



Putting words into action

Model articles: pro et contra

On 24 September 2018, on the official Internet portal for legal information, the Ministry of Economic Development of the Russian Federation published Order No. 411 “**On Approving Model Articles of Association, on the Basis of Which Limited Liability Companies May Operate**” dated 01 August 2018. After the Order enters into force on 24 June 2019, limited liability companies (OOOs) may choose one of the proposed 36 model articles of association as their constitutional document.

What is a model articles of association?

In 2015, amendments were made to the Civil Code of the Russian Federation and the Federal Law On Limited Liability Companies that make it possible for OOOs to use model articles of association that have been approved by the authorised state authority (federal law No. 209-FZ dated 29 June 2015). When using such model articles of association, there is no need to provide the articles of association to the registration authority, because they already contain all of the information required for the operations of OOOs, including information concerning the composition and competencies of the company’s governing bodies and the rights and obligations of the company’s members. The incorporators (members) of a company that intends to use a model articles of association must only adopt a resolution that the legal entity is operating in accordance with the model articles of association and enter the necessary information in the Unified State Register of Legal Entities (EGRUL). In any case, it is necessary to provide information concerning the firm name, domicile, amount of the share capital and the types of activities.

What is a model articles of association?

More than 5 years has been spent on developing and approving the model articles of association. An indication to this was made when in 2013, the Government of the Russian Federation approved an action plan ("roadmap") for optimizing the procedures for registering legal entities. In 2015, the President signed a federal law that made it possible for legal entities to use model articles of association. The texts of the model articles of association themselves were not approved, and despite the provisions in the law, it was not practically possible to use a model articles of association in business. That is, until 36 final versions were approved in September of this year, which OOOs may now choose from.

However, despite all of the efforts of the legislative and executive authorities, the possibility to use the model articles of association is thus far theoretical, because the use of model articles of association is impossible in practice. Forms of the applications for state registration that permit entering information in the EGRUL concerning the choice and use of a model articles of association have not yet been approved.

Features of model articles of association

The choice of one of the 36 adopted model articles of association depends on the following seven factors for regulating a specific OOO:

- the possibility of a member to exit the company
- the need to receive the consent of the other members to alienate an interest to third parties
- the existence of the company's pre-emptive right to purchase an interest
- the right to alienate an interest to a member without the consent of the other members
- the right to transfer an interest to heirs and legal successors without the consent of the other members
- the method for choosing the general director
- the method for approving the composition of the members and resolutions of the general meeting

A resolution to use a model articles of association is adopted by the general meeting of members in the OOO. If the members decide that using a model articles of association is impractical, they may stop using it at any time. In this case, the members must adopt a corresponding resolution at a general meeting.

When amending individual information concerning an OOO, it is sufficient to complete the corresponding fields in the registration application. Providing a new edition of the articles of association to the registration authority is not required.

Legal assessment of the model articles of association

Advantages

- + **simplified process for creating an OOO**
using a model articles of association permits not developing an individualized articles of association, reduces the risk of the state registration of the articles of association being rejected as a result of technical mistakes and, in general, reduces the document flow.
- + **universality of model articles of association**
when amending individual information concerning an OOO, the articles of association are not amended
- + **no need to bring the articles of association into conformity with the legislation**
changes to the model articles of association connected with amendments to legislation in relation to OOOs will be made by the authorized federal executive authority
- + **simplification of the procedure for inspecting counterparties**
court practice references reviewing a counterparty's constitutional documents as one of the due diligence measures when choosing a counterparty. When using a model articles of association, a company can review the contents of the OOO's articles of association on the Federal Tax Service's website



Legal assessment of the model articles of association

Disadvantages

- **it is impossible to supplement a model articles of association with any other provisions or amend the rules stipulated in the model articles of association**
the model articles of association are approved by a federal executive authority, and it is impossible to supplement the terms in the text in the model articles of association (for example, if it is necessary to provide for the formation of a board of directors in the OOO or amend the rules on approving large transactions). Similarly, it is impossible to amend the rules that are already established in the text of the model articles of association (for example, the term of the authorities of the sole executive body (general director) may not be amended)
- **the large number of model articles of association**
one of the purposes of introducing the model articles of association was to exclude the necessity to seek qualified legal assistance when compiling the articles of association. However, the number of approved texts and their structure may make choosing the required option not so simple and clear for the end user
- **the absence of the regulation of certain dispositive issues**
current legislation stipulates a number of dispositive norms, on the basis of which the articles of association may be adapted to the particular traits of a given LLC. Not all of these norms were considered when developing the model articles of association. For instance, not a single one of the 36 model texts provide for the possibility to create a board of directors, although certain model texts provide for the possibility to appoint more than one general director (either jointly operating or independently operating)
- **possible delays in amending the model articles of association when legislation is amended**
in connection with the significant terms for developing and registering the subordinate acts, there is a high likelihood that in the event amendments are made to the legislative acts, companies who have chosen a model articles of association will operate on the basis of a constitutional document that does not conform to the legislation, in which case it will be necessary to look directly to the law





Our opinion

A model articles of association of an LLC certainly may simplify the work and optimize the process for registering legal entities. However, as the drafters of the law themselves noted, the law is largely oriented towards small and medium business. This innovation will be most suitable for OOOs that have one member who is simultaneously serving as the general director or for companies with a small number of members that are legal entities that jointly wish to manage the OOO.

For OOOs that wish to have a more complicated management structure, as well as to guard the OOO and its members from potential unethical practices on the part of the management, we recommend choosing an individualized articles of association that permits the OOO to use all of the legally permitted legal instruments aimed at increasing the efficacy of its management and operations.

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