



Annex 11

A MODEL BY-LAW FOR THE EXECUTIVE BODIES

Approved
by the General Meeting of Shareholders
of the Open Joint Stock Company «_____»

Minutes of the [Annual or Extraordinary]
General Meeting of Shareholders

No. _____
of _____ 200_

dated this __day of _____, 200_
[The Company's Seal]

BY-LAW FOR THE EXECUTIVE BODIES

of the Open Joint Stock Company
«_____»

The city of _____
_____, 200_



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Article 1. General Provisions

- 1.1. This By-law for the Executive Bodies (hereinafter the By-law) of the Open Joint Stock Company «_____» (hereinafter the Company) has been developed in accordance with the laws of the Russian Federation (hereinafter the Law), the Company charter, and the recommendations of the Federal Commission for the Securities Market's Code of Corporate Conduct (hereinafter the FCSM Code).
- 1.2. The Company shall establish the following executive bodies:
 - 1.2.1. The General Director; and
 - 1.2.2. The Executive Board.
- 1.3. The By-law shall determine the status and authority of the General Director and the Executive Board, as well as procedures for their election and dismissal, meeting procedures, duties and responsibilities, and remuneration.
- 1.4. The General Director and Executive Board members shall act in accordance with the Law, the Company charter, the By-law, and other internal documents of the Company.

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- 1.5. The executive bodies are accountable to the Supervisory Board and the General Meeting of Shareholders (hereinafter the GMS). The executive bodies shall be responsible for executing the decisions of the GMS and the Supervisory Board.
- 1.6. All decisions taken by the GMS and Supervisory Board shall be binding upon the General Director and the Executive Board.

Article 2. Status of the General Director

- 2.1. The General Director shall be a single-member executive body of the Company.
- 2.2. The General Director shall at the same time be the Chairman of the Executive Board.
- 2.3. The General Director may not at the same time be the Chairman of the Supervisory Board, a Revision Commission member, or the Corporate Secretary of the Company,¹⁰⁸ or a participant (shareholder), officer, or other employee of a legal entity competing with the Company.
- 2.4. The General Director may not be involved in any other commercial activity apart from managing the day-to-day operations of the Company, with the exception of membership in the Supervisory Board and, subject to the approval of the Supervisory Board, directorship in other legal entities provided this is required in the interests of the Company.
- 2.5. Upon the recommendation of the Supervisory Board, the GMS may delegate the powers of the General Director to an External Manager.
- 2.6. The relations between the General Director and the Company shall be regulated by an employment contract to be signed on behalf of the Company by the Chairman of the Supervisory Board.
- 2.7. The General Director shall refrain from actions that may result in a conflict of interest between himself and the Company, and, if a conflict of interest arises, the General Director shall immediately inform the Supervisory Board and the Corporate Secretary thereof.

Article 3. The Authority of the General Director

- 3.1. The General Director shall manage the day-to-day operations of the Company with the exception of issues that fall within the sole competence of the GMS or the Supervisory Board, and shall ensure the execution of decisions of the GMS and the Supervisory Board.

¹⁰⁸ If the Company has established a position of the Corporate Secretary.

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- 3.2. Beginning with his term of office, the General Director shall have the right to sign official documents, issue orders and instructions, effectuate transactions and sign contracts on behalf of the Company, subject to the Law and the Company Charter.
- 3.3. The General Director shall:
 - 3.3.1. Act on behalf of the Company without a power of attorney, including representing the interests of the Company;
 - 3.3.2. Open settlement accounts with banking and credit institutions;
 - 3.3.3. Dispose of the Company's assets to ensure its current operations, subject to the provisions of the charter;
 - 3.3.4. Guide, oversee, and manage the performance of the Company's employees, within the scope of his authority;
 - 3.3.5. Grant powers of attorney to perform actions on behalf of the Company;
 - 3.3.6. Make decisions on filing complaints and claims against legal entities and individuals on behalf of the Company;
 - 3.3.7. Approve staffing structures, enter into, and terminate employment contracts with the employees of the Company, and offer incentives to and sanction the employees of the Company;
 - 3.3.8. Sign employment contracts with the heads of representative offices and branches on the terms and conditions set forth by the Executive Board, not later than __ business days after their appointment;¹⁰⁹
 - 3.3.9. Supervise the work of the Executive Board, call its meetings, set its agenda, and preside over its meetings;
 - 3.3.10. Organize and implement the proper keeping of accounting records and financial reports of the Company;
 - 3.3.11. Implement risk management and internal control;
 - 3.3.12. Organize the timely filing of financial statements with the relevant authorities, as well as the disclosure of information about the Company to shareholders, creditors, and the markets;
 - 3.3.13. Sign the financial statements of the Company;
 - 3.3.14. Provide information on the Executive Board's agenda items, as well as on his own actions and decisions, to the Supervisory Board [and its committees], External Auditor, Revision Commission and, where necessary, the Corporate Secretary of the Company in a timely manner;

¹⁰⁹ Good practice suggests that this be five business days.

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- 3.3.15. Represent and explain the position of the executive bodies at the GMS and Supervisory Board meetings;
- 3.3.16. Provide reports on the work of the executive body to the Supervisory Board once every __ weeks, including on the Company's key performance indicators;¹¹⁰
- 3.3.17. Provide a report on the General Director's work to the GMS at least once a year;
- 3.3.18. Sign the securities prospectuses;
- 3.3.19. _____;
- 3.3.20. _____;
- 3.3.21. Perform other functions that may be necessary to ensure normal operations of the Company under the Law and subject to the provisions of the employment contract with the Company.

Article 4. Appointment and Termination Procedures for the General Director

- 4.1. Any person may be appointed as the General Director in accordance with procedures set forth by the Law and the By-law.¹¹¹
- 4.2. A candidate for the position of the General Director must possess the following qualifications:¹¹²
 - 4.2.1. _____;
 - 4.2.2. _____; and
 - 4.2.3. _____.

¹¹⁰ Good practice suggests that this be done for every Supervisory Board meeting.

¹¹¹ The FCSM Code, Chapter 4, Section 2.1.1 recommends that the specific requirements with respect to the General Director and Executive Board member be set forth in the charter or by-laws of the company.

¹¹² For example, __ years of professional experience in the sector or industry; higher education; special knowledge and skills, for example in finance and accounting, engineering, or law; personal qualities, such as integrity and team orientation; and useful contacts. More generally, Executive Board members and the General Director specifically should: (i) enjoy the trust of shareholders, directors, other managers and employees of the company; (ii) own the ability to relate to the interests of all stakeholders and to make well-reasoned decisions; (iii) possess the professional expertise and education to be an effective General Director and/or Executive Board member; (iv) possess (international) business experience, knowledge of national economic, political, legal, and social issues, as well as trends and knowledge of the market, products, and competitors (national as well as international); and (v) have the ability to translate knowledge and experience into practical solutions that can be applied to the company.

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- 4.3. The General Director shall be appointed by a $\frac{3}{4}$ -majority vote of the Supervisory Board for a term of ___ year(s).¹¹³
- 4.4. The terms of the employment contract with the General Director shall be determined by the Supervisory Board subject to the Law.
- 4.5. The employment contract with the appointed General Director shall be signed by the Chairman of the Supervisory Board within ___ days after the execution of the minutes of the Supervisory Board meeting.
- 4.6. The Supervisory Board may at any time terminate the powers of the General Director and appoint a new General Director by a $\frac{3}{4}$ -majority vote of all directors.

Article 5. Status of the Executive Board

- 5.1. The Executive Board shall be the collective executive body of the Company and shall, under the leadership of the General Director, manage the day-to-day operations of the Company and ensure practical implementation of the decisions of the GMS and the Supervisory Board.
- 5.2. The General Director shall be the Chairman of the Executive Board.
- 5.3. The Executive Board shall have the following members:¹¹⁴
 - 5.3.1. The Chairman of the Executive Board — the General Director;
 - 5.3.2. The Deputy General Director;
 - 5.3.3. _____;
 - 5.3.4. _____; and
 - 5.3.5. _____.

¹¹³ The term of office of the single member executive body is determined by the Company's charter in accordance with the law. Good practice suggests an initial term of one year, followed by three year terms.

¹¹⁴ A Russian company's Executive Board will typically consist of the General Director, and between five and seven other members, possibly the Chief Operating Officer; Chief Accountant, Chief Financial Officer; Chief Legal Counsel; Marketing Director; Head of Sales; Head of Purchasing; Head of Research and Development; Head of Information Technology; Head of Public/Investor Relations; Heads of Business/Product Lines; Human Resources Director; and the General Director of a dependent company or subsidiary. Executive Boards will however need to be adapted to the circumstances of the company and, consequently, should be composed differently.

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- 5.4. Relations between Executive Board members and the Company are regulated by employment contracts to be signed by the Chairman of the Supervisory Board on behalf of the Company.
- 5.5. Members of the Executive Board shall refrain from actions that may potentially give rise to conflicts of interests between themselves and the Company and, in case such conflicts of interests arise, immediately inform the Supervisory Board and the Corporate Secretary thereof.

Article 6. The Authority of the Executive Board

- 6.1. The Executive Board shall have the right to make decisions on the:
 - 6.1.1. Development of the preliminary strategic direction of the company, which it shall submit for Supervisory Board approval;
 - 6.1.2. Development of financial and business plans, based on the strategic direction of the company and the Supervisory Board's approval;
 - 6.1.3. Approval of the Executive Board's organizational structure (including committees), composition and status of departments, and functional divisions of the Company, upon the recommendation of the General Director;
 - 6.1.4. Approval of internal corporate documents on issues that fall within the competence of the Executive Board, including by-laws regulating incentive schemes and sanctions, as well as working schedules, and job descriptions or terms of references for all categories of the Company's employees;
 - 6.1.5. Approval of transactions, the total value of which is ___ or more percent of the total book value of the Company's assets, subject to immediate Supervisory Board notification;¹¹⁵
 - 6.1.6. Approval of any transactions with fixed assets and loans, unless such transactions fall under the ordinary course of business or fall under the competence of the Supervisory Board or GMS;

¹¹⁵ FCSM Code, Chapter 4, Section 1.1.3. recommends that transactions with the total value exceeding 5% of the book value of company assets be subject to Executive Board approval.

- 6.1.7. Approval of any transactions with fixed assets and receiving loans, unless such transactions fall under the ordinary course of business or fall under the competence of the Supervisory Board or GMS, and the total value of is ___ or more percent of the total book value of the Company's assets;¹¹⁶
- 6.1.8. Preliminary approval of mergers or consolidations in the course of reorganizing the Company;
- 6.1.9. Signing of collective bargaining agreements;
- 6.1.10. Remuneration, and principal terms and conditions of employment contracts concluded with middle management;¹¹⁷
- 6.1.11. Organizational, technical, and financial support for the GMS and the Company's other bodies, including the Supervisory Board and Revision Commission;
- 6.1.12. Appointment of the Company's heads of branches and representative offices;
- 6.1.13. Agenda items of the GMS of subsidiaries in which the Company is the sole shareholder;¹¹⁸
- 6.1.14. Appointment of persons to represent the Company at the GMS of subsidiaries in which the Company is the sole shareholder and provide them with voting instructions;
- 6.1.15. Nomination of candidates for the position of General Director, External Manager, Executive Board member, Supervisory Board member, as well as candidates to other governing bodies of organizations in which the Company has a stake;¹¹⁹
- 6.1.16. _____; and
- 6.1.17. _____.

¹¹⁶ Good practice suggests that the total value not exceed five or more percent of the total book value of the company's assets.

¹¹⁷ FCSM Code, Chapter 4, Section 1.1.5.

¹¹⁸ With the exception of cases in which such decisions fall within the competence of the Supervisory Board.

¹¹⁹ FCSM Code, Chapter 4, Section 1.1.4. recommends that decisions on these issues be made by the Executive Board.

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- 6.2. The Executive Board shall have the right to make decisions on other operational issues, with the exception of issues that under the Law and the charter fall within the exclusive authority of the Company's other governing bodies.

Article 7. Appointment and Termination Procedures for Executive Board Members

- 7.1. All members of the Executive Board shall be appointed by the Supervisory Board upon the recommendation of the General Director by a $\frac{3}{4}$ -majority vote of the Supervisory Board for a term of ___ year(s).¹²⁰
- 7.2. A candidate for the Executive Board must possess the following qualifications:¹²¹
- 7.2.1. _____;
 - 7.2.2. _____; and
 - 7.2.3. _____.
- 7.3. The contract with the newly appointed Executive Board members shall be signed by the Chairman of the Supervisory Board within ___ days following the signing of the relevant Supervisory Board meeting's minutes.
- 7.4. [Should the newly appointed Executive Board member be an employee of the Company with a regular open-ended employment contract, he shall sign an additional term contract with the Company in his capacity as an Executive Board member.]
- 7.5. The Supervisory Board may dismiss any Executive Board member at any time, and appoint a new Executive Board member prior to the expiry of the Executive Board's term of office by a $\frac{3}{4}$ -majority vote of all directors.

¹²⁰ Good practice suggests an initial term of one year, followed by three year terms.

¹²¹ For example, professional experience, education, special knowledge and skills, personal qualities, and useful contacts.

Article 8. Executive Board Meetings

- 8.1. The Executive Board shall meet as needed, but at least __ times a month.¹²²
- 8.2. Executive Board meetings shall be called by the General Director on his own initiative, as well as on the initiative of Executive Board members or the Supervisory Board.
- 8.3. The General Director shall set the agenda of Executive Board meetings,¹²³ send notice and relevant materials to its members, and preside over meetings.
- 8.4. Executive Board members shall have the right to propose items to the meeting agenda.
- 8.5. The quorum for Executive Board meetings shall be not less than __ of all Executive Board members.
- 8.6. Decisions made during Executive Board meetings shall be made by a majority of __ votes of the Executive Board members participating in the meeting.
- 8.7. The transfer of an Executive Board member's vote to another person, including another Executive Board member, shall not be allowed.
- 8.8. The Chairman of the Executive Board shall ensure that meeting minutes are prepared, and copies thereof sent to the Supervisory Board, the Revision Commission, and the External Auditor within __ days following the Executive Board meeting.
- 8.9. The minutes of the Executive Board meetings shall be signed by the General Director in his capacity as Chairman and Executive Board members attending the meeting. The minutes shall contain:
 - 8.9.1. The location and time of the meeting,
 - 8.9.2. The names of the persons present at the meeting;
 - 8.9.3. The agenda of the meeting;
 - 8.9.4. The results of voting on an individual basis;
 - 8.9.5. Decisions made by the Executive Board; and
 - 8.9.6. The rationale for the decisions.

¹²² FCSM Code, Chapter 4, Section 4.1.1 recommends to have scheduled Executive Board meetings not less than once a week.

¹²³ FCSM Code, Chapter 4, Section 4.1.3 recommends to send the agenda of the upcoming Executive Board meetings to every Executive Board member.

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Article 9. Duties and Liability

- 9.1. The General Director and Executive Board members shall act in good faith, with diligence and due care, and in the best interests of the Company and its shareholders.
- 9.2. The General Director and Executive Board members are prohibited from:
 - 9.2.1. Participating in a competing company;
 - 9.2.2. Entering into any transaction with the company without first disclosing the transaction and obtaining Supervisory Board or GMS approval;
 - 9.2.3. Entering into actions that may potentially result in a conflict between their own interests and the interests of the company;
 - 9.2.4. Using corporate property and facilities for personal needs;
 - 9.2.5. Disclosing non-public, confidential information for personal interests or the interests of third parties;
 - 9.2.6. Using company information or business opportunities for private advantage, i.e. personal profit or gain; and
 - 9.2.7. Accepting gifts from persons interested in decisions of the General Director and/or the Executive Board, or accept any other direct or indirect benefits, that exceed RUR _____, unless these gifts are symbolic, given as a common courtesy, or souvenirs that are given during official events.
- 9.3. The General Director and Executive Board members shall be liable to the Company for losses incurred through their fault (or omission), unless otherwise provided for by the Law.
- 9.4. Executive Board members who voted against, or abstained from voting on, the decision that resulted in losses to the Company shall not be liable for such losses.
- 9.5. In determining the grounds for and the amount of liability of the General Director and Executive Board members, normal business practices and other relevant circumstances shall be taken into account.
- 9.6. The terms of contracts with the General Director and Executive Board members may also include liability insurance.

Article 10. Remuneration

- 10.1. The remuneration of the General Director and Executive Board members shall be determined by the Supervisory Board [and its Nominations and Remuneration Committee].
- 10.2. The remuneration of the General Director shall be linked to the overall long-term performance of the Company and consist of a fixed and variable part.
- 10.3. The remuneration of the General Director and Executive Board members shall be fixed in separate employment contracts.¹²⁴

¹²⁴ The IFC's RCGP has developed a model employment contract for the General Director, which can also be adapted to other Executive Board members, see also: Annex 14.