's ownership	15,3
The mean value of the average share of the large outside shareholder	12,6

\*The average data on sample groups of shareholders where taken which do not add up to 100% of the companies capital.  
Source: Хорошев, 1998 (from the data of Brunswick Warburg).

Table 4. Comparison between the integral financial and economic indicators of the efficiency of the public and privatized enterprises in Russian industry by branch for 1995.\*

Branches	Integral efficiency		
	Public enterprises	Enterprises(compa nies)with government share of more than 25%)	Enterprises(compa nies)with government share of less than 25%)
1. Ferrous metals	0.384	0.644	0.505
2. Non-ferrous metals	0.534	0.259	0.726
3. Chemical industry	0.309	0.533	0.895
4. Machinebuilding	0.128	0.696	0.922
5. Construction materials	0.178	0.807	0.775
6. Light industry	0.292	0.461	0.681
7. Food industry	0.229	0.488	0.852
8. Pharmaceuticals	0.288	no data	0.727

\*The actual sample included 2,438 enterprises from the RF Goskomstat Register, in particular: 575 public enterprises, 596 privatized enterprises with the state shareholding of more than 25% and 1,267 privatized enterprises with the state shareholding of less than 25%. The integral efficiency was calculated on the bases of 4 indicators of economic efficiency (productivity, profit margin on the products, use of fixed assets, current assets turnover) and 4 indicators of the financial situation ( autonomy coefficient, manoeuvrability, supply of the own working capital and current liquidity). The integral indicator was calculated for each group of enterprises and provided evaluation of the general situation in this group upon the basis

of a number of parameters. In essence the integral indicator represents the level of parameters (individual indicators) achieved in this group. The level of each individual indicator is rated for the groups of enterprises under comparison from “0” to “1” where 0 is the worst value of the average indicator, 1 – the best. The detailed methodology is described in Addendum 2 to the source below.

Source: Леонтьевский ент , 1996.