In keeping with GRATA’s practice of informing clients regarding important legal developments that might influence their business, we draw your attention to the important changes regarding legal status, corporate relations and activities of joint stock companies and limited liability companies in Russia.

Joint Stock Companies and Limited Liability Companies from 1 September 2014

Amendments to the Civil Code of the Russian Federation (the “Civil Code”) regarding legal status, corporate relations and activities of legal entities, in particular, joint stock companies (JSCs) and limited liability companies (LLCs) introduced by the Federal Law No. 99-FZ dated 05 May 2014 (the “Law No. 99-FZ”) come into force on 1 September 2014.

1. Public and nonpublic companies

Instead of open joint stock companies (OJSCs) and closed joint stock companies (CJSCs) all JSCs shall be deemed public or nonpublic based on the following criteria:

- whether shares of a JSC and securities convertible into shares thereof are publicly placed (by an open subscription) on conditions provided for by laws on securities; or
- whether the charter and the company name of a JSC contains an indication that the JSC is public.

In the event a JSC does meet any of the abovementioned criteria it shall be deemed a nonpublic. All LLCs shall be deemed nonpublic companies as well.

The Civil Code as amended provides for a more flexible regime for regulation of corporate relations in nonpublic companies:

a. The charter of a nonpublic company and the corporate agreement (an agreement entered into by the shareholders/participants of a company and regulating exercise of their rights) may provide that the scope of rights of the company’s participants is not proportionate to the amounts of their shares in the charter capital of the company (provided that information on such corporate agreement and the scope of rights of the company’s participants is entered into the Uniform State Register of Legal Entities (the “USRLE”));

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- Structuring and Full Legal Support of Joint Ventures Establishment and Mergers and Acquisitions Transactions
- Legal Due Diligence for the Purposes of Acquisition and Sale of Shares, Participation Interests and Other Assets

For further information, please contact
Yana Dianova,
Director of Corporate and Commercial Department
GRATA Law Firm (Moscow)
Tel.: +7 (495) 660 11 84
E-mail: Ydianova@gratanet.com
b. Participants (founders) of a nonpublic company may upon their unanimous decision include in the charter of the company certain provisions changing the scope of authority of the management bodies of the company and the procedures for taking decisions by them, as well the procedure for disposal of the shares/participatory interests, in particular:

- to transfer to the authority of the collective management body or the collective executive body of the company certain matters which by law are within the authority of the general meeting of participants (except for particular matters that concern interests of all the participants, i.e. reorganization or liquidation of the company, determination of the number, nominal value and categories (types) of declared shares and the rights granted by such shares);
- to establish the procedure for convocation, preparing and conducting of a general meeting of participants and taking decisions by it which is different from the procedure established by the law;
- to exclude the establishment of an internal audit commission or provide for its establishment only in cases specified by the charter;
- to establish the procedure of exercise of the pre-emptive right of purchase of a participatory interest or a part of a participatory interest in the charter capital of an LLC or pre-emptive right of purchase of shares of a JSC or securities convertible in shares thereof.

2. Differences in regulation of a JSC and an LLC

The Civil Code as amended by the Law No. 99-FZ provides for the following regulatory aspects with respect to JSCs and LLCs:

a. the fact of adoption by the general meeting of participants of a decision and the identities of participants who took part in its adoption shall be confirmed with respect to:

- a public JSC – by a person maintaining the shareholders’ register of this JSC and performing the functions of its ballot committee;
- a nonpublic JSC – by notarial certification or certification by a person maintaining the shareholders’ register of this JSC and performing the functions of its ballot committee;
- an LLC - by notarial certification unless another means (e.g. signing of the minutes of a meeting by all the participants of the company or a part thereof) is provided for by the charter of the company or by a unanimous decision of the general meeting of its participants.

b. A JSC (whether public or nonpublic) shall be obliged to engage every year an auditor who is not connected with the JSC or its participants for the purposes of examination and confirmation of annual accounting (financial) statements of the company. For an LLC an obligation to provide for external audit of its statements arises only in the cases provided for by the law, in particular, upon request of any participants of the company.

3. Differences in regulation of public and nonpublic JSCs

Legal status, corporate relations and the issues of disposal of shares of public JSCs are regulated by a number of imperative rules of the Civil Code as amended.
a. In a public JSC it is not possible to limit the number of shares owned by a shareholder, their total nominal value and the maximum number of voices granted to a shareholder.

b. Shares of a public JSC may be transferred without any restrictions and the charter of such JSC may not provide for the necessity to obtain someone’s consent for such transfer.

c. None can be granted the pre-emptive right of purchase of shares of a public JSC except for the cases provided for by the Federal Law on Joint Stock Companies when the pre-emptive right of purchase of additionally issued shares or securities convertibles into shares of the JSC is vested with shareholders.

d. A public JSC may not issue preferred shares with nominal value higher than nominal value of ordinary shares.

e. The list of matters within the exclusive authority of a general meeting of shareholders of a public JSC is provided for by the Civil Code and the Federal Law on Joint Stock Companies and may not be extended.

f. A collective management body (a supervisory or another board that controls activity of the executive bodies of the company) with at least five members and an internal audit commission should be established in a public JSC.

g. The shareholders register of a public JSC should be kept and the functions of its ballot committee should be performed by an independent organization holding a license required by the law.

h. A public JSC should disclose publicly information specified by the law.

Additional requirements to establishment, activity and termination of public JSCs are provided for by the Federal Laws on Joint Stock Companies and On Securities Market.

Nonpublic JSCs, to the contrary, enjoy significant freedom as long as it concerns regulation of corporate relations. In addition to the matters specified in section 1 above, the charter of a nonpublic JSC may provide, upon unanimous decision of shareholders, that the authority of the general meeting of shareholders includes matters which are not within such authority in accordance with the Civil Code and the Federal Law on Joint Stock Companies.

4. State registration of company names and changes in the constitutive documents

JSCs established before 01 September 2014 that meet the criteria for public JSCs shall be deemed such irrespective of an indication in their company names that a company is public.

At the same time JSCs that meet the criteria for public JSCs are obliged to submit the information on their new company names containing an indication that they are public JSCs for registration in the USRLE.

JSCs that do not meet the criteria of a public JSC may submit the respective information on their new company names for registration in the USRLE in order to change their status for public companies.

From the date of entry in the USRLE of the company name of a JSC containing an indication that it is public the JSC shall have the right to place publicly (by an open subscription) its shares and securities.
convertible into shares that may be publicly traded.

Starting from the date when a nonpublic JSC acquires the status of a public JSC the provisions of its charter and internal documents contradicting to the rules for public JSCs established by the Civil Code, the Federal Laws on Joint Stock Companies and On Securities Market shall become invalid.

Constitutive documents as well as company names of legal entities established prior to 1 September 2014 must be brought in line with the Civil Code as amended by the Law No. 99-FZ as soon as any other changes will be introduced in the constitutive documents of such legal entities. When registering the respective changes to the foundation documents of legal entities no state fee will be charged.

Changing the company name of a legal entity, in particular, indicating that a JSC is public, shall not require changes in the constitutive and other documents containing its former company name.

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Sincerely yours,

Corporate and Commercial Law Department,

GRATA Law Firm (Moscow)