

## **AMENDMENTS TO THE LAW ON LIMITED LIABILITY COMPANIES**

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Federal Law № 312–FZ dated 30 December 2008 (the “New Law”) significantly changed the regulation of Limited Liability Companies (“LLC”) in Russia.

The New Law provides for amendments to the Civil Code of the Russian Federation, the Federal Law “On Limited Liability Companies LLC” (“LLC Law”), the Federal Law “On State Registration of Legal Entities and Individual Entrepreneurs”, and the Fundamental Principles of Russian Federation Law on Notaries.

The key issues affected by the New Law are as follows:

### **Constitutional Document**

The amendments provide that the Charter of the LLC will be the sole constitutional document of the LLC. Instead of a Memorandum of Association, there will be a special Founders’ Agreement, which is not a constitutional document, but only defines the obligations connected with the foundation of the LLC and the payment of shares in the Charter Capital of the LLC.

In this way, the New Law resolves the problem of the coexistence of the Charter and Memorandum of Association and conflicts that arise between them. It appears that it will resolve the problem of the possible inconsistency of provisions of both documents and the need to amend the Memorandum of Association.

### **Withdrawal of Participant**

The mandatory provision of the LLC Law that entitles a participant to withdraw from the LLC at any time and to receive a portion of the LLC's assets corresponding to its share of the charter capital will be eliminated. The New Law restricts the above-mentioned right of a participant to withdraw from an LLC: it may be exercised only in cases explicitly provided for by the Charter.

### **Participants’ Agreements**

The New Law introduces the “Participants’ Agreements”, which is new to Russian corporate law. Participants of the LLC may enter into contractual arrangements in respect of their rights as participants; and exercise and (or) refrain from exercising their rights, including voting rights and transfer of share under certain circumstances.

The wording of this law is prompting suggestions that it provides a legal basis for share options and voting agreements, which are essential for structuring joint ventures under the Russian law.

### **Transfer of Share**

Provisions relating to the transfer of share have been significantly changed by the New Law.

For example, agreements for the transfer of share need to be notarized. Certification by notary determines the moment the share is transferred to the buyer. Failure to comply with the requirements of above-mentioned form of transaction shall render it invalid.

The notary will be obligated to verify the authority to dispose of a share and to provide the LLC and registration authorities with the documents relating to the transaction, which are required to make an entry in the Unified Register of Legal Entities.

The Charter may provide for the pre-emptive right of participants and the LLC to purchase the share sold by other participants to third parties and to set the price at which it will be sold to persons, exercising their pre-emptive rights.

The Charter may allow the transfer of share to third parties subject to participants' consent.

#### List of Participants

Under the present LLC Law information about participants and their stake in the LLC is contained in the Charter. From a practical point of view, this means that each transfer of share inevitably requires an amendment of the Charter.

The New Law introduces the institution of a List of Participants to be maintained by the LLC. But it must be noted that where the information contained in the List of Participants is inconsistent with the Unified Register of Legal Entities, the provisions of the latter shall have prevailing force.

#### Miscellaneous Provisions

The New Law provides for more detailed provisions regarding the procedure for founding an LLC and the mechanism for forming its Charter Capital (including increases and reductions).

Changes regarding the corporate governance of an LLC: abolition of the strict “exclusive” competence of the general meeting of participants. The competence of the Board of Directors may be extended by Charter.

Amendments, introduced by the New Law, will come into force on 1 July 2009.

On the whole, the New Law contains many provisions that make the LLC Law sufficiently flexible and more suitable to the needs of business. These substantial amendments make Russian corporate law more competitive, but most of them need to be tested in practice.