



PROVISIONS HAVE COME INTO FORCE AMENDING LEGISLATION ON LIMITED LIABILITY COMPANIES AND THE REGISTRATION OF LEGAL ENTITIES

For the attention of company CEOs, heads of legal, attorneys and compliance experts

Law firm Pepeliaev Group advises that changes have been made to the procedure for transferring a membership interest in a limited liability company and to the list of transactions which need to be notarised. A notary will now be involved in a wider range of corporate procedures and transactions with membership interests in limited liability companies.

This refers to amendments¹ to Federal Law No. 14-FZ “On limited liability companies” dated 8 February 1998 (the “LLC Law”) and to Federal Law No. 129-FZ “On the state registration of legal entities and individual entrepreneurs” (the “Registration Law”).

Please find below an outline of the most important legislative amendments.

Notarisation

There are now different requirements regarding when notarisation is necessary for transactions with membership interests in a limited liability company (“company”). In particular, starting from 1 January 2016 the following documents must be notarised:

- (i) an offer to members of the company made in accordance with pre-emption rights;
- (ii) a statement from a member¹ of the company declaring its withdrawal from the company;
- (iii) a demand from a member of the company that his/her membership interest be bought out if this member voted against or did not vote when the general meeting of members made a decision to approve a large transaction or to increase the issued capital;
- (iv) an irrevocable offer or acceptance (in the context of an option);
- (v) the fact that the general meeting has passed a decision to increase the issued capital and the names of members who were present when this decision was made.



These amendments aim to ensure that: (i) parties to corporate relationships have genuinely expressed their will regarding the transfer of rights to a membership interest; (ii) the rights to the membership interest in the company arose validly; (iii) the rights of a good faith buyer are protected; and (iv) stability of the business environment is maintained.

It should be noted that the requirement to notarise a decision to increase the issued capital is most probably specific to article 67.1(3)(3) of the Russian Civil Code. This provides that another procedure may be established for confirming the decision of the general meeting of members of the company (for example, the minutes being signed by all members).

¹ Federal Law No. 67-FZ “On amending certain items of Russian legislation with respect to ensuring the accuracy of data submitted when legal entities and individual entrepreneurs are registered” dated 30 March 2015 (as amended at 29 June 2015) and Federal Law No. 391-FZ “On amending certain items of Russian legislation” dated 29 December 2015

Functions of a notary

The functions of a notary have been broadened when transactions with membership interests in a company are documented. In particular, an obligation has been introduced for the notary who notarises an agreement for the disposal of a membership interest (or a part of a membership interest) or an acceptance of an irrevocable offer, to file with the state registry an application for the amendments to be registered. In doing so, the notary should take the role of the applicant. This application should be filed electronically within 2 days after the notarisation, unless the agreement stipulates a longer time limit. A similar rule is set in article 22 of the LLC Law and for notarisation of an agreement to pledge a membership interest (or a part of a membership interest).

The point when the membership interest passes to the buyer

Starting from 15 January 2016, according to the general rule, the membership interest (or a part of the membership interest) passes to the buyer when the corresponding entry is made in the Unified State Register of Legal Entities. The exceptions to this rule are set out in article 23(7) of the LLC Law, most notably when the membership interest (or a part of it) is transferred to the company.

Time limit for the state registration of a legal entity

Starting from 29 December the time limit for the state registration of a legal entity upon formation has been cut to 3 business days (except for state registration of a business entity created by means of reorganisation). Previously the state registration could take up to 5 business days.

What to think about and what to do

In general, the changes described above reinforce the mechanism for protecting good-faith parties who are active in business when they enter into transactions with membership interests. The amended provisions also ensure that data in the Unified State Register of Legal Entities is accurate and create a more favourable environment for opening and developing businesses.

We recommend taking into account the changes described above both when internal corporate procedures are performed and when the investments are planned.

Help from your adviser

Pepeliaev Group's lawyers have vast experience in advising clients on corporate compliance matters. These include transactions with membership interests in limited liability companies and involving the state registration of companies.

Our experts are available to provide the required legal assistance to clients as they comply with the new statutory requirements in their relationships with contracting parties and registering authorities. They will structure transactions with membership interests to help reduce the risks for our clients' businesses.

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