

## Novels in regulating Limited Liability Companies

This year regulation of limited liability companies ("**company**") changes essentially<sup>1</sup>. In particular, amendments of the Civil Code of the Russian Federation, Federal Law on the Limited Liability Companies<sup>2</sup> and the Federal Law on State Registration of Legal Entities and Individual Entrepreneurs have been made. Key novels are considered below.

In this respect all companies shall amend their charters and agreements on incorporation in accordance with the Federal Law on the LLC by the end of current year. However, since the new rules will imperatively apply to companies starting from 1 July 2009, we would recommend bringing into compliance charters and agreements on incorporation with the Federal Law on LLC by this date.

### 1. Relations between participants

- An agreement on incorporation LLC is no longer its constitutive document. Thus, the only constitutive document of LLC shall remain its charter<sup>3</sup>.
- An opportunity of concluding an agreement on exercising rights (the agreement may in particular provide a waiver of such rights<sup>4</sup>) between participants of LLC has been introduced. The context of such an agreement is close to shareholding agreements.
- The procedure of making decisions on several items by general meeting of participants has been changed<sup>5</sup>.

### 2. Disposal of participatory interest of the charter capital

- An opportunity to determine in advance the sales price of participatory interest in the charter has been provided specifying the fixed price or setting forth the procedure of its calculation (on the basis of net assets value, book value and other criteria<sup>6</sup>).

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<sup>1</sup> Federal Law of the Russian Federation NO. 312-FZ of 30 December 2008 on Amendments of Part 1 of the Civil Code of the Russian Federation and several statutes of the Russian Federation.

<sup>2</sup> Federal Law NO. 14-FZ of 8 February 1998 on the Limited Liability Companies.

<sup>3</sup> Clause 3 of Article 89 of the Civil Code of the Russian Federation, Clause 5 of Article 11 of the Federal Law on LLC. Hereinafter, we refer to the corresponding provisions of a new version of the Federal Law on LLC coming into legal force from 1 July 2009.

<sup>4</sup> Clause 3 of Article 8 of the Federal Law on LLC.

<sup>5</sup> For example, in accordance with Clause 2 of Article 23 of the Federal Law on LLC a decision to include provisions into LLC's charter regarding an opportunity to sale participatory interest to the company in case if the participant did not take part in a general meeting of participants or if he voted against the increase of the charter capital or completion of a large-scale transaction shall be adopted unanimously, and a decision to exclude such provisions – by two thirds of the total number of the votes of the company's participants.

<sup>6</sup> Clause 4 of Article 21 of the Federal Law on LLC.

- Participants have an opportunity to include into the charter provisions regarding preemptive purchase right in relation to a part of a participatory interest offered for sale. In this case the rest of a participatory interest may be sold to third parties<sup>7</sup>.
- A participant who wishes to sale its participatory interest shall send the other participants the offer for sale thereof instead of a notice regarding intention to sale. Such offers are governed by the provisions on offer of the Civil Code of the Russian Federation<sup>8</sup>.
- With a few exceptions any transactions on disposal or pledge of participatory interest shall be notarized<sup>9</sup>.

Under a disposal transaction subject to notarization the participatory interest shall be transferred from the moment of such notarization<sup>10</sup>.

- In case if notarization of transactions is obligatory (sale or pledge of participatory interest) the notary sends the application to the Tax Authorities for respective amendments to the Unified State Register of Legal Entities. Moreover, the notary shall notify the company itself in such cases.

### **3. Protection of participants' rights**

- An opportunity to sale one's participatory interest to the company is provided in case if the participant did not take part in a general meeting of participants or if he voted against the increase of the charter capital or conclusion of a large-scale transaction<sup>11</sup>.
- The period for paying the value of the participatory interest to the withdrawing participant is reduced from six months to three<sup>12</sup>.
- Provisions on administration of the participants register are introduced. The information which should be included into participants register, the rules of its administration have been determined<sup>13</sup>.

We will be happy to answer any of your questions regarding the above. Please contact Anton Klyachin ([Anton.Klyachin@salomons.com](mailto:Anton.Klyachin@salomons.com)) or Evgeny Levinsky ([Evgeny.Levinsky@salomons.com](mailto:Evgeny.Levinsky@salomons.com)), or call us at +7.495.691.11.84.

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<sup>7</sup> Paragraph 5 of Clause 4 of Article 21 of the Federal Law on LLC.

<sup>8</sup> Clause 5 of Article 21 of the Federal Law on LLC.

<sup>9</sup> Clause 11 of Article 21, Clause 2 of Article 22 of the Federal Law on LLC.

<sup>10</sup> Clause 12 of Article 21 of the Federal Law on LLC.

<sup>11</sup> Clause 2 of Article 23 of the Federal Law on LLC.

<sup>12</sup> Clause 6.1 of Article 23 of the Federal Law on LLC.

<sup>13</sup> Chapter 3.1 of the Federal Law on LLC.