

22 July 2009

## **CHANGES IN REGULATION OF RUSSIAN LIMITED LIABILITY COMPANIES (OOO COMPANIES)**

At the end of 2008, the State Duma of the Russian Federation introduced numerous amendments to the Civil Code of the Russian Federation and separate legislative acts regarding limited liability companies (LLC). The amendments provide for significant modifications to the conditions and corporate governance procedures of LLCs as well as modifications to the manner in which the rights of participants in LLCs may be exercised. The amendments are applicable to existing and newly incorporated companies and enter into force on 1 July 2009. The articles of associations of LLCs established prior this date must be brought into compliance with the new provisions by 1 January 2010 in order to avoid unnecessary complications.

The essential changes introduced by the Federal Law no. 312-FZ of 30 December 2008 on Amendment to the Federal Law no. 14-FZ of 8 February 1998 on Limited Liability Companies are the following:

- State registration of foundation agreement is removed
- Rules on registration of charter capital in constituent documents and company register are amended
- Participants' Agreement, resembling Shareholder' Agreement, is introduced
- Participant's right to withdraw from the company is limited
- Rules on registration of participants and their participation interests in company are amended
- Procedure of transfer of participation interests is amended and subjected to notarisation
- Procedure of approval of major transactions by the company is formalised
- Role of the board of directors is expanded

### **1                    CONSTITUENT DOCUMENTS AND CHARTER CAPITAL**

The foundation agreement is no longer considered a constituted document of an LLC. Now, the articles of association will become the sole officially registered constituent document. Instead, when an LLC is first incorporated, an agreement on foundation (or resolution of the sole founder) will be required. The provisions of this agreement will partially reflect the information in the existing foundation agreement (information on the amount and nominal value of the participation interest of the participants), but its role will be limited to organisational matters of the formation of the company. Currently existing foundation agreements will become obsolete on 1 July 2009.

The minimum amount of the charter capital of company is now fixed at ten thousand (10 000) roubles, substituting the old method of determination in minimal wages. An aggregate amount of the charter capital must accordingly be reflected in roubles in the articles of association of the company, disregarding the information on the amount of the participation interests of individual participants.

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## 2 PARTICIPANTS' AGREEMENT

The amendments to the law have introduced an agreement on the execution of rights of participants (**Participants' Agreement**), which resembles the shareholders' agreements of Western European jurisdictions. With this legal instrument, the participants of a company may agree among themselves on the manner in which they exercise or refrain from exercising certain rights, including voting in general participants' meetings, selling participation interests or part of thereof at a certain price or under certain conditions (cf. put and call options) and other actions regarding corporate management, including the company's formation, economic activities, reorganisation and liquidation.

Participants' Agreement is binding between its participants, but it is still unclear how this new form of agreement will conform to the LLC's articles of association, and how it will be enforced in Russia. Russian courts have in the past strongly opposed the enforcing of participants' voting rights and freedom of decision by agreement. Therefore, the position and usefulness of the Participants' Agreement remains to be seen.

## 3 PARTICIPANT'S RIGHT TO WITHDRAW FROM THE COMPANY

The right of a current participant to withdrawal from the company has been amended, limiting the ability of participants to exit from an LLC at their own discretion at any time. Under the new law, the participant will be entitled to withdraw if explicitly provided under the articles of association of the company.

Please also note that the withdrawal of participants shall be completely prohibited in companies with sole participants and in cases where no participants would remain in the company after withdrawal. Additionally, the payment of the equity participation interest to the withdrawing participant shall not be possible if payment would cause bankruptcy or the immediate risk of bankruptcy of the company.

In case of such a withdrawal, the participation interest must be acquired by the company within 3 months, as opposed to the six month period under the existing law. Please note that a different term might also be provided by the articles of association or agreed among the LLC's participants. The calculation of the actual value of participation interest shall be made on basis of the accounting records for the most recent accounting period.

## 4 INFORMATION ON PARTICIPANTS

Information on the amount and nominal value of the participation interest of individual participants will be removed from the articles of association of the company. LLCs will be obliged to maintain an internal register of their participants (**Participants' Register**), containing information on each participant; the amount of his or her participation interest in the charter capital and status of its payment; the amount of any participation interests owned by the company itself and the dates of the transfer of participation interests to and dates of acquisition of participation interests by the company.

The above information shall be directly recorded in the Companies Register (Unified State Register of Legal Entities, 'ERGUL'). This change is meant to facilitate transactions of participation interests in limited liability companies, as the information on participants and their participation interests will receive public credibil-

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ity through being recorded in ERGUL, and amendments to the articles of association will not be needed after every transaction. In case of inconsistency, the data indicated in the ERGUL shall prevail.

## **5 TRANSFER OF PARTICIPATION INTERESTS**

Starting from 1 July 2009, all transfers and pledges of participation interests, save for some certain specific exceptions, shall be subject to mandatory notarisation. Transactions shall be considered void if not notarised, and the effective date of the transaction shall be the date of its notarisation. The notaries shall file an application with information on the transfer to the registration authority (Federal Tax Service) within three days from the notarisation of the transaction. The registration authority will make a respective entry into ERGUL to reflect the pledge. The notaries shall also notify the company of the completed transaction, which is currently a duty that rests with the parties to the transaction.

The pre-emptive right of participants to purchase participation interests of a company that are being sold to a third party has also been amended. After the effective date, the participants will also be able to purchase a part of the transferred participation interest, not only the whole interest, as it is required now.

Moreover, the amendments permit participants to pre-determine the price of pre-emptive purchases in the articles of association. The price determination is currently limited to the terms of the transaction and the price offered to the third party. The pre-determined price may either be fixed or determined on the basis of any criteria for the estimation of participation interest value. The pre-determined price should be the same for all participants, irrespective of the amount of their participation interests in the charter capital of the company.

## **6 APPROVAL OF CERTAIN TRANSACTIONS**

The types of transactions that may be qualified as major transactions and related-party transactions are defined in the new amendments to the law. Such transactions are loan and credit agreements, pledges and guarantees. Other types of transactions may be subjected to the same regulations as major transactions by the articles of associations of the company.

Decisions on the approval of major and related-party transactions shall under the new law contain the parties of transaction (in related-party transaction approvals additionally any related party, benefitting from the transaction), the price of the approved transaction, the subject of the transaction and other vital conditions of the transaction. The general meeting of the participants shall additionally have the right to approve future transactions that will be valid until the next annual meeting. These transactions must be of a type that can be concluded within the scope of the normal business activities of the company, and the maximum possible price of the transaction must be indicated in the approval.

Related-party transactions do not need approval if all the participants of the company are involved, if the company is buying out its own participation interest, if the transactions are related to the reorganisation of the company, or if the company has only one sole participant, who is also its general director.

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## 7 COMPETENCE OF THE MANAGERIAL BODIES

Upon the entry into force of the amendments, the powers of corporate bodies will be more flexible and more freely regulated by the articles of association. For example, the formation of the executive bodies of the company and termination of their powers, which earlier fell within the exclusive competence of the general meeting, may be relegated to the board of directors.

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