



New Presidential Decree: Temporary Corporate Governance Regime

On 17 January 2023, Presidential Decree No.16 (the *Decree*) came into effect. The Decree provides for a temporary corporate governance regime for certain categories of Russian companies with a controlling shareholder/beneficial owner sanctioned by a foreign state and minority foreign shareholder(s) associated with unfriendly foreign states.

In particular, the Decree has established a mechanism allowing to limit the ability of shareholders which are associated with unfriendly states (*Unfriendly Shareholders*), or their nominees on the relevant company's board/management board, to influence the relevant corporate governance decisions by exercising (or abstaining from the exercise of) their voting rights.

In particular, such abstention (frequently driven by foreign shareholders' reluctance to be involved in the same corporate governance decision making as the sanctioned controlling shareholder) has, since late February 2022 and up until now, often created an impasse for lack of quorum or requisite majority for certain corporate governance decisions.

The new regime applies to the companies that meet each of the following criteria:

- the Russian company is active in energy (including electric power)-related sectors, machine-building or trade;
- the controlling party or beneficial owner¹ of the Russian company is under sanctions imposed by an unfriendly state;
- the stake held in the Russian company by Unfriendly Shareholders does not exceed 50%; and

¹ For the purposes of the Decree, the "controlling party" means a party that directly or indirectly holds, including pursuant to an agreement, more than 50% of the votes at the company's general meeting or has the right to appoint/elect the CEO or more than 50% of the Board of Directors or the Management Board, and the "beneficial owner" means a natural person who directly or indirectly owns more than 25% of the shares (equity interests) in a company or is able to control it.

- the annual revenues of the group of companies to which the Russian company belongs exceeded 100 billion Roubles in the year which precedes the year in which the relevant corporate governance decision/meeting is to be taken/held (i.e., currently, in 2022).

In such companies, the shareholders (excluding the company's Unfriendly Shareholders but including shareholders associated with friendly foreign jurisdictions or those controlled by such persons, provided such control was established before 1 March 2022) may now pass, by a majority vote, a resolution establishing that the votes of such Unfriendly Shareholders (or their nominees on corporate governance bodies) will not be taken into account for determining the quorum or passing a resolution at the relevant meeting of the company's shareholders, board or management board – regardless of what the constitutional documents may provide to the contrary.

It is unclear whether such shareholder decision to “switch off” the “unfriendly vote” may only be taken specifically with respect to a particular corporate governance meeting/vote and not more generally, although its practical application and interpretation remains to be seen.

The regime set by the Decree is described as temporary and applicable through 31 December 2023.

For more information, please contact:



Mikhail Loktionov

Partner

T: +7 495 785 30 20

E: mikhail.loktionov@stonebridgelegal.ru



Alexander Viktorov

Counsel

T: +7 495 785 30 55

E: alexander.viktorov@stonebridgelegal.ru

The information contained in this document is intended for general guidance and should not be considered as legal advice or opinion.