

Insight

21 July – 17 August 2014

Russian Legislation Update

Corporate

Register of Shareholders

On 31 July 2014 the Central Bank issued Letter No. 015-55/6227 on shareholders' registers of joint-stock companies.

According to the Civil Code amendments (Law No. 142-FZ, in force from 1 October 2013), all joint-stock companies (public and non-public) without exceptions and irrespective of any circumstances, must delegate the maintenance of their shareholders' registers to a professional registrar by **1 October 2014**.

The Central Bank has now clarified the meaning of the professional registrar (an entity holding an official license as a professional participant on the securities market) and some procedural issues related to such delegation.

A registrar maintains the registers on the basis of the relevant contract (approved by the company founders – for newly established JSCs – or by the management body according to the company charter). The information about the registrar must be included in the Unified State Register of Legal Entities (the EGRUL).

A *public* joint-stock company must delegate the maintenance of the shareholders' register to an *independent* registrar. To determine whether the registrar is *independent*, it is necessary to consider, in particular, the existence of: (i) any affiliation between the registrar and the company; (ii) any direct or indirect controlling relationship; and/or (iii) actual dependence of the registrar on the company (e.g., if a substantial amount of the registrar's profit is made up of the commission paid by the company).



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The failure to delegate before the deadline may result in an administrative fine being imposed on the company in the amount of up to RUB 1 million. The list of the professional registrars is available on the official website of the Central Bank.

The Letter was published in the Central Bank Herald on 8 August 2014.

Investment Partnership

On 21 July 2014 the President signed Federal Law No. 220-FZ amending Federal Law No. 335 "On Investment Partnership."

An investment partnership- a new type of joint activity – was introduced to Russian law in January 2012 to foster venture capital investments in Russia. However, it has not been widely used since then. Under an investment partnership agreement, two or more partners agree to pool their contributions in order to perform investment activities listed in the law and derive profits from these activities. Such activities may include both equity investments (acquisition and/or sale of non-publicly traded shares and participatory interests) and non-equity investments (such as acquisition of bonds and derivative financial instruments).

The amendments now aim to eliminate the factors that are hampering the progress of this form of joint venture activity, to encourage the establishment of venture funds in Russia as well as to encourage the shift of venture funds from the offshore zones to Russia.

The Law introduces amendments regarding, among other things, (i) the participation in the investment partnership agreement, (ii) the investment vehicles of the partners' common property, (iii) the liability of the managing partners, (iv) the contributions to the partners' common property and its management, (v) the information about the investment partnership, and (vi) the termination of the investment partnership.

Participants of the Investment Partnership. The parties to the agreement may be Russian and foreign commercial and non-profit legal entities and foreign organizations that are not legal entities under the law of a foreign state. The Law prohibits the participation of individual entrepreneurs in the investment partnership. An entity which is a managing partner in an investment partnership may not participate in several investment partnerships if any of such partnerships prohibits this.

Participation in an Investment Partnership, Liability of Managing Partners. As a general rule, all managing partners are severally and jointly liable for the actions of each of them, if the investment partnership agreement provides for two or more managing partners. The amendments allow the assignment of the rights and obligations under the investment partnership agreement (the managing partners can do so only if it is allowed by the investment partnership agreement) as well as the accession of new participants to the investment partnership (such accession agreement must be notarized).

Joint Investing, Investment Vehicles. The amendments provide that the managing partner is entitled to enter into transactions and manage partners' common business on behalf of all partners on the basis of the investment partnership agreement, without a power of attorney (prior to the amendments, the power of attorney was mandatory).

Now the partners may invest the common property in publicly traded securities and other financial instruments, as well as securities of foreign issuers provided that such securities are admitted for placement and/or circulation in Russia.

The partners may place the information about the investment partnership agreement on the Internet. However, the advertising of joint investment activities is prohibited.

Participants' Common Property Regime, Contributions. Any participant can now make a non-monetary contribution to the participants' common property if the investment partnership allows this (prior to the amendments, only managing partners had such an opportunity and other participants could contribute cash only). The amendments establish the procedure for the partners to contribute their property to the partners' common property depending on the type of property (movables and real estate, uncertificated securities, participation interests, the exclusive rights to intellectual property). The amendments set out the specific procedure for record-keeping relating to the rights to certain types of participants' common property, including securities, investment shares, participation interests in an LLC charter capital, and real estate. Also, the amendments revise the regime for the use of the participants' common property and set out a list of the expenses which the managing partner may incur using the participants' common property (the investment partnership agreement may reduce or broaden this list).

Right to Information. According to the amendments, the managing partner must keep the register of the partners of the investment partnership which, among other things, must contain data about the amount and ratio of the interests belonging to each participant in the participants' common property. The investment partnership agreement may restrict the right of silent partners to inspect documents regarding the management of the participants' common affairs but it may not restrict their access to the investment partnership agreement and related amendments.

Termination of the Investment Partnership Agreement. The amendments now regulate in detail the procedure for interaction with the investment partnership's creditors, debtors and silent participants in case of the termination of the investment partnership agreement.

The Law entered into force on 2 August 2014.

Dual Citizenship

On 4 July 2014 the President signed Federal Law No. 142-FZ introducing the obligation of Russian citizens to notify the Federal Migration Service of having the citizenship of or residence permit in a foreign state.

The Law amends, in particular, the Russian Citizenship Law and the Personal Data Law.

It establishes the obligation for Russian citizens to notify the FMS the first time and every subsequent time they have and/or acquire (i) citizenship of a foreign state; or (ii) a residence permit in a foreign state; or (iii) another document confirming the right to permanent residence in a foreign state.

If a Russian citizen already has a foreign citizenship or residence permit, he/she must file a notification to the FMS by **2 October 2014**; in all other cases – before expiry of 60 days from the day when such foreign citizenship or residence permit was obtained.

Russian citizens are released from this obligation if they permanently reside in a foreign state and in other cases provided for by the international treaties of the Russian Federation and the federal laws.

The failure to notify the FMS may result in criminal liability, in particular, in the form of a fine in the amount of up to RUB 200,000.

The Law entered into force on 4 August 2014.

Economic Partnership

On 11 July 2014 the Central Bank issued Directive No. 3320-U annulling the order of the Federal Service for the Financial Markets (the "FSFM") on bonds which may be contributed to the joint capital of an economic partnership.

According to the amendments introduced to the Economic Partnerships Law by Federal Law No. 251-FZ in July 2013, any bonds issued by companies may be contributed to the partnership's joint capital. Therefore, the Central Bank annulled the April 2012 FSFM Order No. 12-26/pz-n, which established certain requirements relating to such bonds. Now these restrictions are abolished.

The Directive entered into force on 17 August 2014.

