



## **MEMORANDUM**

### **Establishing a legal presence in Russia**

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## Establishing a Legal Presence in Russia

Choosing which type of legal entity to register is one of the most important stages before undertaking business activity in Russia. The type of legal presence will influence all activity, including financial and tax reporting, customs and currency control. Therefore, an investor should pay special attention to determining the appropriate corporate form which will help him achieve his goals while meeting all legal requirements.

A foreign investor may act through one of several legal forms:

- ▶ As a representative or branch office of foreign legal entity
- ▶ As a Russian legal entity
- ▶ As a foreign investor

The procedures for establishing a company in Russia are quite well-developed and are regulated by the RF Civil Code and by additional RF laws.

### *Russian Legal Entities*

In accordance with the Civil Code, the following are some of the most important types of legal entities:

- ▶ Joint stock companies (JSC)
- ▶ Limited liability companies (LLC)
- ▶ Additional liability companies
- ▶ General partnerships
- ▶ Limited partnerships

Joint stock and limited liability companies are forms that are most frequently used by foreign investors to enter the Russian market and are reviewed below.

#### **Limited Liability Company**

The limited liability company (hereinafter LLC) is recognized as a company established by one or more persons, whose authorized capital is divided into participation interests, the size of which is stipulated by founding documents. Participants of the LLC do not bear liability by its obligations but bear the risk of losses connected with the company's activity within the cost of the contributions they have made. An LLC can be founded by either a person or group of people, or a Russian or foreign company. The number of participants in an LLC cannot exceed 50. If the number exceeds 50, then the LLC is subject to reorganization into a JSC within a year. On the expiry of this term, if the number of participants has not been reduced, it shall be liquidated under the court decision.

The minimum authorized capital may not be less than RUR 10,000 (approximately \$370) and at least 50 percent of the capital must be paid in prior to the company's registration. Contributions can be made in cash or in-kind.

The founding documents of an LLC are known as Articles of Incorporation signed by its founders, and the Charter, which is approved by them. If the company is set up by a single person, its foundation document is the Charter.

An LLC has a three-tier management structure which consists of:

- ▶ General participants meeting, the highest governing body which has exclusive rights to amend the Charter, approve annual financial reports, etc.
- ▶ Board of Directors, which supervises the general company's activity
- ▶ Executive body, which may be an individual (usually the general director) and a collegial body. The primary function of the executive body is the daily management of a company.



## Joint Stock Company

A joint stock company (JSC) is a company, whose authorized capital is divided into a definite number of shares; the owners of the JSC (the shareholders) do not bear liability for its obligations, but do accept the risks involved with losses connected to the JSC's activity within the value of their shares.

There are two types of JSCs:

- ▶ Closed joint stock companies (CJSC)
- ▶ Open joint stock companies. (OJSC)

The distinctions between the two abovementioned forms are as follows:

Open Joint Stock Company	Closed Joint Stock Company
Minimum authorized capital is RUR 100,000 (approximately \$3,700)	Minimum authorized capital is RUR 10000 (approximately \$370)
Unlimited number of shareholders	Limited number of shareholders, which cannot exceed 50. Otherwise, the company is subject to reorganization into Open Joint Stock Company within one year
Shares may be freely sold to third parties	Shares may not be freely sold. Share transfers are subject to preemptive rights of other shareholders.

The management structure of a JSC is similar to the management structure of an LLC. Both open and closed JSCs are obliged to have two governing bodies: the General Shareholders' Meeting and the Executive Body. The OJSC with over 50 shareholders must have a Board of Directors or Supervisory Council. Furthermore, a JSC must annually undergo a professional outside audit for control and approval of its annual financial reports.

## Branch and Representative Offices

Branch and representative offices of foreign legal entities are not considered to be Russian legal entities, but bodies representing the interests of foreign legal entity with headquarters in another country.

The table below provides a comparison of the two forms:

Representative Office	Branch
A representative office is subdivision of a foreign legal entity which represents the company's (headquarters) interests in Russia and cannot undertake commercial activity. The main purpose of establishing a representative office is marketing research for the Russian market and promotion of commercial relations between the head company and Russian companies.	A branch is a subdivision of a foreign legal entity which may undertake commercial activity.
The term for which a representative office can be set up is a maximum of three years, with the right of extension.	The term for which a representative office can be set up is up to five years, with the right of extension.

The management structure of a representative or a branch office is represented by the executive body in the person of the head of the branch or representative office. The head of the subdivision of a foreign legal entity acts on the basis of a Power of Attorney issued by the parent company.



## **Registration**

Once a form of a legal presence is chosen, the procedure for state registration must be started. In accordance with the Federal Law "On State Registration of Legal Entities," registration is performed by tax authorities which file documents with the Unified State Register within five days.

Afterwards, the following procedures must be completed:

- ▶ Registration with the State Statistics Committee
- ▶ Registration with non-budgetary funds (the Pension Fund, Obligatory Medical Insurance Fund and Social Security Fund)
- ▶ Opening of bank accounts
- ▶ Notification of tax authorities about the opening of bank accounts
- ▶ Production and registration of a company's seal
- ▶ In case of establishing a JSC, the securities issue must be registered with the Federal Service for Financial Markets of the Russian Federation

Branches and representative offices must also be accredited with state bodies authorized to grant such accreditation. Usually, these authorities include the State Registration Chamber at the Ministry of Justice of the Russian Federation, the Chamber of Commerce and Industry and various Ministries of Russia. For example, if the company is engaged in educational activity, a representative or branch office may be accredited with Ministry of Education.

To establish a company, a foreign investor has to prepare a comprehensive list of documents required by Russian law. All documents from the home country of a foreign legal entity must be notarized and apostilled and a notarized translation into Russian must be provided.

**If you have any questions please feel free to contact us any time at your convenience. We will be glad to answer all your questions and provide with all necessary information you may require.**

Sincerely yours,

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