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Major changes to the Russian law on limited liability companies

The amendments introduced by the Federal law No 312-FZ of December 30, 2008 and enforceable from July 1, 2009 are likely to become a turning point for the Russian most widespread business legal structure – limited liability company (hereinafter – the LLC), requiring from its shareholders both: action and reflection.

On the one hand, the changes bring significant advantages as to the scope of instruments available for regulating and securing the rights and relationships of the shareholders of the LLC, but on the other hand the existing LLCs will have to meet a number of new requirements in order to be in line with the amended legislation.

1. Shareholders' agreements

As a matter of fact, shareholders' agreements are typically considered to be currently unenforceable under Russian legislation. Effective from July 1, 2009 the shareholders of an LLC will be able to enter into such agreements, which may contain provisions on the agreed voting of the shareholders, specific call-option arrangements executed at a previously agreed price, as well as regulations related to the management of the LLC.

2. Charter documents

According to the Russian legislation in force, every LLC with two or more shareholders is obliged to have two charter documents: the charter and the foundation agreement. Starting from July 1, 2009 the latter will no longer be considered to be a charter document of the LLC. Consequently, it will not be necessary to amend the foundation agreement if the LLC introduces amendments to its charter. However, two or more founders intending to incorporate an LLC will still have to conclude an agreement on the foundation of the company, defining the matters related to the establishment of the LLC.

3. Shareholders' register

It is currently mandatory for the charter of an LLC to contain information on the size of the shareholders' interests in the company. This will no longer be the case after July 1, 2009 and thus the LLC will not be obliged to amend the charter every time the shareholding structure is changed. However, the information regarding the split and the size of shares owned by the shareholders will still have to be submitted to the relevant state authorities and included into the Unified State Register of Legal Entities. More than that, the new

legislation inaugurates a new obligation for the LLCs to maintain a shareholders' register, the General Director of the LLC ensuring that the information contained therein is compliant with the figures indicated in the Unified State Register of Legal Entities.

4. Share transfer and pledge of shares

The new legislation makes provisions for mandatory notarization of a share transfer (except for certain cases mentioned in the law) and a pledge of shares in the LLC. Failure to comply with this requirement will imply invalidity of the transaction. The moment, when the share is deemed to be transferred is currently defined as the moment of notification of the LLC of the share transfer. Starting from July 1, 2009 it will be defined either as the moment of notarization of the transfer or as the moment of introducing relevant changes into the Unified State Register of Legal Entities (in the cases when notarization is not required). The charters of the existing LLCs will have to be amended accordingly.

5. Withdrawal of the shareholders from the LLC

According to the applicable Russian legislation, the shareholders have the right to withdraw their participation in the LLC at any time. According to the new law, the shareholders will have the right of withdrawal from the LLC only if the charter contains relevant provisions. Also, all of the shareholders as well as the sole shareholder will not have the right to withdraw their participation in the LLC. The term, within which the LLC will have to pay out the actual value of the share to the shareholder leaving the company will be shortened to three months.

6. Pre-emptive right of share purchase

The shareholders of the LLC will have new rights regarding the realization of their pre-emptive right of share purchase. More specifically, the shareholders will be entitled to agree upon a share price, which may be different from the one, offered to a third party. Thus, establishing a lower price may prevent newcomers from entering the LLC. The new legislation states that such a price may be indicated in the charter of the LLC either as a fixed figure or as a certain formula/criterion for its calculation. The shareholders of the LLC will also be able to exercise their pre-emptive right of share purchase in respect of a part of share being sold.

7. Miscellaneous

The new legislation contains a number of miscellaneous provisions affecting the following areas of the LLC regulation:

- Delayed payment of charter capital
- Procedure of submitting the documents for notarization and their further processing by the notary public
- Scope of powers of the Board of Directors
- Challenging a decision of the Board of Directors by a shareholder
- List of persons entitled to sign the contract with the General Director
- Major and interested-party transactions
- Reorganisation and liquidation
- Affiliated persons
- Reporting on pledges and other encumbrances on the shares to the state authorities
- Share buy-out obligation of the LLC
- Compensation of expenses to the buyer of the share
- Guarantees of restoration of the share ownership

Compliance requirements

The existing LLCs will have to carry out a number of actions in order to comply with the new LLC legislation. The charters and the foundation agreements of the LLCs, incorporated before July 1, 2009 will have to be amended in accordance with the new requirements not later than by January 1, 2010.

It might be worthwhile for the existing LLCs to initiate the preparation of amendments to their charters as soon as possible in order to avoid any impediments in registration (in particular, only one state registration center operates in Moscow, whilst the number of filings for registration of amendments to charters is likely to be very large within the second half of 2009). In this regard we advise the Russian LLCs to update their charters and submit the latter to the registration authorities shortly after July 1, 2009.

Failure to amend the charters and foundation agreements of the existing LLCs before January 1, 2010 may be subject to an administrative fine. Notwithstanding, the expiration of this deadline will not discharge the LLCs from the corresponding obligations. In any case, starting from July 1, 2009 the constitutional documents of the LLCs will apply only to the extent, in which they are compliant with the amended law.

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