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# ELECTRONIC MEDIA IN RUSSIAN CORPORATE LAW



**BEITEN  
BURKHARDT**

Technology development rates have exceeded significantly the ability of the majority of people to assimilate and apply such knowledge.<sup>1</sup> The government concept of an “Information Society” (2011–2020), the Strategy for the Development of an Information Society in the Russian Federation for 2017–2030 approved by the President, and also the government programme “Digital Economy of the Russian Federation” facilitate the development of effective use of information and communication technologies during the exercise of state functions, and also in the business sector. Significant importance is attributed to the receipt, storage and processing of reliable information.

The legislator has already stipulated use of state-of-the-art communication tools in certain sectors. In addition, it is advisable for enterprises to align their internal documentation with the requirements of today’s realities. Electronic media may offer competitive advantages.

## I. Fast access to the Unified State Register of Legal Entities

### 1. ELECTRONIC REGISTER OF LEGAL ENTITIES

The Unified State Register of Legal Entities is an important source of information. It is maintained by the tax authority (registration authority) electronically and it is public and accessible to everyone due to the principle of public disclosure. One can study its contents or obtain electronic excerpts with regard to Russian companies free of charge at any time via the website [www.nalog.ru](http://www.nalog.ru).

The Unified State Register of Legal Entities contains, among other things, information on the corporate form and legal name of a company, the address and e-mail address (optionally), information on the founders (participants) and their participation interests, information on the registrar of the shareholder register of a joint company, information on the adoption of a resolution on a planned change to a company’s location, on legal succession, the original of the charter, information on the liquidation, reorganisation and insolvency process, the size of the charter capital and procedure for decreasing such capital, on the chief executive and special rights of participants or limitation on the alienation of participation interests and also on the licences held by a company.

If there is a change in the information on a company, in general an application for the registration of such changes must be filed within five business days. The application is notarised and signed by the general director. Consequently the general director must appear in person before the notary.

<sup>1</sup> As indicated in the Strategy for the Development of an Information Society in the Russian Federation for 2017–2030 approved by the President.

At the same time, the application may be electronically filed with the register. In other words, there is no need to initially visit the notary, and then file hard copies of the documents with the state authority. However, the general director must have a qualified electronic signature to file the electronic application. Such a signature must be obtained only at the certification centres accredited by the government.

## **2. INFORMATION ON CHANGES IN THE REGISTER**

Information on a business company is available in the state register at any time to any person. The participants of a company also have a legitimate interest to know about the specific information on their company that has been entered in the register and the changes that are planned. At the time of the preliminary electronic registration on the tax authority's website, the owner of a participation interest, just like any other person, may obtain information from the registration authority on the planned changes to the data of the selected company by e-mail. If an application on the registration of amendments is received, the registration authority sends the requested information to the interested person on the next day by e-mail.

Such preliminary registration in respect of long-term contracting partners is advisable as well, in order to promptly recognise and mitigate risks related to a potential change in the counterparty's data.

In addition, the tax authority has a service named "Transparent Business" <https://pb.ais3.tax.nalog.ru>, which is currently working in test mode. This source of information will make it possible to obtain a rapid overview of the mutual relations of a person (entity). For example, you can learn about a company whether a person is a participant thereof or also has the position as general director.

## **3. OBJECTION TO ENTRY IN THE REGISTER**

If a person has a legitimate interest in preventing or suspending registration, this person may file an official objection. An objection may also be filed electronically with an electronic signature. In practice, this option is feasible if the general director or a notarised authorised representative of the applying company has a qualified electronic signature.

After receiving the objection, the registration authority reviews the submitted information. In this case, the documents and information available to the registration authority are taken into account, inquiries may be conducted or an expert opinion may be obtained by the authority. The application will be refused and no registration will be performed, if the findings of such review substantiate that the information that is planned to be included in the Unified State Register of Legal Entities is not reliable. Furthermore, the registration process may be suspended for a period of up to one month.

## II. Electronic media serving a company's needs

### 1. DELIVERY OF DOCUMENTS BY E-MAIL

Traditionally, the process of convening meetings is regulated in legislation in such a way that the shareholders or participants of a company are notified of the meeting by registered mail.

In fact, delivery by registered mail is scarcely ever practised as it is considered to be old-fashioned and is not necessarily taken into account. If no other way of sending a notice is stipulated in the charter of the company, the convening procedure for a meeting does not comply with the requirements of legislation and the resolution on conducting the meeting could thus be contested. In accordance with the Code on Administrative Offences, the violation of the requirements with regard to the procedure for convening meetings is an administrative offence. The general director may face an administrative fine in the amount of RUB 20,000 to RUB 30,000, and a company – from RUB 500,000 to RUB 700,000.

To facilitate timely communication, corporate law expressly permits stipulating in a charter the sending of notices on the holding of a shareholders' meeting, inter alia, by e-mail. In accordance with legislation on limited liability companies, the participants of a company may also stipulate in the charter a notification method other than registered mail. It goes without saying that such an alternative implies that the shareholders or participants communicate their e-mail addresses to be included in the shareholder register or list of participants.

In court practice, if notices on the holding of a meeting are sent by e-mail, inevitably an issue arises as to whether the e-mail is actually the e-mail of the authorised representative, and also, whether the form of notification has been met. In this case, the use of a qualified electronic signature may dispel such doubts.

### 2. VIDEO CONFERENCING

The Law on Joint Stock Companies stipulates that if a shareholders' meeting is held through personal attendance of the shareholders, information and communication devices may be used so that shareholders can participate in the meeting remotely. The Code of Corporate Conduct that is approved by the Central Bank as the supervisory body recommends that companies with a large number of shareholders provide them with the option of participating in the shareholders' meeting through video conferencing.

In accordance with the legislation on joint stock companies, such meetings may only be attended by the shareholders that have registered at the meeting venue prior to the start of the meeting. Shareholders that previously cast their vote by sending personally signed ballots to the company or by completing electronic ballots online are also considered to have registered for the meeting. In this way the right of shareholders to participate in a meeting is ensured. In case of participation through video conferencing, electronic registration is required via a website designated for such purposes. When using a qualified electronic signature,

the unified identification and authentication system should be applied. During participation and also voting, the identity of participants and their statements are verified through respective authentication.

Legislation on limited liability companies (LLC) does not prohibit the application of this regulation but due to lack of the necessary technical conditions electronic voting is, however, not implemented.

The mixed form of conducting the physical meetings of an LLC in combination with video conferencing and voting by means of written ballots, filed in advance or within a set period, could expedite significantly the adoption of resolutions and simplify the communications of the company's participants. Such options of procedure must also be expressly stipulated in the charter of the LLC.

In the case of meetings of the boards of directors or management boards, in most instances internal regulations provide for the option of video conferencing. If this is the case, the regulations should stipulate how resolutions are documented.

In Corporate law the legislative framework for applying state-of-the-art information and communication devices has long been established. Their effective use facilitates not only the organisation of the company but also helps to mitigate the risks that arise during the drafting and execution of contracts.

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