ESTABLISHING AND MANAGING AN LLC (LIMITED LIABILITY COMPANY) IN RUSSIA

Information Letter

A limited liability company (hereinafter also referred to as an "LLC") is a company founded by one or several persons, and whose charter capital is divided into participatory interests. A limited liability company acquires legal capacity from the moment of its state registration.

The legal status of a limited liability company is regulated by the Civil Code of the Russian Federation and the Federal Law "On Limited Liability Companies" No. 14-FZ dated February 8, 1998 (hereinafter referred to as the "Law on LLC").

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I. Establishing an LLC

1.1. Resolution on Establishment, Foundation Documents

A limited liability company may be founded by one or several parties. However, a limited liability company may not have, as its sole participant, any other business entity which is comprised of one party.

A company is founded through the holding of a foundation meeting, at which the founders adopt a resolution to establish a limited liability company, elect the management bodies of the company, and approve the company's articles of association. All resolutions are documented in the minutes of the foundation meeting.

In addition, the founders of the company enter into a written agreement on the foundation of the company, which determines the procedure for carrying out joint actions in founding the company, the amount of the charter capital of the company, and the amount and nominal value of the participatory interests of each founder of the company. It also determines the amount of, the procedure for, and the terms for paying for, these participatory interests in the charter capital of the company. The agreement on the foundation of the company is not a founding document of the company. However, on the basis thereof, information regarding the amount of the participatory interest of each founder is registered by the registration authority in the Unified State Register of Legal Entities (hereinafter referred to as the "USRLE").

If a company is founded by one party, the agreement on the foundation of the company is replaced by a resolution of the sole participant on the establishment of the company.

The founding document of a limited liability company is the articles of association. The articles of association contain the following information:

- the name of the company;
- the address of the company;
- the composition and authority of the management bodies of the company;
- the amount of the charter capital;
- the rights and obligations of the company participants;
- the procedure for, and consequences of, a company participant's exit from the company;

- the procedure for transferring a participatory interest to another party;
- the procedure for storing the company's documents;
- the procedure for the company to provide information to company participants and other parties, as well as other information stipulated by legislation or included in the articles of association at the discretion of its founders.

1.2. Registration of a Company

In accordance with the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs", state registration of LLCs is carried out by the relevant state authority within five business days of the submission of a complete set of documents. However, in practice, state registration may sometimes take longer. Along with an application for state registration signed by the founder (an individual or executive of a founding legal entity), and subsequently notarized, the tax authority shall be provided with:

- a resolution on the foundation of the company (minutes of the foundation meeting);
- Articles of Association (two copies);
- an excerpt from the register of foreign legal entities of the respective country of incorporation (applicable to a founder that is a foreign legal entity) or a copy of the passport of a founder, if the founder in question is an individual;
- a document confirming payment of the state duty of 4,000 rubles.

1.3. List of Company Participants

From the moment of its state registration, the company must maintain a list of company participants, containing information on each participant of the company, the amount of his/her/its participatory interest, and the amount of the participatory interest held by the company. In a case of inconsistency between the information in the list maintained by the company and the information in the USRLE, the right to a participatory interest (a portion of participatory interest) shall be established on the basis of information held by the USRLE.

The number of company participants must not exceed fifty. If the number of participants exceeds said limit, the limited liability company must be converted to an open joint-stock company within one year.

II. Charter Capital and Net Assets of the Company

The charter capital of a limited liability company is comprised of contributions from the company participants. The minimum charter capital is 10,000 rubles. The charter capital of a company may be paid in cash, or by making an in-kind contribution. If the nominal value of an in-kind contribution exceeds 20,000 rubles, such a contribution must be assessed by an independent appraiser.

The company shall ensure that any interested party may have access to information regarding the value of its net assets. If the net asset value of the company is less than its charter capital at the end of the financial year that follows the second financial year, or at the end of any subsequent financial year, the company must, within six months of the end of the respective financial year, adopt either a resolution on the decrease of the charter capital of the company to an amount not exceeding its net asset value, or a resolution on the liquidation of the company.

III. Disposal of Participatory Interests

A participant in a limited liability company is entitled to sell or otherwise dispose of (exchange, give as a gift) their participatory interest to one or several participants in the company. The consent of the company or the other participants to such a transaction is not required, unless the articles of association of the company stipulate otherwise.

A company participant is also entitled to dispose of their participatory interest to a third party that is not a participant in the company. However, such an arrangement may be prohibited by the company's articles of association.

In any case involving the sale of a participatory interest to a third party, company participants have the preemptive right to purchase such a participatory interest (or a portion thereof) at the price offered to the third party, or at a price pre-determined by the company's articles of association, in proportion to the amount of their participatory interest (unless the articles of association stipulate otherwise). The purchase price for a participatory interest (or a portion thereof) as pre-determined by the articles of association may be established as a fixed monetary amount, or calculated on the basis of various

criteria (the company's net asset value, the balance sheet value of the company's assets at the last reporting date, the net profits of the company, etc.).

The articles of association may additionally stipulate the company's preemptive right to purchase a participatory interest (or a portion thereof) in a case in which the other participants have waived their preemptive right.

A transaction involving the disposal of a participatory interest (or a portion thereof) must be notarized. A notary public shall provide the registration body with information on the transaction notarized thereby, in order for the changes in the composition of the company participants and the new amounts of their participatory interests to be registered in the Unified State Register of Legal Entities.

A company's articles of association may stipulate that any transfer of participatory interests to heirs (legal successors) of company participants is only possible subject to the consent of the other participants in the company.

If it is prohibited to dispose of a participatory interest to a third party, and the other participants have refused to purchase it, or in a case involving a refusal to consent to the disposal of a participatory interest or its transfer to heirs (legal successors), the company shall pay the participant or its heirs (legal successors) the actual value of the participatory interest as determined on the basis of the company's accounting reports for the last reporting period preceding the date on which the participant made the request in question.

IV. Antimonopoly Control over Establishment and Current Activities of the Company

4.1. Control at the Stage of Establishment of the Company

In cases when the charter capital of a limited liability company is paid for with the shares (participatory interests) or property of another commercial organization, the establishment of such a company may be subject to state control by the antimonopoly authorities. The necessity to obtain the consent of the antimonopoly authorities depends on the aggregate value of the assets and the aggregate proceeds from the sale of goods (services) of the founders and parties, whose shares (participatory interests) and (or) property contribute part of the charter capital of the company to be established. Such financial indicators are also assessed with respect to any groups of parties to which the founders and said parties belong.

The establishment of a company as a result of a merger of commercial organizations, or the consolidation therewith of one or several commercial organizations, is subject to antimonopoly control in the form of notifying the antimonopoly authorities in a case where the aggregate value of the assets or aggregate proceeds from the sale of goods (works, services) of said organizations, for the preceding calendar year, exceeds 400 million rubles.

4.2. Control over Current Activities

In some cases, transactions involving participatory interests in charter capitals of limited liability companies are subject to control by the antimonopoly authorities in the form of prior consent or subsequent notification (depending on the aggregate number of assets or aggregate proceeds from the sale of goods (services). The following transactions are subject to control:

- acquisition by a party (group of parties) of a participatory interest in the charter capital of a limited liability company if such a party (group of parties) obtains the right to dispose of more than 1/3 of the charter capital of the given company, provided that, before this acquisition, such a party (group of parties) did not hold any participatory interest in the charter capital of such a company or held less than 1/3 of the charter capital (this requirement does not apply to the founders of a limited liability company during the process of its establishment);

- acquisition of a participatory interest in the charter capital of a limited liability company by a party (group of parties) that holds at least 1/3 but no more than 50%, of the charter capital of this company if such a party (group of parties) obtains the right to dispose of more than 50% of the charter capital;

- acquisition of a participatory interest in the charter capital of a limited liability company by a party (group of parties) that holds at least 50%, but no more than 2/3, of the charter capital of this company if such a party (group of parties) obtains the right to dispose of more than 2/3 of the charter capital.

4.3. Liability for Non-observance of the Provisions of Antimonopoly Legislation

In cases where prior consent of the antimonopoly authorities was required or the antimonopoly authorities should have been provided with a respective notification, but a company was established (including by way of a merger or consolidation) without such prior consent / notification, it may be liquidated or reorganized by means of a split-off or separation through a judicial procedure upon

a claim from the antimonopoly authorities, if the establishment of such company has resulted in, or may lead to, the restriction of competition, including as a result of the emergence or strengthening of a dominant position.

Transactions conducted in violation of the procedure established by the Law on Protection of Competition leading to the emergence or strengthening of a dominant position in the market and (or) the restriction of competition may be recognized as invalid through a judicial procedure upon a claim from the antimonopoly authorities.

Moreover, a violation of the procedure for submitting petitions and notifications to the antimonopoly authorities entails the imposition of a fine on the established organization of up to 500,000 rubles.

V. Agreements on Exercising Rights of Company Participants

In cases where it is necessary to regulate the rights and obligations of the company participants, in addition to the articles of association and the provisions established by the Law On LLC, the company participants are entitled to enter into a written agreement on the exercising of the rights of company participants, which may be entered into either during the foundation of the company, or at some point thereafter. Under such an agreement, the participants undertake to exercise their rights in a certain manner, or to refrain from exercising their rights altogether.

In particular, the participants may establish an obligation to vote in a certain manner at the general meeting of participants in the company, to coordinate a voting pattern with other participants, to sell a participatory interest or portion thereof at a certain price and/or under certain circumstances, or to refrain from disposing of a participatory interest or portion thereof until certain conditions have been met, as well as to carry out, in coordination, other actions concerning the management of the company, establishment, operations, reorganization or liquidation of the company.

The agreement on exercising the rights of company participants is the Russian equivalent of the „shareholders agreement" commonly found in foreign jurisdictions.

VI. Participant Withdrawal or Expulsion

A company participant is entitled to withdraw from the company by disposing of a participatory interest to the company, regardless of the consent of the other participants or the company itself, if provided for by the company's articles of association. A withdrawal of company participants from the company that results in no participants remaining in the company, or a withdrawal of the sole participant from the company, is not permitted.

Company participants whose aggregate participatory interest constitutes at least 10% of the company's charter capital are entitled to petition, through a judicial procedure, for the expulsion from the company of a participant who grossly violates their obligations, makes the company's activities impossible, or substantially hinders its activities.

In a case of a withdrawal or expulsion, the company participant is paid the actual value of their participatory interest, equal to the portion of the value of the company's net assets, in proportion to the amount of the participant's participatory interest in the company's charter capital.

VII. Management Bodies

The general meeting of participants is the supreme management body of a limited liability company. Major decisions of the company (amending the company's articles of association, changing the amount of the charter capital, distributing profits) and the basic rights related to the management and control over the company's activities (appointment of the other management bodies of the company, approval of annual reports and balance sheets, decisions on conducting an audit) fall within the exclusive authority of the general meeting of participants.

Companies are required to hold a regular general meeting of participants once a year. All other general meetings of participants are extraordinary (unless otherwise stipulated by the articles of association). An extraordinary general meeting of participants may be held upon the initiative of the single-member executive body (the general director) and other company management bodies, the company auditor, or company participants holding at least 10% of the total votes. The articles of association may specify the instances in which it is necessary to hold an extraordinary general meeting of participants. The Law on LLC regulates in detail the procedure for convening a general meeting of participants. Violation of this procedure does not entail negative legal consequences if all company participants take part in the meeting. In other cases, any decisions taken at a meeting that takes place in violation of the convening procedure may be contested in court by any interested parties.

At a general meeting of participants, participants hold a number of

votes in proportion to their participatory interest in the company's charter capital. As a rule, a simple majority of votes from the total number of votes of the company participants is required for a decision to be taken. To take decisions regarding amending the company's articles of association and changing the amount of its charter capital, at least 2/3 of the total number of votes of the company participants is required. In accordance with the company's articles of association, certain decisions may require a greater number of votes. In some cases, involving the making of decisions on the reorganization or liquidation of the company, a 100% majority vote is required.

Company participants may also take decisions on the issues on the agenda without holding a meeting, by way of an absentee vote. However, not all issues may be decided by absentee vote; for instance, the company's annual reports and accounting balance sheets may not be approved in such a manner. If there is a sole participant in a company, such a participant adopts all decisions falling within the authority of the general meeting of participants autonomously, and formalizes such decisions in writing.

A company's articles of association may provide for the establishment of the company's board of directors (supervisory board), which is not mandatory.

A company's articles of association may endow the board of directors' (supervisory board) with the authority to elect the executive bodies and prematurely terminate their powers, to make decisions regarding the company's large-scale transactions and interested-party transactions, and to resolve other issues. In comparison with Western equivalents, the scope of authority of the board of directors of a Russian company is significantly narrower.

The articles of association may provide for the establishment of an auditing commission (the election of an internal auditor). Companies with more than 15 participants are required to establish an auditing commission (elect an internal auditor).

A company's current activities are managed, and all other issues not falling within the authority of the general meeting of participants and the board of directors (supervisory board) are settled, by the company's single-member executive body. The single-member executive body of a company acts on the company's behalf, represents its interests, and conducts transactions. The single-member executive body is usually called the general director.

The general director is elected either by the general meeting of participants, or by the company's board of directors (supervisory board), and acts on behalf of the company by virtue of law, without any special power of attorney. The general director's powers may be limited by the articles of association. However, if the general director conducts a transaction on behalf of the company that exceeds the limits of his/her authority, such a transaction may be invalidated by a court upon a claim from the company only if the company manages to prove that the other party to the transaction was, or should have been, aware of the limits of the general director's authority. In practice, this is rather difficult to prove. If the general director's actions have caused damage to the company, company participants are entitled to bring an action for damages against the general director.

A company's articles of association may provide for the establishment of a collective executive body (a management board, directorate). Unlike the general director, the members of the collective executive body must hold a special power of attorney signed by the general director, and sealed by the company, in order to conduct transactions on the company's behalf. Unlike many foreign jurisdictions, joint representation is not permitted under Russian law.

VIII. Liability of the Company and its Participants

Company participants in a limited liability company are not liable for the company's obligations, and bear the risk of losses related to the company's activities only to the extent of the value of their participatory interest. If the participants have not fully paid for their participatory interests, they shall be jointly liable for the company's obligations to the extent of the value of the outstanding portion of their participatory interests.

The Law on LLC only provides for two cases in which participants, owing to their participatory interest in the company's charter capital or on another basis, and who have the opportunity to determine decisions taken by the company, bear liability for its obligations together with the company. For example, a parent company bears liability jointly with a subsidiary company for transactions conducted by the latter in the execution of obligatory instructions from the parent company, and bears subsidiary liability for the debts of the subsidiary company in the case of its bankruptcy.

IX. Disputes Involving a Limited Liability Company

Disputes related to the establishment or management of, or participation in, a limited liability company fall within the category of so-called „corporate disputes", the procedure for resolution whereof is established by the Arbitration Procedure Code of the Russian Federation. Corporate disputes include, in particular:

- disputes related to the establishment, reorganization or liquidation of a company;
- disputes related to the appointment to a position, termination or suspension of powers, as well as to the liability of persons who comprise (comprised) the management bodies and supervision bodies of the company;
- disputes upon claims from company founders or participants for damages caused to the company, for the invalidation of transactions conducted by the company.

The resolution of collective disputes falls within the authority of arbitration courts at the place of location of the legal entity, which is aimed at preventing the abuse of a claimant's right to choose, in certain conditions, between different arbitration courts, as well as at enabling the court to expeditiously receive the required documents and information.

As regards the adoption of interim measures in the course of corporate dispute resolution, there exists such a restriction, in accordance with which the adoption of said measures may not make it impossible for the company to carry out its activities.

X. Beiten Burkhardt Services

BEITEN BURKHARDT is represented in Russia by offices in Moscow (since 1992) and St. Petersburg (since 1996), and has extensive experience in providing legal and tax consulting services to foreign investors in Russia.

Our services:

- **corporate law**, including the incorporation of legal entities, representative offices and branches of foreign companies, conducting legal Due Diligence of Russian companies to be acquired, consulting on current corporate issues related to management and financing of Russian companies and divisions thereof;
- **commercial and civil law**, in particular, the preparation of contractual documentation and structuring transactions from a legal and tax perspective;
- **tax law**, including tax planning, investment project structuring and financing, analysis of agreements to be entered into, providing recommendations regarding the minimization of potential risks, representation of clients in disputes with tax authorities;
- **customs law**, including consulting on the optimization of customs clearance, support in obtaining tax concessions on customs duties and VAT exemptions;
- **employment and migration law**, including the preparation of employment agreements, employers' internal regulatory acts, consulting on recruitment, transfer and dismissal of employees, the engagement of foreign employees, as well as consulting on Russian migration law, on obtaining work permits and employment visas;
- **support in real estate transactions and construction law**, including conducting Due Diligence of rights to real estate, support in transfer of rights to Greenfield and Brownfield real estate, preparation of contractual documentation for acquisition of rights to land plots and buildings and performance of construction works;
- **dispute resolution**, including legal appraisal of documents, pre-court and out-of-court dispute resolution (mediation, making claims), representation of clients' interests in state courts of general jurisdiction, state and commercial arbitration courts, as well as during enforcement proceedings.

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