

B2B: Resolutions of the Meetings

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In 2013 the Russian Civil Code was significantly amended in all kinds of areas touching on the country's corporate life, including: transactions (state registration, notarization, approval and invalidity), objects of civil law, powers of attorney, securities, state registration of legal entities, and limitation periods. The Russian Parliament is now considering a fairly extensive list of further amendments to the Civil Code. This article focuses on the area of so called "resolutions of the meetings", which has, in fact, become regulated for the first time by civil legislation.

Chapter 9.1 of Part I of the Civil Code sets out the general terms and conditions covering any meetings of a so called "civil-law community". Though there is no specific legal definition of "civil-law community", this term applies to, among other things, meetings of creditors in the event of bankruptcy, meetings of a legal entity's members, and meetings of co-owners (e.g. owners of individual flats in a block of flats). Ostensibly, the main aim is to protect members of the "civil-law community" who did not participate in the meeting and the interests of third parties; all of this seems positive. However, what effect it will actually have, how it will be interpreted, understood and enforced remains to be seen. This will be clearer when the provisions have been tested in courts.

Decision making procedure

In general, a resolution is deemed passed if (i) more than 50% participants of the meeting voted in favour of the resolution (a simple majority); and (ii) at least 50% members of the "civil-law community" in question participated in the meeting (quorum).

All resolutions must be documented in writing and both the chairman of a meeting and the

secretary must sign the minutes of that meeting. Chapter 9.1 of the Civil Code imposes certain requirements for the content of the minutes: for instance they must state the date, time and place of the meeting, who took part and how they voted.

Setting aside resolutions

The Civil Code and other federal laws set out grounds on which a resolution may be challenged, and some of these are: (i) the procedure for calling and holding the meeting has been materially breached, which has affected the resolution put before the meeting, (ii) a person acting on behalf of participant member at the meeting was not authorized to do so, (iii) the rights of members were not treated equally at the meeting, and (iv) the minutes of the meeting was not duly prepared as required by law.

Importantly, when the court sets aside a resolution, that resolution is void from the date of the meeting at which it was passed. This means, for example, if a resolution appointing a CEO is set aside, all transactions executed by such CEO may be invalidated as a result; this, in fact, could adversely affect third parties' rights.

Chapter 9.1 of the Civil Code provides for a general limitation period for challenging a resolution passed at a meeting: it may be challenged within 6 months of the date when a person/entity found that its rights had been infringed by such resolution. However, this is subject to a maximum of 2 years following the date when information concerning the relevant resolution has become publicly available to the members of the "civil-law community" in question.

It should be noted that, any person/entity who intends to challenge a resolution must, as a first step, give notice in writing (reasonably in advance) to other members of the "civil-law community" in question. The notice must state relevant information so that the other members may join in the action if they wish.

However, in certain cases a court has no right to set aside a resolution passed at a meeting, e.g. if the vote of a person/entity (whose rights have been infringed by such resolution) could not have influenced the results of voting, and if the resolution in question does not have a significant adverse effect on that person/entity.

For the purposes of protecting the interests of members (of the "civil-law community") and third parties, if a resolution is published in the mass media and the court then sets it aside, the Civil Code requires a notice that it has been set aside to be published in the same media outlets. Furthermore, information that the court has set aside the resolution of the meeting must be entered in the respective register in which information about the resolution of the meeting has been recorded.

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