MOSGO & PARTNERS LAW FIRM

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

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From 01 September 2014, the Russian legislation provides that several directors can be appointed in a company. In other words, the "four-eyes principle" of company management, widespread in Europe, can now be used in Russian companies, although with some peculiarities.

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

This is an updated version of our newsletter dd. 18.03.2016.

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. 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, 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 at full strength (*please see Section 3 for details*).

2. PROCEDURE OF APPOINTMENT

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

1. **Modification of the 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 that the powers of the directors were valid in respect of third parties.

3. RISKS

There are still legal and technical peculiarities of multiple directorship in Russia, to name a few:

- 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**, even if the bylaws (charter) of the company provide for joint directorship or the use of a "mixed" model.

Due to technical reasons, only independent multiple directors model is working in full strength in Russia. For third parties, the powers of the directors will be independent

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

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.

- Another disputable problem is whether one of the directors in the model of joint directorship may issue a power of attorney in favor 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.

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