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Establishing a Company in Russia

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The procedures for establishing a company in Russia are by now fairly clear and well-developed. Nevertheless, there are a number of legal issues discussed below that should be kept in mind.

Generally, the Civil Code of Russian Federation governs issues of operating a legal entity in Russia. However, additional regulation is provided by other corporate laws.

The choice of legal entity is an essential step prior to initiation of the registration process. An investor must correctly determine the new company's legal form, i.e. the corporate form which best meets the conditions of the project and is most appropriate for reaching its long-term goals. Among the various corporate forms of legal entities permitted by corporate legislation, the most common are the closed joint stock company (CJSC) and limited liability company (LLC). Moreover, services may be provided in Russia through a representative office (the "RO") or a branch. Generally, a legal entity is better for producing goods so as to simplify registration (and subsequent transfers) of the ownership of property (e.g., of a factory). However, administrative costs of an entity are higher than for an RO/Branch (because of salaries and fees of directors, accountants' salaries, tax accounting and audit expenses, etc.).

Key characteristics of distinction between the two forms of legal entities mentioned above are portrayed below:

In general, the regulatory protections provided to a CJSC make it best suited to investors embarking on a joint venture with Russian parties. An LLC is likely to better suit a founder who will acquire the sole stake in a Russian enterprise.

In making a choice of a legal entity it should be noted that the Russian law requires the founding company to be founded by more than one shareholder/participant in order to act as a sole founder of a legal entity in Russia. Alternatively, the investors may consider holding its Russian assets through a nominee shareholder (an intermediate company), provided that the nominee shareholder is also founded by more than one shareholder/participant.

CJSCs and LLCs can have a three-tier management structure consisting of:

- General meeting of shareholder or participants
- Board of directors
- Executive body

The highest management body of a CJSC or an LLC is the general meeting of shareholders or participants, respectively. An annual general meeting must be held within the time frame set out in the charter, and must occur at least once a year. The annual general meeting is convened by the board of directors of a CJSC and the executive body of an LLC; the meeting approves the annual results of the company. For both a CJSC and an LLC, an extraordinary general meeting may be convened in cases specified in the charter or when in the interest of the company and its shareholders or participants. The authority of the general meeting of a CJSC is set out in the law and cannot be reduced or extended by the shareholders.

The board of directors of a CJSC (and an LLC, if provided for in the charter) supervises the company's operations between general meetings. Its primary functions include the convening general meetings, distribution of company shares, formation of the executive body, formation of branches and representative offices of the company, and the approval of major-and interested-party transactions. Shareholders are allowed to expand the competence of the board of directors by detailing such additional authority in the company charter.

The executive body of a company may be either an individual (usually called a general director, president or chairman of the management committee), or an individual and a collegial body consisting of several managers. The authority of an individual acting as an executive body is confirmed by the protocol of the relevant company body appointing such individual.

A single-person executive body of the company acts on the behalf of the company without a power of attorney and, inter alia, represents its interests, enters into transactions on the behalf of the company, approves its personnel structure, issues orders and gives instructions which are binding for all company employees. All bodies report to the board of directors and to the general meeting of shareholder/participant.

Both a CJSC and an LLC may, however, decide at their own discretion not to form a board of directors (in practice, most LLCs do not form a board of directors).

The management structure and procedures of a Russian company are substantially regulated by Russian law, thus certain agreements (e.g. management or voting agreements) between the founders of the company may be deemed unenforceable under Russian law.

Next Steps

Once form of a legal entity is chosen, the procedures for company formation and tax registration are the next steps in establishing a presence in Russia. A uniform procedure for state registration of the establishment, reorganization, liquidation, amending the foundation documents and maintaining a state registry of legal entities in Russia is regulated by the Federal Law On State Registration of Legal Entities (the "Law"). State registration and tax registration of legal entities is currently performed by the Tax Inspectorates of the Federal Tax Service in the place of company or another entitled body permanent location.

Under the Law, the Tax Inspectorate shall register the company within five days after all necessary documents and information are filed (the Law provides a comprehensive list of documents necessary for registration) within the state register of legal entities. Upon its registration Certificate of Registration is issued within one day. The company starts to exist the next day after all the required documents and information is filed and a record is entered in to the state registry of legal entities.

For the company to be fully operational, the final step is to complete the following procedures:

- Production and registration of a corporate seal
- Registration with the State Statistics Committee
- Registration with the tax authorities as a tax payer
- Registration with the Pension Fund, Medical Insurance Fund and Social Insurance Fund
- Opening of bank accounts in a Russian bank
- In the case of forming CJSC, registration of the issuance of shares with the Federal Service on Financial Markets

The formation of the company and registration process in Russia will take approximately six weeks to complete.

It should be noted that if the total value of the founder's assets according to the last accounting balance exceeds 2 million times the minimum monthly wages (currently approximate \$6.9 million), the Russian anti-monopoly authorities must be notified within 45 days from the date of state registration.

To establish a company, an investor enters into an agreement in which the founders agree to establish a company. Such an agreement for the establishment of a CJSC (agreement for establishment) does not form a constitutive document of the CJSC for the purpose of the Russian law (only the charter is). On the contrary, an agreement for the establishment of a LLC forms a constitutive document (foundation agreement) of the LLC along with the charter. The charter and the foundation agreement/agreement on establishment of the company amongst other documents are the documents that are required to be filed with the Tax Inspectorate at the time of company registration. The structure and contents of these documents are determined by Russian law.

In addition to the comprehensive list of documents required by Russian law it may be necessary for investors to prepare additional documents. Drafting foundation documents and adopting necessary resolutions includes execution, notarization and apostilisation in the home country of the founder(s) of a foundation agreement, resolutions (minutes of the foundation meeting) and relevant powers of attorney.

Thus, the execution of documents in the country of the foreign entity may take several weeks and should be included in the time plan.

Finally, pursuant to Russian accounting and bookkeeping legislation, all records of a company are to be made in Russian, expressed in Russian rubles and maintained according to Russian bookkeeping standards. The accounts according to other standards (e.g. US GAAP, IAS) may be also prepared by the company. However, they are only for internal use, since the Russian tax authorities accept only accounts prepared in accordance with Russian standards. Taxpayers must file certain tax returns on a regular basis, usually monthly. Moreover, taxpayers must submit to the Russian tax authority a balance sheet quarterly.

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