



## Changes in Federal Law “On Limited Liability Companies”

– amendments to the by-laws of all Russian companies required

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**On December 30, 2008 several important changes were introduced into the Federal Law “On limited liability companies” which comes into force starting from July 1, 2009. The importance of these changes is caused by the necessity of amending the by-laws of all existing limited companies to make them compliant with the new Law. Beginning from July 1, 2009 articles of association and foundation agreements of companies will be applied only in the part, which does not contradict the new norms.**

### Beginning from July 1, 2009 Foundation agreement loses its force as a constituent document

First of all, one should pay their attention to the fact that Foundation agreement loses its force as a constituent document. The only constituent document of LLC is now the Charter (Articles of Associations, Statute). Now to change it you do not need the will of all participants. The information about the size and nominal value of the share of a company’s participant is not reflected in it. And this is quite positive for business, because it excludes the necessity to insert amendments into it every time the structure of the Charter capital of a company or the number of its participants are changed.

It is provided that the information about the company’s participants and their shares (participations) should be contained in the Unified public register of legal entities, and transfer of a share from one person to another will be possible only when appropriate changes are made in the register.

It has been directly provided that the company’s participants bear risk of losses connected with its activity within the limits of the cost of the shares belonging to them in an authorized capital (item 1 article 1).

The rules concerning participants’ exit from a company have undergone some changes as well. The possibility of a free exit is excluded as it can be used as a method of evasion from property claims connected with losses of a company and its creditors. Thus, the rights and legitimate interests not only of a company’s participants, but of its creditors either could have been violated.

#### Established reasons for an exit are:

- alienation of a share to a company (if the right to an exit is provided by the charter, article 12)
- the request of a buyout of the share (participation) by the company.

Concerning the last reason: a company’s obligation to acquire a share of its participant in an authorized capital (item 2 article 23) if the general meeting makes a decision to enter into a major deal or to increase the Charter capital which the shareholder does not agree with or has abstained from voting.

Also now it is prohibited to exit from a company if as a result there are no participants left.

The important innovation is that a company now is obliged to keep a list of participants with indication of the information about each participant of a company, the size of their share in an authorized capital of a company and its payment, and also about the size of the shares belonging to the company,

dates of their transfer to the company or acquisitions by the company. However, the information from the United public register prevails.

The changes to protect companies from hostile takeovers have been made. For instance the contract of purchase and sale of a share should be certified by a public notary. Non-observance of the notarial form entails its nullity (item 11 article 21). This amendment will make the corporate procedures of companies with foreign participants significantly more complex.

Participants have the right to sell or to alienate their share (a share part) only to the other participants of a company. Alienation of a share to third persons is possible only if it is directly provided by the company charter. Procedure of realization of a company's preferential right on acquisition of a participant's share, which is sold to the third person, is regulated in detail. The participant of a company intending to sell their share to the third person, is obliged to direct the written offer addressed to the company and other participants (instead of the notification of intention to sell the share, as it was earlier) specifying the price and other terms of sale (item 5 article 21). In this case the rules of the Civil Code regarding offers will operate).

The company is obliged to pay the actual value of the share within a year from the moment of share transfer to the company. The shorter term can be provided by the charter (subparagraph 8 clause "k" article 23).

Founders (participants) of the company have been granted with the right to sign agreements on realization of their rights (clause 3 article 8). This is a positive innovation for elimination of conflicts between participants of the company. Now legally binding arrangements concerning, for example, voting at the general meeting, payment of dividends are admissible.

Provisions on major transactions have been changed as well. First of all, the amount of major transactions has been changed and now it equals to twenty five or more percent of cost of the company's property. And the company Charter can provide for other kinds of transactions and (or) the amount of transactions on which the order of approval of major transactions extends.

Secondly, it is indicated that the given positions are not applied:

- to the companies consisting of one participant which simultaneously carries out functions of an individual executive body of the company;
- to the relations arising at transfer of a share (part of a share) to a company in its authorized capital in cases, provided by the Law;
- to the relations arising at the transfer of the rights on the property in the process of reorganization of the company, including agreements for mergers.

It is necessary to notice that now there is no concept "investment", it is replaced with "shares" (participations) in the authorized capital.

The possibility of transformation of a company into a partnership is also fixed.

It is significant that in the Federal Law on introducing these changes it is indicated that charters and constituent contracts of the companies are to be brought to correspondence with the legislation not later than January 1, 2010.

Till this time, the Federal Law «About limited liability companies» acts without the indicated changes, thus it is necessary to make changes in charters only after July 1, 2009. The representatives of tax authorities have confirmed this opinion.

However before these changes come into effect, it is advisable to conduct a review of the by-laws in order to prepare a list of changes to be introduced into the charter. These changes concern the list of the participants, the rules concerning their exit from the company, company responsibilities to conduct a list of participants, provisions on major transactions, exceptions of information on the size and a nominal value of the share of a company's participant and others.

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