

Receiving permission to change the director from the Government Commission

FAO legal entities and individuals, as well as employees of corporate practices and legal departments

Pepeliaev Group advises of a change in the Finance Ministry's approach to the issue of changing the director of a company under the control of unfriendly non-residents.

On 3 February 2025, the Russian Finance Ministry's Clarifications (the "Clarifications") to Decree No. 618¹ were published. They cancel the need to obtain permission from the Government Commission to change a single-member executive body comprising an individual.

Background to the Clarifications

1. Legal Uncertainty in Clarifications No. 1 to Decree No. 618² Clarifications No. 1)

In Clarifications No. 1, the Finance Ministry specified certain types of transactions that are subject to Decree No. 618. Such transactions include, in particular:

- an agreement to transfer powers of the single-member executive body to a management company;
- transactions that entail rights being established, changed or terminated that allow the conditions to be determined for managing the company and/or for doing business.

Previously, the Finance Ministry believed the list of transactions requiring permission from the Government Commission to be an open one by virtue of clause 10(14) of Clarifications No. 1. Therefore, virtually any corporate procedures connected with business activities being performed could require special approval.

2. Case law

¹ The Finance Ministry's Letter No. 05-06-13RM/9424 "Official Clarifications No. 3 on issues of applying the Russian President's Decree No. 618 dated 8 September 2022" dated 3 February 2025.

² The Finance Ministry's Letter No. 05-06-14RM/99138 "Official clarifications No. 1 on issues of applying the Russian President's Decree No. 618 dated 8 September 2022" dated 8 September 2022.

Case law has started to form in the wrong way, and courts are confirming that it is necessary to apply to the Government Commission to receive permission for changing the director. For instance, in one case³ a member of a company filed a lawsuit with the commercial court with a view to having invalidated a resolution of the board of directors to terminate the powers of the CEO in office at that time and to transfer the powers of the single-member executive body to a management company. The court invalidated the resolution of the board of directors, pointing out that such resolution had been adopted in breach of Decree No. 618. Permission was required here because the Russian company was controlled by an unfriendly non-resident registered in the Netherlands.

In another case⁴, a member of a company applied to the commercial court seeking to have invalidated a resolution of the general meeting of members to change the single-member executive body adopted in the absence of permission from the Government Commission. The court upheld the claim stating that it was necessary to obtain permission from the Government Commission under Decree No. 618. Permission was required here because the Russian company was controlled by an unfriendly non-resident registered in Latvia.

3. Amendments to the Law on Limited Liability Companies⁵

As of 1 September 2024, the amended version of the LLC Law has been in force. This makes it impossible to certify the fact that a resolution has been adopted to elect a single-member executive body by way of the minutes being signed by all members of the company or in an alternative way.

Therefore, notarial certification of the fact that a resolution has been adopted to elect a single-member executive body started to be required not only for minutes of the general meeting of members, but also for minutes of a meeting of the board of directors. The exception applies only to limited liability companies that are credit institutions, non-banking financial institutions or special-purpose vehicles created in line with the legislation on securities.

These amendments have increased the workload of notaries. The latter, in turn, have refused to certify the relevant resolutions without permission from the Government Commission for changing the single-member executive body.

Assessment of the Clarifications that have been adopted

Owing to the above circumstances, legal uncertainty has emerged. Moreover, it has become necessary to apply to the Government Commission to change in a lawful manner a single-member executive body comprising an individual. Therefore, against the backdrop of the evolving case law and position of notaries, the Clarifications of the Ministry of Finance were truly necessary.

³ Resolution of the Thirteenth Commercial Court of Appeal dated 29 June 2023 in case No. A56-95580/2022;

⁴ Resolution of the Thirteenth Commercial Court of Appeal dated 8 July 2024 in case No. A21-5127/2023;

⁵ Article 40(1) of the Law on Limited Liability Companies (the "LLC Law"), article 9(1) of the Law on the State Registration of Legal Entities and Individual Entrepreneurs, article 103.10(7) and 103.10-1(3) of the Fundamental Principles of Legislation on the Notariat.

The adopted Clarifications remove the question of what should be done in situations when an individual who comprises a single-member executive body resigns voluntarily or is unable to perform their functions due to death. Previously, the Finance Ministry had not worked through these situations. As a result, the employment and constitutional rights of individual directors used to be infringed.

What to think about and what to do

Companies should take account of the above amendments in their operations. The new rules extend, in particular, to applications which have already been submitted but are still pending before the Government Commission.

One may assume that the deadline for examining applications on other issues may be reduced in view of the Finance Ministry lifting the extra burden of approving changes of single-member executive bodies comprising individuals.

Please note that other approaches to performing transactions set out in Clarifications No. 1 are still relevant. Specifically, it is still necessary to apply to the Government Commission to transfer the powers of a company's single-member executive body to a commercial organisation or an individual entrepreneur.

Help from your adviser

Pepeliaev Group's lawyers have significant experience of providing comprehensive legal support with regard to all issues of corporate regulation.

Our experts are keeping track on a daily basis of the new amendments in corporate legislation. They are ready to provide recommendations on how to choose the best solutions for business with respect to any issues of corporate law.

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