

Insight

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Russian Legislation Update

Corporate

Veracity of information submitted for the state registration of companies and individual entrepreneurs

On 30 March 2015 the President signed Federal Law No. 67-FZ amending certain legislative acts of the Russian Federation regarding the assurance of the veracity of information submitted for the state registration of companies and individual entrepreneurs.

The amendments were introduced to the LLC Law, the Basic Principles of Notary Activities, the Law on the State Registration of Legal Entities and Individual Entrepreneurs, the Criminal Code and the Administrative Offenses Code of the Russian Federation.

Aiming to assure the veracity of information submitted to the State Register, the amendments, among other things, (i) broaden the competencies and functions of notaries; (ii) introduce a notion of *false company information*; and (iii) expand the criminal and administrative liability for breaches of the rules on company foundation and registration.

Notary acts. Pursuant to the amendments to the LLC Law, the following documents must now be notarized: (i) the adoption by the general meeting of LLC participants of a decision to increase the LLC's charter capital and the list of the meeting participants;¹ (ii) an offer to purchase an LLC share submitted by an LLC participant to other participants and the LLC so they can exercise their pre-emptive right to purchase the share; (iii) the request of a participant to the LLC to purchase his/her share in the circumstances established by law; and (iv) a notice of an LLC participant on his/her withdrawal from the company.



Igor Ostapets

Partner

+ 7 495 787 3019

iostapets@whitecase.com

Irina Dmitrieva

Partner (Tax)

+ 7 495 787 3003

idmitrieva@whitecase.com

¹ This requirement limits the Civil Code provision (Article 67.1(3)) that, as a general rule, permits other manners of confirming the fact of the adoption of a decision by LLC participants at a general meeting and the list of the meeting participants.

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White & Case LLC

Tel: + 7 495 787 3000

Fax: + 7 495 787 3001

whitecase.com

The amendments specify that sales of all or some LLC shares require the notarial certification of one document (contract) signed by the parties. They also list the circumstances when the notarial certification of such transaction is not required (in particular, when shares are awarded to the LLC under a court decision).

The amendments specify the documents which a notary may take into account when verifying the authority of a person to sell the share, which includes:

- the previous LLC share purchase contract (under which the participant acquired the shares);
- the sole founder decision on the establishment of the LLC or the foundation agreement for the LLC with several participants;
- certificates of inheritance;
- court rulings establishing the right of a participant to the share in the LLC's charter capital;
- the minutes of the meeting of the LLC participants if the shares were acquired under a decision adopted at the general meeting.

According to the amendments, a notary certifying a sale of LLC shares must now make sure (in addition to the verification of a person's authority to sell the shares) that such shares were paid up in full.

The amendments broaden the competencies of a notary regarding the state registration of changes related to sale and pledge of LLC shares. Now, the notary must sign the application to request for the change in the State Register² (whereas, before the amendments, the seller's or the pledger's signature was required). Entries in the State Register on pledge of shares may be cancelled by the application of a pledge holder or the relevant court decision.

False company information. The amendments also provide a procedure for establishing the fact of *false company information* included (or to be included) in the State Register. The Federal Tax Service must inspect company information in the Register if there are reasonable doubts about its veracity, e.g., if interested persons object to state registration of the changes to the company charter or the inclusion of the information in the Register.

The Federal Tax Service may suspend the state registration until the verification of the submitted information is completed, but for no longer than one month. Company information will not be registered if the verification reveals that the information is false. The suspension cannot be applied to companies that are being established.

If the information in the State Register is revealed to be false, the Federal Tax Service will notify the company that it must provide true information. If the company does not provide true information within 30 days (or disproves the findings), the Federal Tax Service will make an entry on false company information in the Register.

The amendments also establish a procedure for the preliminary notification on the change of a company's location. The registration of the change of a company's location will be carried out by tax inspectors at the new location.

The above amendments will enter into force on 1 January 2016.

Liability. The amendments specify the provisions of the Criminal Code regarding criminal liability for establishing a company through figureheads, broaden the notion of a company's officer in the Administrative Offenses Code, and also establish administrative liability for submitting false company information to the Register.

The amendments entered into force on 31 March 2015, except for certain provisions discussed above.

Cancellation of the mandatory requirement for a company to have a seal

On 6 April 2015 the President signed Federal Law No. 82-FZ amending certain legislative acts of the Russian Federation regarding cancellation of the mandatory requirement for companies to have a seal.

Pursuant to the amendments to the LLC and JSC laws, **as of 7 April 2015**, companies may, but are not required to, have a seal, except where the law explicitly establishes this requirement. If a company uses a seal, information about the seal must be included in the company's charter.

The Law entered into force on 7 April 2015 (save for certain provisions).

² With the exception of cases when the pledge of a share occurs in the future by law or under a contract.

Currency Control

On 30 March 2015 the President signed Federal Law No. 60-FZ amending the Administrative Offenses Code with respect to liability for violations of currency control rules.

The amendments significantly decrease the liability for repeated violations related to Russian residents' failure to comply with the procedures for submitting reporting forms and supporting documents related to currency operations, as well as the rules on filing transaction passports (in particular, the maximum fine for companies is now set at RUB 150,000 as opposed to RUB 600,000 before). However, the changes do not apply to repeated breaches of the procedure for submitting reports on overseas accounts — the liability for those breaches remains the same as before.

The Law entered into force on 11 April 2015.

Banking/ Basel III

On 15 April 2015 the Bank of Russia issued Directive No. 3600-U amending its Regulation No. 395-P "On the Method of Calculation of the Amount of the Net Worth (Capital) of Credit Organizations (Basel III)."

The Directive was registered with the Ministry of Justice on 24 March 2015.

The Directive was issued following the recent legislative changes relating, among other things, to subordinated instruments (Federal Law No. 432-FZ of 22 December 2014). In particular, it provides that subordinated loans can be granted without indicating the term for repayment; it also specifies the maximum interest rates for subordinated loans. Additional Tier 1 capital can include, among others, subordinated loans obtained before 1 July 2015 from non-residents for no less than 50 years.

Furthermore, information about the occurrence of grounds for the exchange or conversion of subordinated instruments into a bank's shares (including information on the common equity ratio falling below 5.5%) has to be published on the Central Bank's website. The Central Bank is entitled to request a bank to make such exchange or conversion.

The Directive entered into force on 30 March 2015.

Concession Agreements

On 31 March 2015 the Government issued Resolution No. 300 approving the form of a proposal for entering into a concession agreement with a project applicant.

The recently adopted amendments to the Federal Law "On Concession Agreements" permit interested parties that meet the established criteria to conclude concession agreements. In particular, an applicant (potential concessionaire) may submit a proposal for the conclusion of a concession agreement, together with a draft concession agreement reflecting all material terms for implementing a concession project, to the relevant public authority (the potential grantor).

The Resolution approves the form of a proposal for the conclusion of a concession agreement with an applicant. The completed form must provide information on an applicant's compliance with the established requirements including the availability of (or possibility to obtain) the funding necessary for the concession project as well as information on the initiative itself (e.g., project costs, technical and economic characteristics of the concession facility and information on the use of innovative technologies for implementing the project).

The Resolution will enter into force on 1 May 2015.