

Participants' Rights in a Russian Limited Liability Company



Further information

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Contents

1. PARTICIPANTS HOLDING ANY PARTICIPATION INTEREST IN A COMPANY	1
2. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING AT LEAST 1/10 OF A COMPANY'S CHARTER CAPITAL	2
3. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING MORE THAN 1/3 OF A COMPANY'S CHARTER CAPITAL	2
4. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING MORE THAN 1/2 OF A COMPANY'S CHARTER CAPITAL (SIMPLE MAJORITY HOLDING)	2
5. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING AT LEAST 2/3 OF A COMPANY'S CHARTER CAPITAL (QUALIFIED MAJORITY HOLDING)	3
6. THE RIGHTS OF PARTICIPANTS THAT OWN THE ENTIRE PARTICIPATION INTEREST IN A COMPANY	3
7. THE PARTICIPANTS' AGREEMENT	3

Participants' Rights in a Russian Limited Liability Company

This note provides a brief summary of participants' rights of a Russian limited liability company according to Federal Law on Limited Liability Companies dated 8 February 1998 No. 14-FZ as amended (the "LLC Law").

1. PARTICIPANTS HOLDING ANY PARTICIPATION INTEREST IN A COMPANY

Participants holding any participation interest in a company have the following rights:

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| <p>1.1 to have access to the company's documents, including:</p> <ul style="list-style-type: none"> (a) charter, foundation agreement and duly registered changes thereto; (b) account books; (c) internal regulations; (d) documents of title to the assets on the balance of the company; (e) minutes of general participants' meetings and meetings of board of directors, management board and internal audit commission; and (f) court decisions related to claims regarding the company's incorporation, corporate governance issues or participation in a company. <p>1.2 to take share in the company's profit distribution;</p> <p>1.3 to receive a part of any distribution of the company's assets during liquidation proceedings;</p> <p>1.4 to receive notice of general participants' meetings and to take part in the general participants' meetings;</p> <p>1.5 to add points to the agenda of a general participants' meeting;</p> <p>1.6 to exercise pre-emption rights in respect of any participation interest (or a portion thereof) to be sold to third parties; these rights may be exercised:</p> <ul style="list-style-type: none"> (a) at the price offered to the third parties; or (b) at the price predetermined in the company's charter, which may differ from the price offered to the third parties (such price may either be provided in the charter as a fixed cash amount or be calculated based on various criteria). <p>1.7 to claim for transfer of the purchaser's rights and duties to them in respect of the participation interest disposed in violation of the participants' pre-emptive rights;</p> <p>1.8 to set off their monetary claims to the company through increase of the amount of their participation interest in the company's charter capital if the general participants' meeting unanimously votes for such offset;</p> | <p>1.9 to require the redemption of their participation interest and payment of their actual value in situations where:</p> <ul style="list-style-type: none"> (a) the participants decide to withdraw from the company if such right is stipulated by the company's charter; (b) alienation of their participation interest to third parties is prohibited by the company's charter and other participants refused to acquire the participation interest; (c) other participants or the company did not give the consent on alienation of the participation interest to the third party or other participant if such consent is required under the company's charter; (d) the participants voted against or did not submit a vote in respect of a "major transaction" (with the value exceeding 25% of the balance sheet value of the company's assets) or an increase of the charter capital; (e) the participants were forced out of the company; and (f) other participants did not give the consent on transfer of participation interest to the participants' heir (successor) or the third party that acquired the participation interest at public auction. <p>1.10 to initiate court proceedings to challenge any decision of the general participants' meeting if:</p> <ul style="list-style-type: none"> (a) such decision was adopted in violation of Russian laws, applicable regulations or the company's charter; (b) such decision infringes the rights and legal interests of the participant; and (c) such participant did not take part in the general participants' meeting or voted against the decision. <p>The court, however, may reject such claims if the participants' vote could not influence the voting results, the violations of laws, applicable regulations or the company's charter were insignificant and the participant did not suffer any damages caused by such decision.</p> <p>1.11 to initiate court proceedings to challenge any decision adopted by the company's board of directors, management board, sole executive body or manager if:</p> |
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- (a) such decision is adopted in violation of laws, applicable regulations or the company's charter; and
- (b) such decision infringes the rights and legal interests of the participant.

The court, however, may reject such claims if the violations of laws, applicable regulations or the company's charter were insignificant and the participant and (or) the company did not suffer any damages or other adverse consequences caused by such decision.

- 1.12 to initiate court proceedings to challenge a major transaction or a "related party transaction" concluded in violation of the requirements of the LLC Law.

The court may reject such claims if one of the following applies:

- (a) the participants' vote could not influence the voting results (where the transaction was subject to approval by the general participants' meeting);
- (b) it is not proved that the challenged transaction causes or may cause any damages or other adverse consequences for the participants or the company in the future;
- (c) the challenged transaction has been approved before the court hearing; or
- (d) it is proved that the counterparty of the challenged transaction did not know and ought not to have known that a corporate approval had been required.

- 1.13 to initiate court proceedings against:

- (a) any member of the company's board of directors;
- (b) any member of the company's management board; and
- (c) the company's sole executive body;
- (d) the company's manager,

for any damage caused to the company by their actions (omission).

- 1.14 to demand for the audit carried out by the auditor of their choice.

The general participants' meeting may unanimously decide on additional rights and duties to be provided for all the participants or only particular participants upon their request or consent.

2. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING AT LEAST 1/10 OF A COMPANY'S CHARTER CAPITAL

Participants holding the participation interest representing at least 1/10 of a company's charter capital have the following rights:

- 2.1 to initiate court proceedings to force a participant out of the company in the case of a material breach of its obligations or if such a participant blocks the running of the company's business;
- 2.2 to convene or to request for convocation of an extraordinary general participants' meeting.

3. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING MORE THAN 1/3 OF A COMPANY'S CHARTER CAPITAL

Participants holding the participation interest representing more than 1/3 of a company's charter capital have the right to block the following decisions requiring approval by a supermajority of the participants:

- 3.1 increase of the company's charter capital by way of either increase in the nominal value of the participation interest or additional contribution to the charter capital;
- 3.2 revisions and amendments to the company's charter or the adoption of a new charter;
- 3.3 establishment of branches and representative offices of the company;
- 3.4 termination or limitation of the additional rights provided for particular participant given that his consent for such termination/limitation is obtained;
- 3.5 imposition of additional responsibilities on a particular participant given that his consent for such imposition is obtained;
- 3.6 contribution to the company's assets.

4. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING MORE THAN 1/2 OF A COMPANY'S CHARTER CAPITAL (SIMPLE MAJORITY HOLDING)

Participants holding the participation interest representing more than 1/2 of a company's charter capital may approve the following decisions unless a higher vote is required under the company's charter:

- 4.1 distribution of the company's profit among the participants;
- 4.2 a "major transaction" (with the value 25% or exceeding 25% of the balance sheet value of the company's assets unless approval of a "major transaction" with the value in the range from 25% to

- 50% of the company's assets falls within the board of directors' responsibility under the company's charter);
- 4.3 a "related party" transaction if such participants are not the related parties in such a transaction (unless approval of this transaction falls within the board of directors' responsibility under the company's charter);
- 4.4 election of the company's board of directors and internal audit commission as well as the appointment of the company's external auditor;
- 4.5 appointment of the company's management board and sole executive body (unless it falls within the board of directors' responsibility under the company's charter);
- 4.6 transfer of the functions of the sole executive body to the external manager, approval of the manager and the terms of the management agreement;
- 4.7 approval of the company's annual reports and financial statements;
- 4.8 approval of the company's internal regulations of the company;
- 4.9 approval of the pledge of a participation interest established by a participant in favour of third parties unless it is prohibited by the company's charter (the participant intending to pledge the participation interest does not have the right to vote in this case).
- 5.4 contribution to the company's assets (which does not lead to increase in the size of the participation interest);
- 5.5 revisions and amendments to the company's charter or the adoption of a new charter unless these revisions and amendments require a unanimous participants' approval under the Russian law. Revisions and amendments requiring a unanimous approval are those that relate to:
- disproportionate contribution to the company's assets;
 - limitation of the maximum size of the participation interest that can be held by a participant;
 - particular provisions related to execution of the pre-emption rights, e.g. providing predetermined price for acquisition of participation interest, or the option to acquire only a portion of the participation interest offered to the third parties;
 - participant's right to withdraw from a company;
 - term for payment of the actual value of the participation interest to the participant who decided to withdraw from a company;
 - disproportionate company's profit distribution; and
 - disproportionate vote at the general participants' meetings.

A holding of more than 50% of participation interest in the company's charter grants the participant the right to block the passing of decision at the general participants' meeting by not-attending this meeting or voting against the decisions. Please note that the participant holding at least 1/10 of a company's charter capital can initiate court proceedings to force a participant out of the company in case such participant blocks the running of the company's business.

5. PARTICIPANTS HOLDING THE PARTICIPATION INTEREST REPRESENTING AT LEAST 2/3 OF A COMPANY'S CHARTER CAPITAL (QUALIFIED MAJORITY HOLDING)

Such participants may approve the following decisions unless an approval by a higher vote is required under a company's charter:

- 5.1 increase or decrease of the company's charter capital;
- 5.2 establishment of branches and representative offices of the company;
- 5.3 termination or limitation of the additional rights granted to a particular participant or imposition of additional responsibilities on such participant upon the consent of such participant;

6. THE RIGHTS OF PARTICIPANTS THAT OWN THE ENTIRE PARTICIPATION INTEREST IN A COMPANY

Any person holding 100% of a participation interest in a company's charter may exercise all the powers conferred on such company (including its reorganisation or liquidation) in general participants' meeting and may take such decisions by way of a written resolution.

7. THE PARTICIPANTS' AGREEMENT

Since July 2009 participants of Russian limited liability companies may set themselves certain internal rules in relation to the performance of rights attached to the participation interests that they own, including issues regarding voting at a general meeting of participants, obligations to sell or buy participation interests at a predefined price and other similar matters.

According to the LLC Law, a participants' agreement is not a public constitutional document of a company, but is private and does not require any state registration.

March 2011

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