



MAY 2014

## Recent Amendments to the Russian Civil Code: the New Regulation of Legal Entities

On May 7, 2014 high-importance amendments were introduced to the Russian Civil Code with regard to legal entities (the Law). The amendments will take effect on September 1, 2014.

### Key amendments

#### 1) New division into public and non-public companies shall be introduced

Public companies shall be deemed to be joint-stock companies (hereinafter JSC) the shares of which are publicly placed and/or traded, as well as JSC, the charters and company names of which refer to their public status. All other JSC, as well as limited liability companies (hereinafter LLC), shall be deemed nonpublic companies.

Nonpublic companies will be regulated in a more flexible manner than public companies. Thus, a non-public company may allocate powers between governing bodies in a manner other than that provided by the law and may introduce a different procedure to convene, prepare and hold general meetings.

From now on, no legal entity may be incorporated as a closed joint-stock company or an additional liability company.

#### 2) Controller's liability shall be introduced

A person who is 'de facto' able to determine the actions of a legal entity and particularly instruct the executive bodies (a shadow director, a controlling shareholder) shall now be liable to the legal entity.

Liability shall incur in the same instances as that of the management, i.e. breach of duty of care and fiduciary duty.

#### 3) Management shall be protected from liability

For the first time ever, the Law provides for the protection of management from liability for damage done to the company, should the shareholders give their consent. However, this protection is only available for (1) nonpublic companies and (2) damage related to breach of duty of care, i.e. for commercially disputable or unreasonable decisions.

#### 4) Two-key principle shall be allowed

The amendments provide for granting the powers of a sole executive officer to several persons acting jointly.

The Law also provides for another possibility – the distribution of powers of a sole executive officer amongst several persons acting individually.



Related information shall be put in the charter and in the state register of legal entities.

**5) Legal regulation of shareholders' agreements has been itemized**

- Company's participants shall now have to notify the company of the existence of a shareholders' (participants') agreement but shall not have to disclose its contents;
- In the case of public JSC more information from the shareholders' agreement will be disclosed, though the procedure for, scope and terms of such disclosure have not been determined yet and are to be provided for in the law on JSC ;
- Breach of a shareholder agreement may now result in annulment of resolutions made by the company bodies, but only where all the company participants were parties to the agreement at the time of making such resolution;
- Company's lenders, as well as any other third parties having legal interests may enter into a corporate agreement with the company participants;
- It is explicitly stated that a shareholder agreement may conflict with the charter, but this shall not result in its nullity.

**6) Major changes have been introduced to provisions on reorganization and winding-up of legal entities:**

- a "mixed reorganization" (i.e. a reorganization involving a number of "basic" reorganization forms, as well as more than two legal entities, even if they have different corporate forms) shall be allowed;
- a rule stating that invalidity of a resolution to reorganize shall not lead to winding-up of the legal entities resulting from such reorganization and shall not constitute ground for invalidity of transactions performed by such legal entities;
- exceptional grounds have been provided, allowing to cancel the reorganization of a corporation, e.g. where no resolution to reorganize has been made, and the documents on such resolution have been forged;
- a procedure to distribute discovered property of a dissolved legal entity among the lenders has been introduced.

**7) Grounds for a parent company's liability for its subsidiary's debts have been specified**

A parent company's joint liability shall now arise not only where a relevant subsidiary has been instructed to perform a transaction, but where such transaction has also been approved.

## OUR RECOMMENDATIONS

Primarily, we would advise economic agents to pay particular attention to the Law's interim provisions (Article 3).

These provisions explicitly stipulate that no particular re-incorporation of legal entities or relevant amendments to their names or constituent documents shall be required in view of the Law becoming effective. The relevant modifications may be introduced into the constituent documents of such legal entities as soon as first amendments are made.

The constituent documents may be brought into compliance with the Law earlier on a voluntary basis; no state duty shall be charged.

Joint-stock companies qualifying as public companies shall be automatically recognized as such as soon as the Law becomes effective, whether or not the company name contains reference thereto.



As related to functioning of any corporations (public and nonpublic), particular attention shall be paid to compliance with the fiduciary duties by both the management and all persons exercising actual control over the company. In the event of doubts as to whether this particular transaction violates such duties, we would suggest consulting a legal expert on Russian law.

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