

A NEWS ALERT FROM
MANNHEIMER SWARTLING

3 MARCH 2009

Russian Legal Alert

Alert on changes in the Russian legislation on limited liability companies

**FOR ADDITIONAL
INFORMATION
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FEDERAL ACT NO. 312-FZ "ON AMENDMENTS TO PART I OF THE CIVIL CODE OF THE RUSSIAN FEDERATION AND CERTAIN LEGAL ACTS OF THE RUSSIAN FEDERATION" will enter into force on 1 July 2009. A number of amendments will be introduced to the Civil Code of the Russian Federation, the Fundamental Principles of the Legislation of the Russian Federation on Notarial Activities, the Federal Act "On limited liability companies" ("LLC Act") and the Federal Act "On state registration of legal entities and individual entrepreneurs".

The amendments are aimed at protecting LLCs from raider takeovers, eliminating a number of gaps in the LLC Act, more detailed regulation of the transfer of participatory shares in the charter capital of an LLC to other participants or third parties, restricting the right of participants to exit from the company.

THE CHARTERS OF THE COMPANIES ESTABLISHED PRIOR TO 1 JULY 2009 MUST BE BROUGHT IN COMPLIANCE WITH AMENDMENTS TO THE CIVIL CODE OF THE RUSSIAN FEDERATION AND THE LLC ACT BY 1 JANUARY 2010.

THE MOST SIGNIFICANT AMENDMENTS ARE AS FOLLOWS:

CONSTITUTIVE DOCUMENTS

As from 1 July 2009 a foundation agreement will no longer be a constitutive document of an LLC. The only constitutive document of an LLC will be its charter. Upon establishment of an LLC its participants shall enter into a written agreement on the establishment of the company. The agreement must set forth the procedure for carrying out joint activity by the participants relating to the establishment of the company, the amount of the charter capital of the company, etc. The agreement will terminate following the fulfillment by the participants of their obligations related to the establishment of the company and payment for the participatory shares in the charter capital of the company.

SHAREHOLDERS' AGREEMENTS

Founders (participants) of an LLC will have the right to enter into an agreement on exercising their rights of the company's participants (shareholders' agreement). The agreement may contain obligations of the participants to exercise their rights in a certain manner and (or) to waive such rights, including the right to vote in a certain manner at the general meetings of participants, co-ordinate voting with other participants, sell participatory shares at a price set forth in the agreement and (or) upon the occurrence of certain circumstances, or abstain from the disposal of participatory shares until the occurrence of certain circumstances, as well as an obligation to carry out other concerted actions related to the management of the company, its establishment, operations, reorganization and liquidation. Thus, despite insufficient regulation of these matters in the LLC Act, Russian law has generally acknowledged shareholders' agreements. Previously, such agreements were invalidated by Russian courts.

PRE-EMPTIVE RIGHTS

The rules concerning pre-emptive rights of the participants to buy participatory shares in the charter capital of the company have been changed. The charter may provide for pre-emptive rights of the participants and the company itself to buy participatory shares either at a price offered to a third party, or at a price set forth in the charter. The charter may only provide for one of these options. It is not allowed to provide for a pre-emptive right of a specific participant to buy participatory shares at a price set forth by the charter.

The charter may provide for pre-emptive rights of the participants or the company to buy a part of the participatory share offered for sale. The remaining participatory share may be sold to a third party following the partial exercise of the pre-emptive rights by the company or its participants.

If a participatory share is sold at a public auction, the rights and obligations of the company's participants may be transferred to the third party only with consent of other participants. Such consent was not formerly required.

NOTARIZATION REQUIREMENTS

As from 1 July 2009 transactions regarding alienation of participatory shares will require notarization. This requirement will not apply to, inter alia, acquisition of participatory shares by the company at the request of its participants, upon exit of participants from the company, upon sale of participatory shares owned by the company, and upon distribution of a participatory share among the participants. Failure to comply with the notarization requirement will render a transaction invalid.

According to the amendments to the LLC Act, a notary will be obliged to verify the authority of the seller on the basis of documents set forth in the LLC Act.

A participatory share will be deemed transferred to the acquirer as from the date of notarization of the transaction. If a transaction is not subject to notarization, the participatory share will be deemed transferred to the acquirer upon making a relevant entry in

the Unified State Register of Legal Entities ("Register"). Within three days following notarization the notary shall file with the tax authority an application signed by the seller on making changes in the Register together with the respective agreement or, in case of a unilateral transaction, other document confirming the transfer of the participatory share. The notary shall also send a copy of the application to the company, unless the parties have agreed to notify the company themselves.

A pledge agreement regarding participatory shares will also require notarization. Within three days following notarization the notary shall file with the tax authority (with a copy to the company) an application signed by the pledgor on making relevant changes in the Register.

In light of the notarization requirement for agreements on the sale and purchase of participatory shares, the application of foreign law to such agreements becomes questionable.

EXIT FROM LLC

A participant will have the right to exit from the company irrespective of the consent of other participants only if the company's charter provides for such right. According to the present version of the LLC Act, such exit does not require the consent of other participants. The actual value of the participatory share determined on the basis of the company's accounting reports for the last accounting period will be payable to a withdrawing participant within three months. According to the present version of the LLC Act, the value of the participatory share is determined on the basis of the accounting reports for the year during which the application on the exit was filed with the company and is payable within six months. It will be possible to provide for other procedures and time-periods for the payment of the actual value of the participatory share in the charter.

LIST OF PARTICIPANTS

As from 1 July 2009 all LLCs shall maintain lists of their participants specifying information on each participant, his/her/its participatory share and payment for the share, as well information on the participatory shares owned by the company, dates of their transfer to, or acquisition by, the company. There will be no requirement to specify the company's participants in its charter. The company's General Director (CEO) will be responsible for the maintenance of the list of participants, unless the charter provides otherwise. The participants shall timely inform the company of any changes in their name or company name, place of residence or place of location, as well as of the participatory shares owned by them. Failure to provide such information will trigger the obligation of the participant to reimburse the company for the incurred losses.

AFFILIATED COMPANIES

Affiliated persons will have to notify the company in writing on the participatory shares owned by them no later than within ten days of the date of acquisition of the participatory share that gave rise to their affiliation. An affiliated person is a person having the right to exercise over 20% of the votes of the company's participants. Failure to provide the said information will trigger the obligation of the affiliated person to reimburse the company for the incurred losses.

Mannheimer Swartling is the leading business law firm in the Nordic region (Law firm of the Year - Northern Europe, PLC Which Lawyer - 2009). The firm is a full service firm with an extensive international practice. The firm has approximately 650 employees, of which approximately 420 are lawyers.

Mannheimer Swartling has a long history in Russia. The firm opened its first Russian office in 1990 and was the first European law firm

which established itself in the then Soviet Union. The firm's Russian practice of over 50 lawyers involves a broad range of advisory and transactional work and has two full service offices in Russia located in Moscow and St Petersburg.



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