

Legal Alert

FTS cracks down on registration practice shortcomings

INTRODUCTION

1. On 25 November 2020, Order No. ED-7-14/617@ of the Federal Tax Service of Russia "On approval of forms and requirements for the completion of documents to be submitted to a registration body for the state registration of legal entities, individual entrepreneurs and farm enterprises" dated 31 August 2020 (the "**Order**") entered into legal force. The Order has approved new forms and rules for the submission of information to be entered into the Unified State Register of Legal Entities (the "**URSLE**"). The Order and the forms approved by it are available via this [link](#) on the website of the Federal Tax Service (the "**FTS**").
2. The Order sets out several significant and long-awaited changes to the process of completing and submitting the documents to be included into the URSLE, which will allow to implement to the fullest extent some of the corporate governance instruments that were introduced to the Russian law by the recent civil law reform.

INCLUSION OF INFORMATION ABOUT THE EXISTENCE AND CONTENTS OF A SHAREHOLDERS'/PARTICIPANTS' AGREEMENT IN THE URSLE

3. Beginning from 1 September 2014, participants in legal entities have had an opportunity to allocate corporate rights among them disproportionately not only in the charter but also in the shareholders'/participants' agreement. Formally, the Russian Civil Code required to include the information on disproportionate allocation of corporate rights in the URSLE (par. 1, Article 66 of the Russian Civil Code). However, FTS forms required for entering such information in the URSLE did not exist, and therefore the implementation of said opportunity was impossible in practice, which was recognised by the FTS itself. The new forms approved by the Order now correct this and establish the way to include such information in the URSLE.
4. In addition, new forms approved by the Order provide for the opportunity to include in the URSLE information about restrictions on the disposal of shares (participatory interests) set forth in a shareholders'/participants' agreement in respect of a relevant company.

Practical implication: Inclusion of information in the URSLE on the existence of a shareholders'/ participants' agreement and on the restrictions on the disposal of shares (participatory interests) of a company established by such agreement may help mitigate risks of third parties' entering into transactions in respect of such shares (participatory interests) in violation of the established restrictions. If you are already a party to a shareholders'/ participants' agreement containing such restrictions, you may wish to consider whether it is necessary to take actions to include such information in the URSLE.

INCLUSION OF INFORMATION ABOUT SEVERAL DIRECTORS AND THE ALLOCATION OF AUTHORITY AMONG THEM IN THE URSLE

5. Beginning from 1 September 2014, legal entities may appoint several directors. At the participants' (shareholders') discretion, such directors may act jointly or severally. In practice, the previous FTS forms for registration of information about directors did not allow to reflect in the URSLE the way in which directors of a relevant company were authorised to exercise their authority. Subject to the position expressed by the Supreme Court¹, it was assumed that in the absence of such information in the URSLE, each director was acting severally. The new FTS forms provide for the possibility to include information in the URSLE on how (jointly or severally) the directors shall exercise their authority.

¹ Par. 24 of Resolution No. 25 of the Plenum of the Russian Supreme Court "On application by courts of certain provisions of Section I of the First Part of the Civil Code of the Russian Federation" dated 23 June 2015.

Practical implication: beginning from 25 November 2020, it is possible to specify in the URSLE in which way the authority is allocated among several directors, including whether they act jointly. The correct information about such allocation included in the URSLE shall increase the awareness of the company's counterparties, as well as protect a company's participants and therefore, the stability of civil law transactions.

MIXED REORGANISATION

6. Previously, participants in legal entities had an opportunity to carry out mixed reorganisations that combined either several different forms (for instance, transformation and merger) or several legal entities with different corporate form (for instance, joint stock companies and limited liability companies). However, it was difficult to carry out a mixed reorganisation in practice, since FTS forms required to register information about such reorganisation did not exist. Even though the courts recognised that the absence of proper FTS forms should not be the reason for a refusal to carry out a mixed registration, mixed reorganisation from the practical point of view was difficult. The new FTS forms will allow specifying that the reorganisation is to be carried out as a mixed one.

Practical implication: beginning from 25 November 2020, the risk of refusal to register a mixed reorganisation with the FTS on the basis of nonconformity of the FTS forms to the submitted information about such reorganisation is eliminated.

OTHER NOVELS

7. Other regulatory novels relevant from a practical perspective include the following:
- a possibility to include a company's official name in a foreign language in the URSLE;
 - the right to include in the URSLE, apart from other contact information, a company's email address;
 - at a company's discretion, participatory interests in a limited liability company may be stated as a common fraction or a percent (but not as a decimal, for example, "0.5", which was allowed before);
 - it is no longer required to include addresses of individuals related to a company, for instance, directors and participants, in the URSLE.

Please note that according to the general rule, FTS shall be notified of the changes to be included in the URSLE (for example, information about the existence of a shareholders'/participants' agreement and several directors as described above) within three working days. Failure to meet this deadline may result in an administrative penalty (up to 5,000 Rubles) in accordance with Article 14.25 of the Russian Code of Administrative Offence. Previously, legal entities were not held liable as it was impossible to perform this obligation. However, after the Order enters into legal force, there is a risk that the FTS may consider that relevant period shall start running on 25 November 2020, including in respect of changes that were introduced previously. At this moment, no clarifications by the FTS on this matter are available.

Should you have any questions in relation to this information, please email us at alerts@rgp.legal or reach out to your contact at RGP.

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