

RUSSIA ALERT

AMENDMENTS TO THE RUSSIAN LIMITED LIABILITY COMPANIES LAW

Federal Law No. 312-FZ on Amendments to Part I of the Civil Code of the Russian Federation and Certain Statutory Acts of the Russian Federation, adopted on December 30, 2008 (the “Law”), introduced substantial changes to legislation governing the legal status and operating procedures of Russian limited liability companies. The Law comes into force as of July 1, 2009. Starting from that date, companies’ constituent documents will be effective only to the extent not inconsistent with the Law.

The Law contains a number of novelties, the application of many of which depends upon whether or not the company’s charter contains the relevant provisions. The most significant amendments include the following—

RULES OF TRANSFER OF A PARTICIPANT’S INTEREST TO THIRD PARTIES

Transactions involving a disposal of an interest (with certain minor exceptions) are subject to mandatory notarization, absent which the transaction will be invalid. The interest will be deemed transferred upon notarization of the transaction involving a disposal thereof.

- The participant’s pre-emptive right in respect of an interest or a portion thereof offered to a third party may be exercised as follows—
 - at the price offered to the third party, or
 - at the price predetermined in the company’s charter, which may differ from the price offered to the third party. Such price may either be provided in the charter as a fixed cash amount or be determined based on various criteria.
- The charter may provide that participants may exercise their pre-emptive right in respect of only a portion of the interest offered for transfer.
- Notification of the company’s participants regarding their option to exercise the pre-emptive right in respect of the selling participant’s interest or a portion thereof must be made to such participants via the

company through delivery of an offer which, generally, may only be revoked no later than the day on which it is received by the company.

- The Law removes the existing provision that the company's charter may require the consent of other participants to the disposal of interest (or a portion thereof) to a third party other than by way of sale.
- Other transfers of interests to third parties, in particular by succession, require consent of all participants (unless provided otherwise in the charter). Absent such consent, the successors are entitled to the payment of the actual value of the interest or transfer of other assets of equal value.
- The participants' consent is also required for a transfer of rights and obligations of the company's participant, where the interest is sold at a public auction.

PARTICIPANTS' AGREEMENT

The Law provides for the company participants' right to enter into an agreement on the exercise of the company participants' rights. The list of the conditions and rules for the participants to exercise their rights and perform the obligations that may be set forth in such agreement is not exhaustive. The Law indicates that such agreement may, in particular, provide for the obligation of the parties thereto to—

- vote in a certain way at the general participants' meeting of the company
- coordinate voting with other participants
- sell the interest (or a portion thereof) at the price fixed in such agreement and/or upon occurrence of certain events
- refrain from disposal of the interest (or a portion thereof) until occurrence of certain events
- take other concerted actions relating to governance, formation, operations, reorganization and liquidation of the company.

PARTICIPANTS' RIGHT TO WITHDRAW FROM THE COMPANY

- The Law repeals the existing provision regarding the participants' unconditional right to withdraw from the company at any time. Such participants' right will exist only if provided in the company's charter.
- The Law entitles the participant to demand that the company buy its interest in cases wherein such participant votes against the approval of a major transaction or an increase of the charter capital through additional contributions made by participants, or where such participant does not take part in voting on such issues. In such cases, the participant is entitled to the payment of the actual value of the interest.

AMENDED RULES TO FORM THE COMPANY AND REGISTER AMENDMENTS

- The Law no longer lists the foundation agreement as a constituent document and limits the constituent documents to the charter only.
- However, the foundation agreement entered into at the time of the company's incorporation continues to be an instrument evidencing the interest of each of the participants until the first disposal of such interest.
- Charters of companies registered before July 1, 2009, must be brought into compliance with the Law between July 1, 2009, and January 1, 2010.

RECORDS OF PARTICIPANTS AND THEIR INTERESTS

- The Law no longer requires the charter to include information on the size and nominal value of each participant's interest. Such information is included in the foundation agreement entered into by the participants at the time of the company's incorporation.
- The Law requires the company to maintain a list of its participants including—
 - details of each participant
 - participant's interest in the charter capital and the paid-up portion thereof
 - information on treasury interests and the dates when such interests were transferred or acquired.
- Information on the size and nominal value of the participants' interests is included in the Unified State Register of Legal Entities (USRLE).
- If an interest (or a portion thereof) is transferred, the corresponding changes are made in the USRLE and the list of the company's participants. In case of any discrepancies between the USRLE and the list of the company's participants, the USRLE data shall prevail.
- An excerpt from the USRLE (together with the interest deed of purchase) constitutes official evidence of the participants' title to the relevant interest.

PLEDGE OF INTERESTS

The Law provides that the interest pledge agreements must be notarized. The information on encumbrances must be recorded in the USRLE.

GOVERNANCE

- The voting rights at the general meetings may be exercised only to the extent of the paid-up portion of interest (unless provided otherwise in the charter). The current Limited Liability Company Law does not contain this requirement, so that all votes under both fully paid-up and not fully paid-up interests may be exercised.
- The Law outlines the model authority of the board of directors, if any. The existing law is silent as to the competence of the board.

- The Law provides a special period of limitations (two months) to challenge decisions of all management bodies, including the general meeting. Under the existing law, a special period of limitations applies only to challenges of decisions of the general meetings.
- The Law clarifies and supplements the interested party and major transaction approval rules. In particular, an interested party transaction may be approved in advance, provided that the cap on the transaction amount is specified. The Law lists exceptions to the interested party and major transaction approval rules. In particular, if all company participants are interested parties, no approval is required.

CONTACT INFORMATION

If you have questions about this alert, please contact:

Alexey Kondratchik.....	akondratchik@akingump.com	7.495.783.7837	Moscow
Andrei V. Danilov	avdanilov@akingump.com	7.495.783.7839	Moscow