RULING
OF THE PLENARY SESSION
OF THE SUPREME COURT
OF THE RUSSIAN FEDERATION

No. 27

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On Challenge of Major Transactions and Interested Party Transactions

In order to ensure the uniform practice of court application of legislation on business companies, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", hereby rules to provide the following clarifications:

General Provisions on Challenge of Major Transactions and Interested Party Transactions

1. When the courts consider claims for invalidation of transactions as made in violation of the manner for making major transactions stipulated in Federal Law No. 208 of 26 December 1995 "On Stock Companies" (hereinafter – the Law on Stock Companies) and in Federal Law No. 14 of 8 February 1998 "On Limited Liability Companies" (hereinafter – the Law on Limited Liability Companies), Article 173.1 of the Civil Code of the Russian Federation (hereinafter – the CC RF) is subject to application; when the courts consider claims for invalidation of transactions as made in violation of the manner for making interested party transactions, Item 2 of Article 174 of the CC RF is subject to application (Item 6 of Article 79, Item 1 of Article 84 of the of the Law on Stock Companies, Item 6 of

Article 45, Item 4 of Article 46 of the of the Law on Limited Liability Companies) with due regard to the special conditions stipulated in the aforementioned laws.

2. The statute of limitations for claims for invalidation of major transactions and interested party transactions and for enforcement of consequences of their invalidity is one year, calculated in accordance with Item 2 of Article 181 of the CC RF.

The statute of limitations for claims for invalidation of a transaction made in violation of the corresponding manner and on enforcement of consequences of its invalidity, in particular when such claims are filed in the name of the company by a participant (shareholder) or a member of the board of directors (supervisory board) (hereinafter – the board of directors), is calculated from the day when a person that exercises (individually or together with other persons) the powers of the single managing body learned or must have learned that such a transaction was made in violation of statutory requirements to the manner of its making, in particular when such a person directly made that transaction.

If the person that exercises (individually or together with other persons) the powers of the single managing body was colluding with the other party to the transaction, the statute of limitations is calculated from the day when the corresponding facts were learned or must have been learned by the person exercising (individually or together with other persons) the powers of the single managing body, other than the person that made the transaction. Only if there was no such person prior to the filing of the claim by a participant of a company or a member of the board of directors, is the statute of limitations calculated from the day when those facts were learned or must have been learned by the participant or member of the board of directors filing such a claim.

3. Where, in accordance with Item 2 of this Ruling, the statute of limitations is calculated from the moment when the participant (shareholder) filing the claim learned or must have learned that the transaction was made in violation of statutory requirements to the manner of its making, the following should be taken into account:

1) when the claim is filed jointly by several participants, the statute of limitations is not regarded as missed, if at least one of the participants did not miss the statute of limitations for filing the corresponding claim, on condition that this participant (these participants) has the necessary amount

of voting shares (votes) of the company, as stipulated in law (Item 6 of Article 79, Item 1 of Article 84 of the Law on Stock Companies, Item 6 of Article 45, Item 4 of Article 46 of the Law on Limited Liability Companies);

2) if the company publicly disclosed information about the challenged transaction in the manner stipulated in legislation on the stock market, it is presumed that its participants (shareholders) learned about the challenged transaction from the moment of public disclosure of information, when it could be concluded from that information that such a transaction was made in violation of the corresponding manner;

3) it is presumed that the participant must have learned that a transaction was made in violation of the manner for making major or interested party transactions no later than on the date of the annual general meeting finalising the year during which the challenged transaction was made, unless information about the making of the transaction was concealed from the participants, and (or) it could not be concluded from the materials provided to the participants during the general meeting that such a transaction was made (e.g. it did not follow from the balance sheet that the composition of the main assets has changed as compared to the preceding year);

4) if the above rules cannot be applied, it is presumed that in any case the participant (shareholder) must have learned about the making of the challenged transaction more than a year ago (Item 2 of Article 181 of the CC RF), if that participant has not participated in the general meetings of participants (shareholders) for a long time (two or more years in a row) and has not requested information about the activities of the company.

4. When assessing whether the rules for making major transactions or interested party transactions were complied with, the courts should proceed from the premise that by general rule the decision to consent (approve) to the making of a transaction (Article 157.1 of the CC RF) (hereinafter – the decision on approval, approval) must indicate the person (persons) that is its party (parties), the beneficiary (beneficiaries), as well as the terms of the transaction (conditions that have major significance for the decision on approval of the transaction, e.g. the price, subject matter, time terms, whether there is a duty to secure performance of obligations, etc.) or the manner in which they are determined. A made transaction is regarded as approved, if its terms corresponded to the information about the

transaction described in the decision on its approval or in the transaction draft attached to the decision.

Further amendment of the terms of an approved and made transaction is an independent transaction (Article 153 of the CC RF) requiring a new approval.

5. The decision to form a single managing body – in particular, to transfer the powers of the single managing body of the company to a managing company (a manager) – and a decision to elect members of collective bodies do not require special approval in the manner stipulated for major or interested party transactions (Item 2 of Article 32, Item 1 of Article 40, Item 1 of Article 41 of the Law on Limited Liability Companies and Article 66, Items 1 and 3 of Article 69 of the Law on Stock Companies).

6. If a company is party to a case, the rules on making major and interested party transactions apply to the conciliation agreement, acknowledgment of a claim, renunciation of a claim (Chapters X and XI of the Law on Stock Companies, Articles 45 and 46 of the Law on Limited Liability Companies).

7. A participant of a company and a member of the board of directors, challenging a company's transaction, act in the name of the company (sixth paragraph of Item 1 of Article 65.2, Item 4 of Article 65.3 of the CC RF). In this regard,

> 1) the decision to satisfy a claim on invalidation of a transaction, filed by a participant or a member of the board of directors, is adopted in favour of the company in whose name the claim was filed. Herewith, if the claim on enforcement of consequences of invalidity of the transaction is satisfied, the participant or member of the board of directors exercising the procedural rights and duties of the plaintiff is indicated in the enforcement document as the recoveror, and the company in whose interests the claim was filed – as the person in whose favour the enforcement is carried out;
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> 2) if at the moment of the transaction the participant filing the claim in the name of the company was not a participant of the company, this does not constitute grounds for refusing to satisfy the claim.

The transfer of a participation share (share) to another person does not impact the statute of limitations as regards claims for invalidation of major and interested party transactions and for enforcement of consequences of their invalidity.

8. If the court dismisses the claim on invalidation of a major or interested party transaction, or if a transaction has not been challenged, this does not by itself preclude the court from satisfying a claim for recovery of damages caused to the company by persons indicated in Article 53.1 of the CC RF, Item 5 of Article 71 of the Law on Stock Companies and in Item 5 of Article 44 of the Law on Limited Liability Companies. It also does not preclude the court from satisfying a claim for expulsion of the participant (shareholder) (Item 1 of Article 67 of the CC RF, Article 10 of the Law on Limited Liability Companies) that made this transaction to the detriment of the company (in particular, when acting as a single managing body), or gave instructions to make it, or voted to approve it during the general meeting of participants (shareholders).

Major Transactions

9. For a transaction to be qualified as a major one, it needs to simultaneously meet two criteria at the moment of its making (Item 1 of Article 78 of the Law on Stock Companies, Item 1 of Article 46 of the Law on Limited Liability Companies):

1) the quantitative (pricing) criterion: the subject matter of the transaction is property, in particular the results of intellectual activity and means of individualisation equal to them (hereinafter – property), the price or book value of which (and if the property is transferred for temporary possession and (or) use, if a licensing contract is concluded – book value) is 25 % and more of the book value of the company's assets, estimated in accordance with the accounting (financial) statement of the company for the latest accounting date;

2) the qualitative criterion: the transaction exceeds the limits of regular commercial activity, i.e. the making of this transaction will terminate the activities of the company or transform the type of its activities, or significantly change their scale (Item 4 of Article 78 of the Law on Stock Companies, Item 8 of Article 46 of the Law on Limited Liability Companies). For example, such consequences may be entailed by the sale (lease) of the company's main business asset. A transaction may also be qualified as entailing a significant change of the scale of the company's activities, if it significantly changes the company's region of activities or its outlet market.

When determining the latter criterion, the courts should take into account that it should exist at the moment of making of the transaction. The subsequent ensuing of such consequences does not by itself indicate that they were caused by the corresponding transaction, and that the transaction exceeded the limits of regular commercial activity. When assessing the possibility of such consequences at the moment of the transaction, the courts should take into account not only the terms and conditions of the challenged transaction, but also other facts pertaining to the company's activities at the moment of the transaction. For example, a transaction of procurement of equipment that could be used within the framework of ongoing activities could not have resulted in transformation of the type of activities.

Any transaction of a company is regarded as made within the limits of regular commercial activity, until proven otherwise (Item 4 of Article 78 of the Law on Stock Companies, Item 8 of Article 46 of the Law on Limited Liability Companies). The burden to prove that the challenged transaction was beyond the limits of regular commercial activity lies on the plaintiff.

10. By virtue of Item 2 of Article 78 of the Law on Stock Companies, the board of directors (supervisory board), and where there is no such board – the single managing body of the stock company, is obliged to approve a statement regarding the major transaction, if the issue of its approval is subject to consideration at the general meeting of shareholders.

The statement may be contained directly within the decision of the board of directors or in a separate document attached to the decision and constituting its inalienable part.

The statement must in particular contain information about the presumed consequences for the activities of the company resulting from the major deal and the assessment of its feasibility (second paragraph of Item 2 of Article 78 of the Law on Stock Companies). Herewith, the statement may contain a positive, as well as a negative recommendation regarding the transaction.

By implication of sub-item 1 of Item 6.1 of Article 79 of the Law on Stock Companies, if the general meeting of shareholders decides to approve the transaction in the absence of the statement, such a transaction cannot be challenged as made in violation of the manner of obtaining consent. This does not preclude the filing of claims for recovery of damages caused by the transaction against the

persons that failed to perform their duty of preparing the statement (Article 71 of the Law on Stock Companies).

11. By implication of the second paragraph of Item 1 of Article 78 of the Law on Stock Companies and of the second paragraph of Item 1 of Article 46 of the Law on Limited Liability Companies, when deciding whether the challenged transaction meets the quantitative (pricing) criterion of a major transaction, the court should determine its sum (amount) disregarding the claims that may be filed against the corresponding party due to non-performance or undue performance of obligations (e.g. forfeits), except when it is established that the transaction was originally made for the purpose of non-performance or undue performance by the company.

12. For the purposes of Item 1.1 of Article 78 of the Law on Stock Companies and Item 2 of Article 46 of the Law on Limited Liability Companies, the book value of a company's assets is by general rule determined in accordance with the data contained in the annual accounting statement for the 31 December of the year preceding the year of the transaction (Article 15 of Federal Law No. 402 of 6 December 2011 "On Accounting"). If the company is obliged by law or by its charter to provide interim accounting statements, e.g. on a monthly basis, the aforementioned figures are determined based on such an interim accounting statement.

13. Contracts stipulating the duty to perform periodic payments (lease contract, services contract, contract of storage, agency, fiduciary management, insurance, franchise agreement, licensing agreement, etc.) are recognised as meeting the quantitative (pricing) criterion of major transactions for the person obliged to perform those payments, if the sum of such payments within the contract period (for contracts concluded for an indefinite term – within one year; if the amount of payment varies during the contract period, the largest sum of payments within one year is taken into account) is more than 25 % of the book value of the company's assets (Item 1 of Article 78 of the Law on Stock Companies, Item 1 of Article 46 of the Law on Limited Liability Companies, Article 15 of Federal Law No. 402 of 6 December 2011 "On Accounting").

14. For the purposes of Item 1 of Article 78 of the Law on Stock Companies or Item 1 of Article 46 of the Law on Limited Liability Companies, the interrelated nature of a company's transactions may be indicated, in particular, by a common commercial purpose in making of transactions, including the common commercial use of the property sold (transferred for temporary possession or use),

consolidation of all the property alienated (transferred for temporary possession or use) under the transactions by a single person, short intervals between making of several transactions.

In order to determine whether a transaction consisting of several interrelated transactions meets the quantitative (pricing) criterion of major transactions, the book value or price of property alienated (transferred for temporary possession or use) under all the interrelated transactions should be compared to the book value of assets at the last accounting date, which shall be the balance sheet date preceding the first of the transactions.

15. In accordance with Item 2 of Article 79 of the Law on Stock Companies, the decision to approve a transaction, the subject matter of which is property that costs 25 % to 50 % of the book value of the company's assets, should be unanimously taken by all the members of the board of directors (supervisory board); votes of members that have withdrawn from the board are not taken into account. In particular, a deceased member of the board of directors (supervisory board) or a member whose legal capacity was limited, who was legally incapacitated or disqualified by virtue of a court decision, or a member that informed the company that he/she renounces her/his powers (such renunciation must be made in written form and in due time prior to the meeting of the board of directors) is regarded as having withdrawn.

16. If the subject matter of a transaction is property, the value of which exceeds 50 % of book value of the company's assets, the decision to approve such a major transaction is within the exclusive competence of the general meeting of participants (shareholders) and cannot be transferred by the company's charter to the competence of other bodies of the company (Item 4 of Article 79 of the Law on Stock Companies, Item 3 of Article 46 of the Law on Limited Liability Companies).

17. In accordance with Item 5 of Article 79 of the Law on Stock Companies and Item 6 of Article 46 of the Law on Limited Liability Companies, if a transaction is simultaneously a major transaction (and its subject matter is property, the value of which is 50 % and less, as well as more than 50 % of book value of the company's assets) and an interested party transaction, it must be made in accordance with the rules on major transactions, as well as the rules on interested party transactions. Herewith, pursuant to the rules on interested party transactions, such a transaction is subject to approval only if the corresponding request was made (Item 1 of

Article 83 of the Law on Stock Companies, Item 4 of Article 45 of the Law on Limited Liability Companies).

The issue of approval of a transaction that is simultaneously a major transaction and an interested party transaction may be considered as a single point of the agenda, as well as two separate points (approval of the transaction as a major one and approval of the transaction as an interested party transaction). Where the charter of a non-public company stipulates that interested party transactions are not subject to approval, the corresponding transaction is only subject to approval under the rules on major transactions.

If under the rules on major transactions the approval of a transaction simultaneously meeting the criteria of a major transaction and an interested party transaction is within the competence of the board of directors, it is approved, accordingly, by the board of directors (supervisory board) under the rules on major transactions and by the general meeting of participants (shareholders) – under the rules on interested party transactions (where the corresponding request was made (Item 1 of Article 83 of the Law on Stock Companies, Item 4 of Article 45 of the Law on Limited Liability Companies).

18. By virtue of sub-item 2 of Item 6.1 of Article 79 of the Law on Stock Companies and of the third paragraph of Item 5 of Article 46 of the Law on Limited Liability Companies, the plaintiff has the burden to prove that the other party to the transaction knew (e.g. through collusion) or had imputed knowledge that the transaction was a major one for the company (both as regards the quantitative (pricing) and the qualitative criteria) and (or) that the transaction lacked due approval.

Imputed knowledge about the major nature of a transaction (in particular, about the significance of the transaction for the company and about the consequences it would entail) is only presumed until proven otherwise if the counterparty, the person controlling it or a person under its control is a participant (shareholder) of the company or of the person controlling the company, or is a member of bodies of the company or of the person controlling the company. Absence of these facts does not preclude the plaintiff from providing evidence that the other party to the transaction knew that the transaction was a major one (e.g. a letter from the other party, from which it follows that it knew the transaction was a major one).

By general rule, the law does not stipulate the duty of a third person to check, prior to making a transaction, whether the corresponding transaction is a major one for its counterparty and whether it was duly approved (in particular, there is no duty to study the accounting statements of the counterparty in order to determine the book value of its assets, the types of its activities, the influence of the transaction upon the counterparty's activities). By general rule, third persons relying on the data of the Unified State Register of Legal Entities (hereinafter – USRLE) regarding the persons authorised to act in the name of a legal person may act on the premise that those persons are authorised to make any transactions (second paragraph of Item 2 of Article 51 of the CC RF).

If it is indicated in the corresponding transaction (in another document) that the person making it in the name of the company guarantees that all the necessary corporate procedures, etc., have been complied with in the making of the transaction, this does not by itself indicate that the counterparty is acting in good faith.

19. If a company's charter extends the manner of approval of major transactions to other types of transactions, this should be regarded as a way to establish the need to acquire consent of the company's board of directors or of the general meeting of its participants (shareholders) to certain transactions (Item 2 of Article 69 of the Law on Stock Companies, Item 3.1 of Article 40 of the Law on Limited Liability Companies). When considering disputes on invalidation of such transactions due to violation of the manner of their making, the courts should be guided by Item 1 of Article 174 of the CC RF.

20. Taking into account the special significance of major transactions for the activities of companies and that the manner in which such transactions are made acts as a guarantee of the right of the company participants to make decisions regarding the significant changes in the activities of the company (second paragraph of Item 1 of Article 65.2 of the CC RF), following the entry into force of Federal Law No. 343 of 3 July 2016 "On Amendments to Federal Law 'On Joint-Stock Companies' and Federal Law 'On Limited Liability Companies' regarding Regulation of Major and Interested Party Transactions" (hereinafter – Federal Law No. 343, in force since 1 January 2017), other rules for making transactions cannot be included into a company's charter, and it cannot be stipulated that such transactions are not subject to approval.

Interested Party Transactions

21. In accordance with Item 1 of Article 81 of the Law on Stock Companies and Item 1 of Article 45 of the Law on Limited Liability Companies, the persons indicated in the aforementioned provisions are regarded as having an interest in the company's making of a transaction, in particular if they, their spouses, parents, siblings of full or half-blood, adoptive parents and adopted children and (or) the organisations controlled by them are beneficiaries in the transaction or controlling persons of a legal person that is a beneficiary in the transaction, and likewise if they occupy positions in the managing bodies of the legal person that is a beneficiary in the transaction, as well as positions in the managing bodies of the organisation managing such a legal person.

When applying the aforementioned norms, the courts should act on the premise that the beneficiary in a transaction is a person that is not a party to the transaction, which, as a result of the transaction, may be exempted from obligations to the company or a third person; or acquires rights from this transaction (in particular, a beneficiary in an insurance contract, fiduciary management contract, a beneficiary of a bank guarantee, a third party in whose interests the contract is concluded in accordance with Article 430 of the CC RF); or otherwise acquires material gains, e.g. by receiving the status of a participant of the company's stock option plan; or is a debtor in an obligation, for securing which the company provides suretyship or pledges property (unless it is established that the suretyship contract or the pledge contract was concluded by the company not in the interests of the debtor or without its consent).

If it is impossible to qualify a transaction as an interested party transaction, this does not preclude the court from invalidating it by virtue of Item 2 of Article 174 of the CC RF, as well as on other grounds.

22. In order to qualify a transaction as meeting the criteria of interested party transactions stipulated in Item 1 of Article 81 of the Law on Stock Companies and in Item 1 of Article 45 of the Law on Limited Liability Companies, the interest of the corresponding person should exist at the moment of the transaction.

23. By implication of Item 1 of Article 81 and Item 4 of Article 83 of the Law on Stock Companies, Items 1 and 4 of Article 45 of the Law on Limited Liability Companies, participants – legal persons, who are not interested persons, but are

under the control of interested persons (controlled organisations), have no right to participate in the vote regarding the approval of the interested party transaction.

24. The request to hold a general meeting of participants (shareholders) or a meeting of the board of directors to resolve the issue of approval of an interested party transaction may be submitted at any moment, in particular before a notification regarding the making of such a transaction is sent (Item 1 of Article 83 of the Law on Stock Companies, Item 4 of Article 45 of the Law on Limited Liability Companies).

The request may also be submitted after a transaction has been made. In this case, the corresponding company body resolves the issue of subsequent approval of such a transaction.

A member of the board of directors or a participant of a company may file a claim for invalidation of an interested party transaction, both when such a transaction was made in violation of interested party transactions rules (no notification regarding the making of the transaction was sent), and when the notifications were sent, but no request to hold a general meeting of participants (shareholders) or a meeting of the board of directors to resolve the issue of approval of the transaction was submitted. Herewith, the aforementioned persons do not have a duty to submit a request for a general meeting of participants (shareholders) or a meeting of the board of directors to be held in order to resolve the issue of subsequent approval of such a transaction prior to filing a claim for invalidation of the interested party transaction.

If there is a decision to approve an interested party transaction, this does not constitute grounds for refusal to satisfy the claim for its invalidation. If there is such a decision, the burden to prove that the transaction damaged the interests of the company lies on the plaintiff (Item 1 of Article 84 of the Law on Stock Companies, Item 6 of Article 45 of the Law on Limited Liability Companies).

25. A request to provide information regarding the interested party transaction may be submitted, if the consent (approval) to make that transaction was not acquired, in particular if a notification regarding the making of such a transaction was sent, but no request to hold a general meeting of participants (shareholders) or a meeting of the board of directors to resolve the issue of approval of the transaction was submitted, or if such a request was not satisfied (Item 1 of Article 84 of the Law on

Stock Companies, Item 6 of Article 45 of the Law on Limited Liability Companies).

26. In accordance with the second paragraph of Item 4.1 of Article 83 of the Law on Stock Companies, where a transaction requires the approval of the general meeting of shareholders to be made, all the shareholders that own the company's voting shares are regarded as interested persons, and herewith there is another person (other persons) interested in such a transaction, then in accordance with Item 1 of Article 81 of the Law on Stock Companies the approval to make such a transaction is granted by a majority of the votes of all the shareholders that own the company's voting shares and participate in said voting. An analogous rule is applied to limited liability companies (Item 1 of Article 6 of the CC RF).

27. By implication of Item 1.1 of Article 84 of the Law on Stock Companies and paragraphs fourth to sixth of Item 6 of Article 45 of the Law on Limited Liability Companies, the presumption of detriment to the company's interests caused by the transaction, stipulated therein, is only applied on condition that the other party of the challenged transaction knew or had imputed knowledge that the transaction was an interested party transaction for the company, and (or) that there was no approval in regard of the transaction.

The burden to prove that the other party to the transaction knew or had imputed knowledge that there was an element of interest in the transaction, and that there was no consent (approval) to its making lies on the plaintiff.

As regards interested party transactions, the courts should act on the premise that the other party to the transaction (defendant) knew or had imputed knowledge about the element of interest, if the interested person is that same party to the transaction, or its representative declaring its will in the transaction, or their spouses or relatives as indicated in the second paragraph of Item 1 of Article 45 of the Law on Limited Liability Companies and in the second paragraph of Item 1 of Article 81 of the Law on Stock Companies.

By general rule, the law does not stipulate the duty of a third person to check, prior to making a transaction, whether that transaction is an interested party transaction for its counterparty and whether it has been duly approved (in particular, there is no duty to study the lists of affiliated persons, controlling and controlled persons of the counterparty, the company's charter). By general rule, third persons relying on the data of the USRLE regarding the persons authorised to act in the name of a

legal person may act on the premise that those persons are authorised to make any transactions (second paragraph of Item 2 of Article 51 of the CC RF).

If it is indicated in the corresponding transaction (in another document) that the person making it in the name of the company guarantees that all the necessary corporate procedures, etc., have been complied with in the making of the transaction, this does not by itself indicate that the counterparty is acting in good faith.

28. In accordance with Item 8 of Article 83 of the Law on Stock Companies and Item 9 of Article 45 of the Law on Limited Liability Companies, the charter of a non-public stock company, as well as of a limited liability company may stipulate that interested party transactions are performed in the general manner established for all other transactions of the company or may stipulate other rules for such transactions (e.g. obligatory preliminary approval; rules of sending notifications about transactions; a list of persons, to whom such notifications are sent; the manner in which a request is submitted in order to discuss the approval of the transaction; waiver of possibility of such requests; etc.), in particular by indicating that only certain statutory rules are to be applied or not to be applied. Herewith, the company's charter may not amend or cancel the application of statutory provisions regarding the invalidation of transactions, in particular those stating that detriment to the company's interests is an obligatory condition for the invalidation of an interested party transaction.

Herewith, if a company's charter extends the list of transactions that are regarded as interested party transactions (in particular by extending the list of interested persons or setting other criteria for regarding persons as interested persons), then a transaction that is not an interested party transaction from the viewpoint of the Law on Stock Companies and of the Law on Limited Liability Companies, but corresponds to the definition of such a transaction in the company charter, where made in violation of the manner for making interested party transactions, is subject to invalidation not in accordance with interested party transactions rules, but by virtue of Item 1 of Article 174 of the CC RF.

Rules stipulating a different manner for making interested party transactions should also include provisions regarding the making of interested party transactions added into the charter of a non-public stock company or of a limited liability company before the entry into force of Federal Law No. 343 (1 January

2017), in particular if they were added into the charter by decision of a general meeting of participants (shareholders) that was not adopted unanimously.

If the charter of a non-public stock company or of a limited liability company stipulates that the statutory rules for making interested party transactions are not subject to application, such transactions may be challenged on general grounds in accordance with Item 2 of Article 174 of the CC RF, disregarding the special features stipulated in the Law on Stock Companies and the Law on Limited Liability Companies.

Closing Provisions

29. The provisions of the Law on Stock Companies and of the Law on Limited Liability Companies as amended by Federal Law No. 343 are subject to application to transactions made after the entry of Federal Law No. 343 into force (1 January 2017) (Article 4 of the CC RF).

Decisions on approval, adopted prior to the entry of Federal Law No. 343 into force (1 January 2017) in regard of transactions that were not made before that date, stay in force after 1 January 2017 and may be regarded as due consent (approval) to the transactions, if they are compliant with the provisions of the Law on Stock Companies and the Law on Limited Liability Companies, as amended by Federal Law No. 343.

A decision to approve a transaction that is simultaneously a major transaction and an interested party transaction, where adopted prior to the entry of Federal Law No. 343 into force (1 January 2017) in accordance with the rules on interested party transactions, if such a transaction has not been made before 1 January 2017, may be regarded as due consent (approval) to an interested party transaction after 1 January 2017. Herewith, such a transaction is subject to separate approval pursuant to the rules on major transactions (Item 5 of Article 79 of the Law on Stock Companies and Item 6 of Article 46 of the Law on Limited Liability Companies).

If the charter of a non-public stock company or of a limited liability company contains different rules for making interested party transactions, the clarifications provided in this Item are applied to the corresponding transactions with due regard to such rules.

30. With regard to adoption of this Ruling, Items 1–9, sub-items 2) and 4) of Item 10, Items 11–14 of the Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation No. 28 of 16 May 2014 “On Certain Issues pertaining to Challenge of Major Transactions and Interested Party Transactions” are not subject to application, except when in consideration of cases on challenge of transactions made prior to entry of Federal Law No. 343 into force (1 January 2017).

Chief Justice of the Supreme Court of
the Russian Federation V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation V.V. Momotov