



Leading the Way in Russian Law®

January 27, 2012

Business partnership – new company type under Russian law

On 1 July 2012 new company type will be effective in Russia according to Federal Law dated 3 December 2011 No.380-FZ "On business partnerships" ("Law").

From the legislative standpoint, business partnerships will operate as a special-purpose vehicle to be used in course of innovative activity (including venture activity).

It should be pointed out, that currently the most common types of companies in Russia are limited liability companies (LLC), closed joint-stock companies (CJSC) and open joint-stock companies (OJSC). Among the key features of business partnerships are:

- in comparison with LLC and CJSC, a business partnership cannot be established by a sole person. However, unlike OJSC, there is a limit of participants – no more than 50 persons;
- unlike LLC, CJSC and OJSC, a business partnership is not entitled to issue bonds and other equity securities;
- a business partnership has limited legal capability in the sense that it is not entitled to establish other legal entities, with the exception of unions and associations;
- unlike LLC, CJSC and OJSC, there is no minimal capital requirements for a business partnership. However, securities cannot be contributed to the capital of a business partnership, except for bonds, issued by companies which are included into the special list by the Federal Services of Financial Markets;
- the Law enables partners to regulate their internal corporate relationship to the full extent possible by entering into a management agreement. It should be pointed out that due to its flexibility, a management agreement is quite different from a promotion agreement (for LLC), an establishment agreement and a shareholder agreement (for CJSC and OJSC);
- partners enjoy a pre-emptive right if shares are transferred (like in LLC and CJSC);
- in comparison with the legislation on LLC, CJSC and OJSC, the Law does not provide for a strict corporate structure in a business partnership. Only the legal status of the CEO is described in detail. There is an explicit provision in the Law that the corporate structure can be fixed by a management agreement.

On a separate note it should be mentioned that a business partnership is intended for the innovation activity, where excessive control and red tape can be detrimental. Accordingly, procedures of establishment, reorganization and liquidation are simplified. Nevertheless, there is a restriction – business partnership can be reorganized only into a joint-stock company (the Law does not specify whether closed or open).

A positive moment is that there are no strict requirement regarding the minimal amount of the capital as well as it is not necessary to comply with administrative requirements during the increase/decrease of the capital. This simplification should promote development of the venture activity in Russia.

One of the main peculiarities of business partnerships lies in delegation of significant discretionary powers in determining the means of management, structuring internal relations among partners, in possibility to establish different regimes of rights and duties of business partners. The embodiment of permissive

regulation of the business partnership activity is the management agreement. From the standpoint of the legislator such high degree of permissive regulation should promote versatility of business partnerships to certain innovative project.

The legislator views business partnership as an active actor of innovation activity. Accordingly, the necessity to protect IP assets of the business partnership as a project company is obvious since without them it loses its potential value. Hence the legislator allows the partners to fulfil obligations of the partnership in the name of the partnership, in case the partnership fails to fulfil its obligation and forfeiture of IP assets of partnership will be at issue.

The Law sets forth the formation of pooled capital in business partnerships, by analogy with general partnerships and limited partnerships. Contributions to the pooled capital can be assets, monetary funds, proprietary rights and other rights, having monetary value. The Law establishes for the first time the obligation of a partner to pay interest for delay in contributing to the pooled capital. This allows for stable functioning of the partnership, e.g. at financing investment project. It is interesting, that the Law establishes a limitation on contributing securities to pooled capital except for bonds of companies, determined by the Federal Service of Financial Markets.

The existence of pooled capital and liability for delays to effect contributions thereto renders the business partnership a very attractive form for implementation of innovative investment projects with venture financing.

By analogy to business companies the Law sets forth creation and functioning of sole executive body. The agreement on carrying on business of partnerships may set forth, inter alia, the procedure for approval of the actions of this sole executive body.

Partners' shares in the pooled capital may be objects of transactions, including pledge. The procedure of concluding such transactions is mostly determined by the agreement on carrying on business. The Law establishes the procedure of exercising pre-emptive rights for the purchase of the partner's share. At that such rule may be cancelled by the agreement on carrying on business.

A partner's share may be forfeited in the amount of its real value, calculated on the basis of accounting data, as of the last reporting date, preceding the date of forfeiture.

Broad permissive powers of business partnership members regarding alienation of shares shall ease the participation of foreign investors in such investment projects, because such transactions, e.g. with shares of capital of an LLC are overregulated and do not provide for necessary level of transparency and freedom of actions for the investor.

On a separate note it should be noted, that the business partnership has special, intermediate position and serves as a linker between simple partnerships without separate legal personality and business companies, having the status of a legal entity.