

Shareholders' Right to Information on the Company's Operation: Court Practice

March 2010



This Special Update provides a brief overview of the Presidium of the Supreme Commercial Court Information Letter No. 144 on the commercial courts' practice with respect to providing information on the company's operation to its participants or shareholders (the "shareholders").

Russian legislation provides for a shareholder's right to receive information on the company's operation and review its books and other documentation.¹ A shareholder has the right to information (save for certain exceptions) irrespective of the amount of its stake in the charter capital of the company. Disputes initiated by current and former shareholders of companies on the provision of information to them are considered to be corporate disputes and fall under the exclusive jurisdiction of commercial courts at the location of the relevant companies.

Shareholder's Right to Information

The right to request information on the company's operation belongs only to shareholders of the relevant company. The company may request the person who filed a request for information to provide evidence of its status as the company's shareholder. The Letter lists instances where a shareholder does not have to confirm its status, including:

- a joint stock company ("JSC") maintains the register of shareholders itself and the relevant person is included in the register; or
- a person is included in the list of participants maintained by a limited liability company ("LLC").

As a general rule, the right to information is terminated when a person ceases to be a shareholder. The Letter lists the following exceptions from the above rule:

- a person to whom an LLC is to pay the actual value of its participatory interest acquired by the LLC may request information on the determination of the actual value of such participatory interest; and
- a person from whom shares in an open JSC have been bought out following the procedure established by the JSC,² may request information on the determination of the price of the bought-out shares.

Scope of Requested Information

According to the Letter, the charter or internal documents of the company may not limit the shareholders' right to information, as compared to the statutory provisions. In particular, the LLC Law sets forth the possibility to establish in the company's charter only the procedure for receiving information on the company's operation, rather than a list of such information.

The Letter also clarifies that a shareholder may request the provision of:

- information on the company's operation for the period when it was not a

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shareholder;

- information on legal entities the company is a successor to as a result of reorganization;
- civil law agreements that the company is to keep; and
- book-keeping information (even if it is only stored electronically).

If the requested documents contain confidential information, this may not constitute grounds for the company to deny the shareholder's request. If the requested documents contain confidential information (including commercial secrets), the company may request the shareholder to issue a certificate confirming its obligation to keep the information in confidence. If the documents contain other statutorily protected information (including banking secrets), the company may provide the shareholder only with extracts from the relevant documents.

Procedure for Exercising the Right to Information

Contents of a Request to Provide Information

According to the Letter, shareholders do not have to disclose the aims and grounds of their interest in receiving information on the company. They are to indicate in the request only the list and types of the information required. However, the level of detail of the shareholder's request is evaluated by the court considering the circumstances of a particular case and the necessity to ensure the actual exercisability by the shareholder of its right (e.g., if the shareholder requests minutes of the general meetings of shareholders for a certain period, there is no need to indicate the exact dates of the minutes).

Form of Exercising the Right to Information

The law provides for the following form in which a shareholder may exercise its right to information: reviewing the documents and getting copies of the documents. A shareholder may choose any of the above forms. At the same time, the company may not request the shareholder to review the documents before requesting their copies. In the course of reviewing the documents the shareholder may use its personal technical devices for the copying of documents (e.g., a photo camera), irrespective of whether it has been indicated in the request for the provision of information. In addition, the Letter provides that a shareholder may request relevant information to be sent by post.

Form of Documents Provision

The company may provide a shareholder with uncertified copies of the requested documents, unless otherwise indicated in the shareholders' request for information.

Term for Documents Provision

The company is to provide the documents within the term indicated in the shareholder's request. However, the Letter specifies that the actual ability of the company to abide by such term such be considered (i.e., exercising the shareholder's right to information should not suspend or substantially impede the company's operation).

The Letter also clarifies that the court may dismiss a shareholder's claim for the provision by the company of information if the company provides the relevant

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information before the court approves its ruling. At the same time, the provision of information after the court ruling may not constitute grounds for having the ruling set aside.

Abuse of Right to Information

According to the Letter, the courts should in all relevant cases consider indicia of abuse by shareholders and companies of their rights with respect to the provision of information.³ The Letter lists circumstances which may be considered indicia of abuse by a shareholder of its right to information, including:

- the shareholder requests the provision of the same documents several times, provided that the first request was granted by the company;
- the shareholder requests information with respect to an earlier period of the company's operation which is not valuable for analytical purposes (e.g., economic, legal analysis (including the expiry of the limitation period)); or
- the shareholder is an actual competitor (or its affiliated person) of the company and the requested information (i) is confidential; (ii) refers to the area of competition, or (iii) may cause harm to the commercial interests of the company in case of dissemination.

At the same time, the indicia of a bona fide interest of the shareholder include:

- the shareholder plans to sell company shares (including in the course of the company's bankruptcy);
- the shareholder prepares to file a court claim to challenge decisions/ transactions of the company or to invoke the liability of members of the company's governing bodies; or
- the shareholder prepares for participation in the general meeting of shareholders.

The Overview will serve as a guideline for the lower courts when considering similar issues.

This update is a general summary of recent legislative developments and should not be treated as legal advice. Readers should seek the advice of legal counsel on any specific question. All translations of terminology in this update are unofficial.

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¹ Article 67 of the Civil Code, article 8(1) of the LLC Law, article 91(1) of the JSC Law.

² In case of buy-out of shares at the request of a person who acquired more than 95% of shares of an open JSC.

³ Constitutional Court Resolution No. 8-O-P, dated 18 January 2011.