Multiple Directorship in a Russian Company: Key Practical Aspects And Possible Risks

Newsletter 18 March 2016

Before 1 September 2014, only one CEO ("general director") could be appointed in a company according to the Russian law. On that day, however, Article 53 of the Civil Code of the RF (as amended by Federal Law No. 99-FZ dated 5 May 2014) entered into force. It introduced the possibility of electing several persons to the position of an executive officer (hereinafter – **director**), instead of just one. In other words, the "four-eyes principle" of company management, widespread in Europe, can now be used in Russian companies.

Please see the details of how to appoint multiple directors in a company and what difficulties and risks can arise, in our newsletter below.

1. AUTHORITY OF SEVERAL DIRECTORS

According to the amended Civil Code of the RF, multiple directorship can be implemented based on one of the two models:

1. Appointment of several directors with **independent powers**.

   This option is presumed, unless the Unified State Register of Legal Entities (**EGRUL**) expressly specifies otherwise.[1] In practice, this means that the signature of only one director is required to conclude a contract. No additional control is therefore assumed, because each director may act on his/her own.
   A deal (contract) cannot be avoided by the company if it is signed by one director only. However, in case one director is absent, ill or cannot sign for the company for other reasons, the company's activity will not come to a halt.

2. Appointment of several directors with **joint powers**.

   In this case, for a transaction to be valid, the signatures of all directors of a company will be necessary.

In theory, a company can adopt different combinations of these two models ("mixed" models). For example, there can be matters in which directors will act only jointly, while only one signature will be sufficient for other matters. Independent powers can also be distributed according to the functions of the directors: *e.g.* one director will sign contracts,

[1] Paragraph 24 of Resolution of the Plenum of the Supreme Court of the Russian Federation No. 25 "On the Application of Certain Provisions of Section I of the First Part of Civil Code of the Russian Federation by the Courts" dated 23 June 2015.

while the other will sign internal orders – both on their own. The law does not expressly prohibit such a model.

In fact, only the model of independent multiple directorship with comprehensive unlimited powers is working at the moment (*please see Section 3 for details*).

2. PROCEDURE OF APPOINTMENT

To appoint several directors in a company, the following steps will be required:

1. Adoption of changes to the bylaws (charter) of the company.

   The charter must contain information on independent or joint authorities of general directors for multiple directorship in the company to be lawful.

   The charter shall be approved by the general meeting of the company's shareholders and registered with the registration authorities (the Federal Tax Service).

2. Registration of the directors in the EGRUL.

   The information on the appointment of several directors is to be recorded in the EGRUL.

Recording information in the EGRUL is necessary so the powers of the directors are valid in respect of third parties. For example, if the powers are joint, and a transaction is made without the signature of one of the directors, it will be null and void – the contract will be deemed "unsigned" and will have no legal effect.

3. RISKS

Although these changes are progressive, there are still legal and technical bars for some of them to operate correctly:

- Currently, the EGRUL does not provide for a possibility to indicate that the powers of directors are joint or distributed among directors in a "mixed" model (when some of them are joint, while others are independent). It means that, generally, for third parties, the powers of the directors will be independent,[2] even if the bylaws (charter) of the company provide for joint directorship or the use of a "mixed" model.

- The law does not specify whether, in case of termination of powers of one of the directors acting jointly, the other director can sign for both or the company's activity will be paralysed until the second director is appointed.

  We believe that in case one of the directors with joint powers is dismissed by a resolution of the shareholders, the powers of the others will remain valid (the

[2] Paragraph 24 of Resolution of the Plenum of the Supreme Court of the Russian Federation No. 25 "On the Application of Certain Provisions of Section I of the First Part of Civil Code of the Russian Federation by the Courts" dated 23 June 2015.

shareholders will be presumed to have resolved to leave one capable director in the company; otherwise, they could have terminated his powers as well).[3]

However, if one of the directors refuses (or is unable) to perform his functions, other directors do not have enough powers to represent the company.[3]

- Another disputable problem is whether one of the directors in the model of joint directorship may issue a power of attorney in favour of another director, so that certain actions could be assumed by the latter. There is no express prohibition for the issuance of such a power of attorney in the law; therefore, we believe that this question can be determined by the charter of the company.

4. ALTERNATIVES?

As follows from the above, introducing multiple directorship is not an easy and fast procedure.

For this reason, as an alternative, some companies use internal policies (analogues of the "multiple directorship"), according to which the documents are signed by a director and another officer of the company (chief accountant, financial controller, representative of the shareholders, etc.).

Generally, it is not prohibited under the law and can help to achieve the main goal: to avoid entering into deals, which are detrimental for a company, when the director simply does not have enough knowledge or expertise in a particular field of business.

However, even if such policies are introduced into the bylaws (charter) of the company, they do not automatically become binding on the third parties (partners, counterparties of the company). Even where a contract is signed only by the director (without the second officer's signature), it is unlikely that the court will annul such a deal; in this case, only disciplinary measures can be used against the director.

MOSGO & PARTNERS LAW FIRM

Tel.: +7 (495) 228 48 78
info@mosgolaw.com
www.mosgolaw.com

[3] We believe that the clarifications of the Supreme Court regarding representation are applicable to the case at hand (Paragraph 126 of Resolution of the Plenum of the Supreme Court of the Russian Federation No. 25 "On the Application of Certain Provisions of Section I of the First Part of Civil Code of the Russian Federation by the Courts" dated 23 June 2015).