

Russia

Dmitry Lyakhov

Jonathan Russin

Russin & Vecchi LLP

1. **Types of company with limited liability and applicable legislation**

The most commonly used forms of company with limited liability in Russia are the joint stock company and the limited liability company. Russian law also provides for companies with additional liability, but this form is rarely encountered in practice.

Limited liability companies do not issue share certificates; instead, the share percentages are stated in the foundation documents. Where numerous shareholders are anticipated, the joint stock company is the preferred form, since large numbers of shareholders can be more easily accommodated through the use of share certificates. Joint stock companies can be either open or closed. In open joint stock companies shares may be bought and sold without limitation, while in closed joint stock companies shares may be freely bought and sold only among existing shareholders or a predetermined group of persons which enjoy a right of first refusal when shares are sold by a shareholder.

The fundamentals of the legal regulation of limited liability companies and joint stock companies can be found in the Civil Code of the Russian Federation (Part One) No 51-FZ, dated November 30 1994 (as amended). These basic rules are fleshed out in regard to limited liability companies in the Federal Law on Limited Liability Companies No 14-FZ, dated February 8 1998 (as amended), and in regard to joint stock companies in the Federal Law on Joint Stock Companies No 208-FZ, dated December 26 1995 (as amended). There are also some specialised laws and enactments detailing certain related issues, such as the Federal Law on State Registration of Legal Entities and Individual Entrepreneurs, the Federal Law on Foreign Investments in the Russian Federation and the Federal Law on Insolvency (Bankruptcy). In addition to laws passed by the legislative chambers, Russian legal materials include governmental enactments, presidential orders and other obligatory documents of various state bodies (eg, the Central Bank, the Federal Service on Financial Markets and the Federal Anti-monopoly Service), as well as court practice which, while not an official source of law, guides the interpretation of all legal materials.

2. **Incorporation procedure**

The procedures for incorporating limited liability companies and joint stock companies are similar; the chief difference is the requirement for joint stock companies to register the issuance of share certificates, which does not apply to limited liability companies. The state body responsible for registering legal persons such as limited liability companies and joint stock companies is the Russian

Federation Tax Service, with incorporation taking place at the local Tax Service office of the place where the company is located. The State Register of Legal Entities is a public record and all information contained therein is open for examination by third parties, except for passport data of physical persons and information on the bank accounts of legal entities and individual entrepreneurs. Information is provided upon written request and payment of a state fee of approximately \$8.

A company's registered office is generally the place where the main executive body is located.

The first step in registering a company is the adoption of a joint resolution by the founders, which is executed in the form of minutes of the founding meeting (or a decision of the sole founder, where the company has only one founder). The founders also draft a charter (bylaws) and execute a foundation agreement (if there are several founders). In case of a limited liability company, the foundation agreement is considered as a founding document and should be submitted to the Tax Service at the moment of registration. However, in the case of a joint stock company, the foundation agreement is not a founding document; it is simply considered to be an internal document of the company, which should be kept in the company's files.

The founders are free to choose any company name they desire, but use of the words 'Russia' and 'Russian Federation' and derivative phrases is restricted. This requirement is established by the new Part IV of the Civil Code and came into force in 2008. According to this new requirement, the use of the word 'Russia' and derivatives may be allowed only with the express permission of the government and if more than 75% of the equity in the company is owned by the Russian Federation.

According to current legislation, no declaration of foreign investment is required where the company is established by foreign founders. However, in some cases involving 'strategic' industries, preliminary approvals will be required. Also, where the company has a foreign founder, no foreign tax number or special tax registration is required under the general registration procedures.

For the purposes of registration of a company with limited liability, the following documents must be submitted to the Tax Service:

- the application for registration. The applicant must be either the founder (if the founder is an individual) or the founder's general director (if the founder is a legal entity). The applicant's signature should be witnessed by a Russian notary public (or at a Russian consulate abroad). The application should contain a list of the main activities which the company plans to perform;
- the minutes of the meeting of the founders (or decision of the sole founder) expressing a decision on registration of the company;
- the company's foundation documents (charter and foundation agreement for a limited liability company and charter for a joint stock company);
- where the founder is a legal entity, its certificate of incorporation or similar document (eg, an excerpt from the Trade Register);¹ and

1 Where the founder is a foreign legal entity, this document should be duly apostilled or legalised in order to be valid in Russia. The choice between the two procedures depends on whether the company's country of origin is a party to the 1961 Hague Convention on Waiver of Requirement for Legalisation of Foreign Official Documents.

- a receipt confirming payment of the applicable state registration fee, which is currently set at Rb2,000 (approximately \$80).

2.1 Charter

The sole foundation document of a joint stock company is its charter. The foundation documents of limited liability companies with two or more founders are the foundation agreement and the charter; limited liability companies with a single founder require only a charter. The charter is a private document of the company and there is no need to certify it with a notary public.

The charter of a limited liability company must include the following information, at a minimum:

- the object and purposes of incorporation;
- the full and short trade name of the company;
- information on the company's location;
- the structure and competence of the governing bodies;
- a list of issues falling within the exclusive jurisdiction of the general meeting of shareholders;
- a list of issues that must be adopted unanimously or by qualified majority of the shareholders;
- information on the procedures for the adoption of resolutions by the executive bodies;
- the amount of the charter capital;
- the amount and nominal value of each share;
- the rights and obligations of the shareholders;
- the terms and conditions for withdrawing from the company, and the consequences of withdrawal;
- the terms and conditions for the transfer of shares;
- rules on the storage of company documents and information, and the provision of such information to company shareholders;
- the procedure for conducting the general meeting of shareholders that will adopt the annual reports;
- the powers of the general director;
- procedures governing the general director's activities and decision-making powers; and
- the number of members of the audit committee and their powers.

The foundation agreement of a limited liability company should contain:

- the founders' obligation to incorporate the company;
- the terms of joint cooperation regarding incorporation;
- the amount of charter capital;
- the amount and composition of each founder's contribution;
- the nature of the founders' contributions;
- the terms of the founders' contributions;
- the founders' liability for failure to make agreed contributions;
- the structure of the governing bodies;

- the conditions of the founders' participation in company activities;
- the terms and conditions for the allocation of profits and losses;
- corporate governance procedures; and
- the terms and conditions governing withdrawal from the company.

In addition to these required provisions, the Law on Limited Liability Companies contains optional provisions that may be established in the charter. The founders may agree to include other provisions in the charter that do not contradict the provisions of the law or other current legislation.

The bylaws of a joint stock company must include the following information, at a minimum:

- the full and short trade name;
- information on the company's location;
- the type of joint stock company (closed or open);
- the quantity, nominal value and type (ordinary or preferred) of distributed shares;
- the rights of holders of each type of shares;
- the amount of charter capital;
- the structure and competence of the governing bodies, and procedures for the adoption of resolutions;
- procedures for convening and conducting the general shareholders' meeting, along with a list of issues which should be adopted unanimously or by two-thirds qualified majority vote;
- information on branch and representative offices;
- information on the rights of the Russian Federation or municipality to participate in the management of the company; and
- other clauses provided by law.

The company's tax number is issued by the registration body (ie, the local Tax Service office) during registration, together with the company number (ie, the unified state registration number).

The Tax Service should complete registration of the company within five days of receipt of the required documents, along with proof of payment of the applicable state fee. The Tax Service was designated as the registration authority in order to act as a 'one-stop shop'; as a result, upon registration with the Tax Service, a company is also registered with all applicable state pension funds, social and medical insurance funds. After this, the company should register itself with the state statistics committee. Upon registration, no further declaration of commencement of activities or other tax declaration is required. Moreover, no legalisation of the official books is required.

3. Number of shareholders

Limited liability companies may have between one and 50 shareholders, whether natural or legal persons. However, a limited liability company may not have as its sole shareholder another legal entity that itself has only one shareholder. Like

limited liability companies, closed joint stock companies may have between one and 50 shareholders. Open joint stock companies may have an unlimited number of shareholders.

4. Corporate name – limitations

Companies may adopt any name the founders desire. The company may not include the words 'Russia', 'Russian Federation' or derivative phrases in its corporate name, unless the Russian Federation owns more than 75% of the equity in the company. In this case the company must also receive special approval from the Russian government.

The full official name of a company consists of an indication of its corporate form – open joint stock company ('OAO' in Russian), closed joint stock company ('ZAO') or limited liability company ('OOO'), followed by the company's name.

5. Corporate domicile

A company's domicile is the place where its general director (chief executive officer) is located, which should be indicated in the charter and in the application for registration. If the company changes its officially registered domicile, it must register the change with the Tax Service. In practice, many Russian companies use nominal addresses for registration with state bodies and then rent their main office in a different area, which is permitted.

6. Corporate object

Although there is no legal requirement to include the company's goals, purposes and types of activity in the charter, this information is commonly included. Since such information could be construed as limiting the company's activities to those listed, the phrase "and any other types of activity which are not prohibited by law" is often included at the end of any such list. Some types of activity may be performed only if the company has obtained a licence issued by an authorised state body that specialises in issuing licences in its field, or a special permit for performing some type of activity (eg, construction, use of radio frequencies).

7. Capital stock

The minimum charter capital for both limited liability companies and closed joint stock companies is Rb10,000 (approximately \$400), while for open joint stock companies it is Rb100,000.

7.1 Nature of contributions

Cash, assets, rights and other property or property rights with monetary value may be contributed to the charter capital of a limited liability company. In the case of in-kind contributions, the general meeting of shareholders must determine the value of the property; where the in-kind contribution is valued at over Rb20,000 (approximately \$800), an independent appraisal is required.

Shares in a newly incorporated joint stock company must be fully distributed among the initial shareholders before registration.

7.2 Partial payments

Partial contributions of the initial capital are allowed for both limited liability companies and joint stock companies. For limited liability companies, at least 50% of the charter capital must be contributed prior to registration, with the remainder being contributed within one year of state registration, unless a shorter term is required under the foundation agreement. For joint stock companies, at least 50% of the charter capital must be paid in within three months of registration and the remainder within one year of state registration. Shares that are not fully paid cannot be voted on at the general meeting of shareholders.

7.3 Representation of shares

Limited liability companies do not issue share certificates or other similar documents. Joint stock companies issue shares, which are always registered. Shares must be uncertificated (ie, must exist only as entries in a special shareholder register).

The shares of a joint stock company may be ordinary or preferred, but preferred shares may not comprise more than 25% of the company's charter capital. Ordinary stock may be of one type only, but various types of preferred share may be issued with varying rights, including defined dividends and liquidation preferences, as set forth in the charter. Preferred shares carry no voting rights as long as defined dividends are timely paid.