METHODOLOGICAL AND ANALYTICAL MATERIAL
ON THE SUBJECT: “OPPORTUNITIES AND PROSPECTS
FOR THE USE OF “BUSINESS PARTNERSHIP” FORM
OF INCORPORATION IN THE FIELD OF VENTURE
AND DIRECT INVESTMENT”

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SECTION 1.
FACTORS BEHIND THE EMERGENCE OF THE BUSINESS PARTNERSHIP AS A LEGAL FORM OF ORGANISATION IN THE RUSSIAN FEDERATION

SUMMARY CONCLUSIONS OF THIS SECTION

Business Partnerships are a new form of commercial organisation in the Russian legislation. It has been introduced as an alternative to the existing investment models which do not fully meet the needs of venture investors.

The purpose of introducing Business Partnership as a legal form of incorporation was to improve Russia’s investment attractiveness for investors, including foreign investors, by means of creating a legal form similar in its structure to foreign equivalents that are familiar to them (some of those are considered in greater detail in Section 2).

The introduction of Business Partnership as a new legal form of organisation is in many respects in line with the development trends observed in the Russian law, and is of a proactive nature: while amendments to the Civil Code of the Russian Federation which would increase the flexibility of regulation for non-public companies are still being discussed, many of the planned changes are already available in the Business Partnership option. Today this form already offers business and venture investors new opportunities for investment structuring due to a wide range of advantages in comparison to other legal forms of incorporation recognized by the Russian law (these issues are examined in more detail in Section 4).


The introduction of Business Partnership was aimed at increasing the investment attractiveness of Russia for investors, including foreign investors, by creating a legal form of incorporation similar in its structure to forms in other jurisdictions that are familiar to such investors.

One of the barriers to direct attraction of foreign investments to the Russian market was the lack of convenient legal models for such investments.

Before the Law was adopted, there were two main models (legal entity types) potentially available for investments identified by Russian law: Partnerships and Companies.

Business Partnerships do not exactly meet the needs and demands of investors, particularly, those implementing venture capital projects, mainly because of the imposition of property liability for obligations of a partnership on a partner (in the case of general partnerships)/ general partner (in the case of limited partnerships), as well as the impossibility to restrict the right of a partner to withdraw from the partnership.

The use of companies (Joint Stock Companies and Limited Liability Companies) as a tool for investment also does not fully meet the needs of investors due to the lack of sufficiently flexible corporate regulation in the Russian law, conformity of models, procedures and methods of corporate management of companies to mandatory norms which prohibit the use of a number of structures and tools known in the foreign law.

One of the first attempts to solve this problem was made in 2009: the institutes of shareholders’ agreements and LLC participants’ agreements were introduced through adoption of corresponding amendments to Federal Law No. 208-FZ dd. December 24, 1995 “On Joint Stock Companies” (hereinafter - “Law on JSC”) and Federal Law 14-FZ dd. February 8, 2002 “On Limited Liability Companies” (hereinafter - “Law on LLC”).

The reform of civil law that is currently being implemented is also intended to increase the flexibility of corporate regulation. The amendments to the Civil Code of the Russian Federation that took effect this year envisage that corporate relations shall be regulated by civil law. Considering the more or less discretionary method of regulation that is inherent to civil law, this gives reason to hope for further liberalisation of the statutory regulation and law enforcement practice in respect of non-public companies. Draft Federal Law No. 47538-6/2 “On Amendments to Chapter 4, Part 1 of the Civil Code of the Russian Federation, Article 1 of the Federal Law “On Insolvency (Bankruptcy)” and Annulment of Particular Provisions of Legislative Acts of the Russian Federation” currently under consideration by the State Duma of the Russian Federation includes provisions that...
are new for the Civil Code of the Russian Federation and expected to help significantly increase the flexibility in structuring the governing bodies and their competences in non-public companies (draft new Article 66 of the Civil Code of the Russian Federation), provisions on the possibility of approval by founding members (ordinary members) of a legal entity of its internal rules which are not deemed to be a constituent document of a legal entity and may contain provisions compliant with the Articles of Association (draft Article 66 of the Civil Code of the Russian Federation), as well as provisions contributing to greater attractiveness of corporate agreements (hereinafter - “Corporate Agreement”). For example, Clause 4, Article 66 of the Civil Code of the Russian Federation which stipulates that the Corporate Agreement may define the structure of a Company’s bodies and their competences where amendment of such by virtue of relevant provisions in the Articles of Association is allowed by the law; provisions of Article 67 of the Civil Code of the Russian Federation specifying that a Corporate Agreement may constitute grounds for annulment of decisions by a Company’s bodies if parties to the Corporate Agreement are all its members and if this does not prejudice third parties; that parties to the Corporate Agreement shall not be entitled to invoke its invalidity in due to its non-compliance with the Company’s Articles of Association; that Company’s creditors and other third parties may in certain cases be parties to the Corporate Agreement.

The specified amendments mark a significant step forward in making Russian corporate practice closer to the advanced Western legal systems. However, many issues related to such tools of corporate management as shareholder agreements and participation agreements remain unregulated at the legislative level, and in the absence of an established judicial practice in respect of disputable issues, they cause uncertainty with regard to the validity, enforceability and applicability of specific provisions of such agreements. Generally, Russian courts assume a quite conservative position with regard to such agreements, specifying that their provisions shall comply with the Russian law and the Articles of Association of a Company. Therefore, when investment projects are implemented in practice, quite often the model of investment through a holding company is used, where the holding company is incorporated in a foreign jurisdiction with the established procedure for fulfillment of shareholders’ agreements and with subjecting such agreements to the foreign law.

Therefore, in the course of the civil law reform, the beginning of which was marked by Decree of the President of the Russian Federation No. 1108 dd. July 18, 2008 ”On Development of Civil Legislation”, an attempt was made to provide for a legal form of incorporation in the legislation of the Russian Federation which would meet the demands of foreign investors, allowing the creation of structures that are well-established in international practices but were previously not recognised by the Russian law, with no need to create a foreign company as an intermediate investment tool.

Formally, the draft Law was developed by the Ministry of Economic Development of the Russian Federation (hereinafter - “MEDT of Russia”), submitted to the State Duma by the Government of the Russian Federation on June 2, 2011, and signed by the President of the Russian Federation on December 3, 2011, and it came into force on July 1, 2012. The Law was met with mixed reception on the part of researchers and professional associations and faced criticism from the Presidential Council on Codification and Development of Civil Legislation (in particular, due to the incompliance of some of its provisions with one of the basic concepts of the civil legislation reform; the legal engineering of the text of the Law also drew criticism). However, Business Partnership as a legal form of incorporation has a number of advantages over other forms known in the Russian law; it also offers new opportunities for investment structuring in Russia.

1 This issue is explored in more detail in Section 2 of the Memorandum.

2 See Explanatory Note to Draft Federal Law No. 47538-6 “On Amendments to Parts 1, 2, 3 and 4 of the Civil Code of the Russian Federation, as well as to Particular Legislative Acts of the Russian Federation”.


4 For example, in the case of Verny Znak LLC (Award of the Moscow Federal District Arbitration Court dd. May 30, 2011 in case No. А40-140918/09-132-89А) the court invalidated due to contraventions of the law and Articles of Association the following provisions of the participation agreement: (1) on obligation of the parties to vote unanimously on all agenda issues of the general meeting; (2) on reduced term of sending a notice of the date, time and venue of the general meeting; (3) on additional requirement for its convening in the form of member’s obligation to send to the other member draft minutes of the general meeting; (4) on the right of only one party to propose a candidate for the executive body to be approved by the general meeting and the other party's lack of right to vote against the proposed nominee; (5) on profit distribution disproportionate with stakes; (6) on the right of one party to make decisions at general meetings regardless of willingness of the other party; (7) on imposition of additional obligations in relation to the company if compared to those established in the Law on LLC and the Articles of Association; (8) on restrictions on one of the parties’ disposal of its stake; (9) on the possibility to acknowledge transactions performed by one of the parties in violation of provisions of the agreement at issue invalid under the other party’s claim; (10) on restrictions on cessation of membership applicable to one of the parties in the absence of such restrictions in the Charter; (11) on the right of one of the members to send to the other member an offer for sale of the stake at the price of not more than 50% from net profit of the company for the financial year in case of impossibility of adoption a decision on agenda issues of the general meeting due to voting of one of the members against such decision, and on obligation of the other party to transfer its stake at the price set forth in the agreement; (12) on establishment of responsibility in loss of the form of the loss of voting right at extraordinary meeting for 5 months since the date of violation of one of the clauses of the agreement at issue, loss of the right of ownership of the share, loss of the right of participation in profit distribution, transfer of the stake of the violating party to the other party’s pledge. It is known that this case was just staged, and it should be taken into consideration when court’s conclusions related to this case are analysed. However, it demonstrates the risks of uncertainty for parties as regards the enforcement of the terms and conditions of such agreements.
SECTION 2.
COMPARATIVE ANALYSIS OF THE LEGAL STRUCTURE OF A BUSINESS PARTNERSHIP AND ITS FOREIGN EQUIVALENTS FOR IMPLEMENTATION OF VENTURE-TYPE BUSINESS PROJECTS

SUMMARY CONCLUSIONS OF THIS SECTION

- Practical experience with such legal forms as Limited Liability Company (LLC) in the USA and Limited Liability Partnership (LLP) in Great Britain should be taken into account in the context of Business Partnerships in the Russian Federation, as some legal regulatory elements found in these two legal forms were incorporated into the basic concepts of the Law.

- The performed analysis shows that the Business Partnership is in many respects similar to the foreign legal forms of incorporation that had served as models on which it was based, but is not the same. The author of the Law has combined in Business Partnership certain elements of the legal forms of incorporation of other jurisdictions with new practices.

- The legal forms of incorporation discussed here originated in foreign jurisdictions to be used for activities involving increased risk; however, they have general legal capacity and may be used for carrying out any activities not prohibited by the law.

- Requirements regarding the number of members of a Business Partnership in the Russian Federation are stricter in comparison to their foreign equivalents, which is due to its legal nature and its intended use primarily for private investments.

- The Operating Agreement is one of the key documents for a Business Partnership. In respect of all foreign legal forms of incorporation, participants are allowed to enter into agreements regulating internal company matters. The provisions usually included in agreements in relation to LLCs or LLPs shall be undoubtedly taken into account by venture investors when drafting Business Partnership Operating Agreements, while also taking into consideration the mandatory provisions of Russian law.

- The absence in the legislation of the Russian Federation of requirements for the minimum charter capital amount for Business partnerships and for compulsory independent assessment of non-monetary contributions in general conforms to the similar practice in respect of their foreign equivalents.

- In all legal forms of corporation under consideration, resolutions on the most important issues are made by members.

- Management models applied in foreign organisations that are analogous to Business Partnerships can be figuratively divided into corporate, partner and mixed (depending on the degree of involvement of members in management issues). These models can also be applicable to Business Partnerships, taking into account the requirement for a Business Partnership to have a sole executive body (See Section 8).

- While the right to act on behalf of an LLP and LLC can be vested in each member, in Business Partnerships in the Russian Federation only the person acting as the sole executive body has this right. However, taking into account the right of such person to issue powers of attorney, this restriction is not significant.

- No tax exemptions are envisaged for Russian Business Partnerships, unlike it is the case with their foreign equivalents (See Section 13).
It is known that the authors of the Law to a large extent were guided by the experience of other countries in regulation of legal forms of incorporation, taking an intermediate position between corporations (as legal entities) and partnerships (as contractual entities). Such forms can be exemplified by Limited Liability Companies in the USA (Limited Liability Company, hereinafter – “LLC”) and Limited Liability Partnerships in Great Britain (Limited Liability Partnership, hereinafter – “ LLP”).

As the practical use of Business partnerships in Russia today is still in its inchoative stages, comparing Business partnerships with their foreign equivalents is necessary to identify their advantages and disadvantages, as well as to reveal – successful practices that could be used for successful implementation of venture-type projects in Russia.

It is worth noting that as corporate regulation in the USA is implemented at the level of separate states, we consider for comparison only the most common characteristic features of LLC under the American law.

2.1. LEGAL STATUS OF THIS LEGAL FORM OF INCORPORATION AND ITS PLACE IN THE SYSTEM OF ECONOMIC ENTITIES

An American LLC is a company consisting of one or more participants. Like American corporations, an LLC is characterised by the limited liability of its participants; at the same time, the nature of mutual relations resembles partnerships.

A British LLP is an association of two or more persons for the purposes of carrying out income-generating activities. It is also a mixed legal form of incorporation and combines the independent legal capacity of a partnership with the limited liability of its participants typical of British limited companies, as well as the organizational flexibility of general partnerships.

A Russian Business partnership is a commercial entity created by two or more persons, members of which take part in its management, as well as other persons, to the extent specified in the Partnership Operating Agreement. Similarly to LLCs and LLPs, in terms of their legal nature Business partnerships occupy an intermediate position between partnerships and companies.

The appearance of LLC and LLP as legal forms of incorporation was historically necessitated by legal and accounting companies’ needs, whose activities entail risk of professional errors, and where it is important to limit the personal liability of the participants. However, at present both these legal forms may be used for carrying out any activities not prohibited by law. Similarly, the appearance of Business Partnerships was first of all intended for a specific sector (venture investment); however, it has general legal capacity and may be used for carrying out any activities not prohibited by law.

Therefore, all three legal forms of incorporation have a mixed legal nature and take an intermediate position between partnerships and corporations, combining their advantages for business operations. Though they appeared in the areas of activities involving increased risk, these legal forms of incorporation have general legal capacity and may be used for carrying out any activities not prohibited by law.

2.2. POTENTIAL MEMBERS

Both individuals and legal entities can be members of an American LLC. There are no requirements as to their quantity, i.e. even one member is enough. A change in the number of members affects the company’s activities. Thus, in accordance with the legislation of some states, the death or liquidation of an LLC participant entails the termination of the company’s activities, but if the remaining members make the relevant decision, the company can continue its operations. The law of some states establishes that cessation of membership in an LLC shall not be allowed; however, in a number of states a member has the right to terminate his/her membership in an LLC if the Operating agreement contains corresponding relevant provision in this respect.

In the UK too, both individuals and legal entities can be members of an LLP. However, their number shall be at least two, and at least two members shall be so-called designated members who exercise administrative and accounting functions. There are no restrictions as to the maximum number of members. A person may become a partner by adhering the agreement between the existing members, and cease their membership in accordance with the existing agreement between members or, in the absence of such an agreement with the other members on cessation of membership, by duly notifying the other member within reasonable time limits. If the number of members of an LLP is reduced to one, it shall not cease to exist and shall be entitled to conduct its business. However, in case of conducting business with only one member for a period longer than six months, this member shall be jointly liable for the obligations of the LLP arising at the end of that period. In this case, if an LLP does not conduct any business activities, the registrar of companies may initiate its liquidation.

Similarly to LLC and LLP, both individuals and/or legal entities can be members of a Business partnership. The number of members of a partnership shall be at least two and not more than fifty, and additional restrictions in relation to the maximum number of members may be specified in the Partnership Operating Agreement.

Cessation of membership in a Business partnership shall be allowed if such possibility is provided for in the Operating Agreement, except for cases when as a result of such cessation there are no partners left. In case the number of members of a partnership falls reduced to one or exceeds the maximum number, the Law provides for an obligation to reorganise a Business partnership by transforming it into a joint stock company or liquidating the partnership.
Therefore, the Law provides for stricter requirements to the number of members in case of a Business partnership, as compared to LLP or LLC. The minimum number of members of a Business partnership or an LLP is based on their legal nature (partnership) which is different from an LLC (company). The maximum number of members is established similarly with Russian limited liability companies and closed joint-stock companies and is aimed at the use of Business Partnerships for private investments. Additional restriction of the number of members is allowed due to peculiarities of venture-type business projects implementation and the high discretion in regulation of Business partnerships in general.

2.3. BASIC DOCUMENTS REGULATING ACTIVITIES

Depending on the requirements of a specific state, an American LLC shall be incorporated by means of registration of a certificate of formation or articles of organization by the Secretary of the corresponding state. In the majority of states, the signing of the limited liability company agreement / operating agreement is not an obligatory requirement but it is widespread in actual practice. In a number of states, for example, in the New York state²³, entering into an Operating Agreement is mandatory. The Operating Agreement is an internal document regulating relations between members and is not subject to registration by the Secretary of the State. As a rule, it covers company’s activities, contributions of members, management arrangements, profit distribution, etc.

When a British LLP is incorporated, an incorporation document²⁴ is registered. Partner agreement is not obligatory but is widespread in practice and usually includes issues related to profit distribution, new members admission to a partnership, management and decision-making, cessation of membership and exclusion from an LLP, as well as rights and obligations of ceasing partners. Like Operating Agreement in an American partnership, Partner Agreement is an internal document and is not subject to obligatory registration. As a rule, partners in an LLP act as parties to the agreement, but, in general, other persons may also act in this capacity.

In accordance with the Law, the only constituent document of a Business Partnership is the Articles of Partnership. The Law also provides for a possibility of signing a Partnership Operating Agreement in addition to the Articles of Partnership. A Partnership Operating Agreement may contain any terms and conditions related to partnership management, activities, reorganization and liquidation compliant with the existing laws, except for cases where such provisions are contained in a partnership’s Articles of Partnership. Apart from that, the agreement can regulate rights and obligations of members of a partnership as well as persons who are not members of a partnership; it may also regulate the order and dates for the exercise of rights and fulfilment of obligations.

Therefore, a possibility of signing an Operating Agreement regulating internal issues is provided in all the three legal forms of organisation. Apart from that, in all three cases the Operating Agreement is an internal document, which proceeds from the nature of issues it contains. In the absence of established business practice in the Russian Federation, when drawing up a Business Partnership Operating Agreement, it is useful to take into consideration the experience of, and examples of corresponding agreements for, LLP and LLC with due account of the mandatory provisions of Russian law.

2.4. CHARTER CAPITAL FORMATION

Charter capital of an American LLC is rather a bookkeeping than a legal notion and has no particular significance when a company is incorporated or conducts its business. Contributions to the charter capital of an American LLC may be made in cash, movable or immovable property, services rendered or even (the majority of states permitting this) an obligation to render services in the future. No expert appraisal of contributions is required; fair valuation by members is enough.

As a general rule, there are no requirements to the amount of the charter capital of a British LLP, nor official requirements to the form of contributions and their appraisal. Moreover, unless partners agree otherwise, they are actually not obliged to make contributions.

Under the Law, each member of a Business Partnership shall make a contribution to the charter capital of a partnership. That contribution may be made in cash, property or property rights or other monetisable rights. Securities (except for Company bonds), as well as other types of assets and other objects of civil law rights contribution of which is prohibited by the Partnership Operating Agreement, shall not be accepted as contribution to the charter capital. Monetary valuation of in-kind contributions shall be approved by a unanimous resolution of all members and, except for cases when they fail to achieve consent, no appraiser is required.

Therefore, the absence of requirements for the minimum amount of charter capital at a Business Partnership and the obligatory independent appraisal of in-kind contributions to it are generally analogous to the same practices at LLCs and LLPs.

2.5. MANAGEMENT MODEL OPTIONS

In accordance with the Law, the only mandatory management body in a partnership is the sole executive body elected by members of a partnership. It is also authorised to represent the partnership and make transactions on behalf of the partnership without a power of attorney. The system, structure and powers of other management bodies, the procedure for their operation and termination of operation shall be set forth in the Partnership Operating Agreement, with due account for the provisions of the Law. Other management bodies may consist of persons who are not members of the partnership. Therefore, the authors of the law have provided members with the freedom to choose the management model.
The Law on British LLPs also allows partners to choose a management model at their own discretion and entrench it in an agreement. As a general rule, each partner is entitled to participate in LLP management, as along with being recognised as an agent and creates obligations for an LLP through his actions.

Therefore, the number of members entitled to act on behalf of an LLP without a power of attorney is wider than that in a Business Partnership. As a general rule, all management issues pertaining are settled by the majority of partners, yet deciding on such matters as change of the type of Partnership’s activity, admission of a new member to a Partnership, transfer of Partnership’s stake, requires consent of all members. Unless otherwise provided by members, they do not receive any remuneration for participation in management. In actual practice members of an LLP often apply the corporate type management model: for example, create a Management Board whose powers shall be set forth in the partner agreement. At the same time, they may appoint one member responsible routine management or apply another model.

Like it is the case with British LLPs, members of an American LLC play a crucial role in its management. Most important issues, such as alienation of a significant part of assets, mergers with other legal entities or LLC liquidation, are subject to their approval. The number of members required to vote on any decision shall be set forth in the Operating Agreement. LLC members may choose a management model that best meets the needs of their business activities. Based on an LLC structure in general and management arrangements, the following management models can be identified:

2.5.1. CORPORATE MODEL

When the corporate model is chosen, members elect a Board of Directors which is responsible for managing the company’s business. In its turn, the Board of Directors elects officers who manage company’s operations on a current basis, represent the company in transactions with third parties and exercise other powers granted to them. As a rule, among officers there is the President and the Secretary of a company, as well as one or several Vice-Presidents and the Treasurer. Members of the Board of Directors and officers are not necessarily company members.

Usually, the President of a company acts as a sole executive body, though in an LLC this function may be also performed by the Chairman of the Board of Directors. Acting as a sole executive body, the President is entrusted with broad powers to act on behalf of a company, however, unless otherwise provided in the Operating Agreement, all significant actions of his are subject to approval of the Board of Directors.

2.5.2. PARTNER MODEL

Where the partner model is applied, all company members are involved in management. Each of them is entitled to act on behalf of the LLC when dealing with third parties. Though corresponding powers of members can be restricted, in many states such restriction shall not have any legal consequences for third parties who were unaware of it.

2.5.3. MIXED MODEL

Where the mixed model is applied, members do not act directly on behalf of an LLC, nor exercise routine management of its operations. However, as opposed to the corporate model, under the mixed model, there is no Board of Directors. Members elect in their discretion officers and managers who exercise management. Managers and officers are not necessarily members of the Partnership.

Therefore, as opposed to an LLP and an LLC generally managed by partners, it is provided for Business Partnerships that existence of a sole executive body is compulsory, and other members of Business Partnerships are not entitled to act on behalf of a Partnership without a power of attorney. Similarly to LLCs and LLPs, unanimous settlement by members of the most important matters specified in the Law and the Management Agreement is envisaged for Business Partnerships. We believe that the main management models created by LLC can be adapted by Business Partnerships with due account of the mandatory provisions of Russian Law.

2.6. TAX EXEMPTIONS

There is no special tax regime provided for American LLCs. At members’ choice it can be taxed as a corporation (where income tax is paid by the company itself) or a partnership (income tax is paid by each individual member). Incomes and property held by a Limited Liability Partnership are treated for the purposes of taxation as held by its members. As opposed to the above-mentioned forms, no tax exemptions are provided for the Russian Business Partnerships.
12 See also Section 3 of the Memorandum.


15 See Article 8 of the Limited Liability Partnerships Act 2000.


19 See Article 1000 of the Companies Act 2006.

20 See Article 11, Clause 1 of the Law.

21 See Article 5, Clause 1, Sub-clause 5 of the Law.

22 See Article 11, Clause 3 of the Law.


24 See Article 2, Clauses 1, 2 of the Limited Liability Partnerships Act 2000.


26 See Article 7, Clause 3 of the Limited Liability Partnerships Act 2001/1090.

27 See Article 6, Clause 1 of the Limited Liability Partnerships Act 2000.

28 See Article 7, Clauses 5, 6 of the Limited Liability Partnerships Act 2001/1090.


30 See Article 10, Clauses 1, 3 of the Limited Liability Partnerships Act 2000.
SECTION 3.
LEGAL STATUS, PLACE, AND ROLE OF BUSINESS PARTNERSHIPS IN THE SYSTEM OF RUSSIAN ECONOMIC ENTITIES FOR PURPOSES OF PREPARATION AND IMPLEMENTATION OF VENTURE-TYPE BUSINESS PROJECTS

SUMMARY CONCLUSIONS OF THIS SECTION

- Today a Business partnership is one of the most discretionally regulated legal forms of a commercial entity in Russia and is likely to be an attractive form for venture investments.
- The Business Partnership form is a synthesis in its structure of Company (first of all, in respect of limitation of members’ liability) and Partnership (in respect of flexibility of management).
- Although it is considered that Business Partnerships are intended to be applied for innovative (including venture-type) projects, they have general legal capacity.
- A Business partnership is not entitled to (a) issue bonds or other issuable securities; (b) advertise its activities; and (c) be a founding (ordinary) member of other legal entities except for unions and associations.
- A Business partnership can be created only by way of incorporation. A Business partnership can be reorganised only into a Joint-Stock Company.

Business partnership is mentioned in the Civil Code of the Russian Federation (Article 50, Clause 2) among legal entities which are commercial organizations, along with Partnerships and Companies, as well as some other legal forms of organization. Business partnership has a general legal capacity and may enjoy civil rights and incur civil obligations necessary to perform any types of activity not prohibited by the federal laws unless such contradict the goals and objectives set forth in the Articles of Partnership or the Partnership Operating Agreement.

A Business partnership is not entitled to:
- issue bonds or other issuable securities;
- advertise its activities;
- be a founding (ordinary) member of other legal entities except for unions and associations.

According to a literal interpretation of the Civil Code of the Russian Federation, the provisions on subsidiary and dependent companies applicable to Companies do not apply to Business partnerships (Articles 105, 106 of the Civil Code of the Russian Federation).

With respect to Business partnerships there is a general rule that a partnership is obliged to hold a licence to carry out types of activities subject to licencing. A Business partnership can be established only by way of incorporation (creation of a partnership by way of reorganisation of a legal entity of a different legal form of incorporation is not allowed).

In accordance with the general provisions of the Civil Code of the Russian Federation, a partnership shall have a full name and is entitled to have an abbreviated name in languages of peoples of the Russian Federation and/or foreign languages. A Business partnership shall have a trade name which consists of its name and the words “business partnership”.

A partnership is deemed to be created at the time of its state registration carried out in accordance with the procedure set forth in Federal Law No.129-FZ dd. August 8, 2001 On State Registration of Legal Entities and Individual Entrepreneurs (hereinafter – the Law on State Registration). A partnership’s details shall be entered onto the Unified State Register of Legal Entities (hereinafter – “EGRUL”).

Business partnerships are one of the most discretionally regulated corporate forms of business which permits independent settlement of most issues related to partnership’s operations and management by partnership’s members and other persons (who are not members). In terms of their structure Business partnerships are a synthesis of Companies (first of all, insofar as limitation of members’ liability) and Partnerships (as regards flexibility of management). These aspects are expected to attract potential investors (including foreign ones) and encourage creation and development of innovative (including venture-type) projects in Russia. The Law, however, does not specify the necessity of application of partnerships only for innovative (including venture-type) activities which allows to apply the Business Partnerships in other areas as well and is confirmed by the current practice.
A partnership can be created only by way of incorporation. A Business partnership can be reorganised into a Joint-Stock Company.

In the context of innovative (including venture) business activities Partnerships as a legal form are intended to be used for the creation of a project (operating) company which is actually responsible for the implementation of an innovative project.


32 See Article 1473, Clause 3 of the Civil Code of the Russian Federation.

33 This issue is examined in more detail in Section 8 of the Memorandum.

34 This issue is examined in more detail in Section 14 of the Memorandum.
SECTION 4.
ADVANTAGES OF BUSINESS PARTNERSHIPS AS A LEGAL FORM OF INCORPORATION AND ISSUES OF CONCERN RELATED TO BUSINESS PARTNERSHIPS’ ACTIVITY

SUMMARY CONCLUSIONS OF THIS SECTION

The key advantage of the Business partnerships is the degree of discretion previously unknown in the Russian corporate law, which provides competent members of a partnership with significant degree of freedom as far as regulation of their relations goes. This is the essential difference between the Partnerships from such form as Joint-Stock Company or Limited Liability Company that are usually applied today as project companies for carrying out innovative (including venture) business activities. Partnership allows settling a large number of issues with great flexibility and, at the same time, provides investors with a "corporate cover" of a legal entity limiting risks of possible losses for investors, which aspect distinguishes it apart from Limited Partnership (this form also provides the required flexibility on a number of issues but does not allow efficient limitation of risks).

The laws also provide a special degree of protection of rights to results of intellectual activity owned by a Partnership, and this can be an important factor for implementation of innovative (including venture-type) business projects.

Issues of concern related to Business partnership’s activity are plenty at this stage, and this is mainly the result of conflict of laws and the recent appearance of this legal form of incorporation. Such issues will become fewer.

High degree of discretion in practice means stricter requirements to the quality of Business partnership’s documents, which fact shall betaken into account when drawing them up.

Among the main advantages of the Business partnerships (if compared to such legal forms of incorporation as Companies which are most often chosen by investors for implementation of investment projects) are the following:

1. Ample opportunities for application of different forms of Business partnership financing (See Sections 6.1.2, 6.1.3 of the Memorandum);
2. Flexible structuring of corporate management and a possibility of application of specific penalties for violation of the obligations set forth in the Partnership Operating Agreement (See Sections 8.1 and 9.2.9 of the Memorandum), possibility of application of foreign legal provisions to the Partnership Operating Agreement (See Section 9.2.5 of the Memorandum);
3. Special procedure for acquisition and termination of membership allowing significant flexibility in regulation (See Section 7 of the Memorandum);
4. The limited liability of a partnership and its members (See Section 10 of the Memorandum);
5. The possibility to introduce obligations on non-competition and confidentiality, exceptional degree of protection of rights to results of intellectual activity owned by a Partnership (See Section 9.2.6, Section 11 and Section 12 of the Memorandum).

Issues of concern related to Business partnership’s activity abound at this stage, and this is mainly the result of conflict of laws and of the recent appearance of this legal form of incorporation. Among the key problem areas mandatic issues the following can be listed:
1. The specific features of the status of persons who are parties to the Partnership Operating Agreement but are not members of the partnership;
2. Specific features of disposal of stake in the partnership’s charter capital (See Sections 7.2, 7.3, 7.4 of the Memorandum);
3. Specific features of participation of foreign individuals and applicability of restrictions on participation of foreign persons in a Partnership involved in strategic types of activities (See Sections 5.1, 5.2.1, 5.2.2, 9.2.8 of the Memorandum);
4. The following issues of concern related to the Partnership Operating Agreement can be mentioned specifically:
   a. Correlation of the provisions contained in the Articles of Partnership and the Partnership Operating Agreement with the obligation to enter into a Partnership Operating Agreement (See Section 9.2.2 of the Memorandum);
   b. Correlation of the terms and conditions of the Partnership Operating Agreement with the provisions of Russian competition law (See Sections 9.2.7, 9.2.6 of the Memorandum).
(c) peculiarities of application of specific penalties for violation of the obligations set forth by the Partnership Operating Agreement (See Section 9.2.9 of the Memorandum);

(5) the lack / potential difficulties with application of instruments used for Company financing in financing Business Partnerships (See Sections 6.1.4 and 6.2 of the Memorandum);

(6) potential issues arising in connection with judicial, etc, protection of rights of members and other persons who are parties to the Partnership Operating Agreement:
   (a) the procedure for exercise of the right to judicial protection (See Section 9.2.10 of the Memorandum);
   (b) risks related to courts filling the gaps in legislative regulation (See Section 9.2.11 of the Memorandum);

(7) Apart from that, in practice difficulties can arise in connection with the requirement concerning obligatory notarial certification of the Partnership Operating Agreement. Taking into account the provision of Article 163 of the Civil Code of the Russian Federation on notarial certification of a transaction meaning verification of the legitimacy of transaction, inclusion of any non-standard terms and conditions into the Partnership Operating Agreement may in practice result in them not being approved by a notary public, and this negates the cornerstone concept of the Law which stipulates that members enjoy a significant degree of freedom with regard to regulation of their relations.
SECTION 5.
POTENTIAL SUBJECTS OF BUSINESS PARTNERSHIP

SUMMARY CONCLUSIONS OF THIS SECTION

Both individuals and legal entities, irrespective of their nationality or country of incorporation, are permitted to participate in a Business partnership provided that at least one of the members is an individual. The Law provides for a possibility of establishing prohibition or restriction of participation of specific categories of individuals or legal entities in a Business partnership, but so far no such restrictions exist.

The Russian Federation, its constituent entities, municipalities, as well as foreign nations and their constituent entities, international governmental and non-governmental organisations lacking the status of legal entities may not become members of a Business partnership. It is not clear due to the absence of relevant legislative regulations whether foreign organisations lacking the status of legal entities are entitled to become members of a Business partnership or not.

From the perspective of the concept of Business Partnership, an investing partner and a partner possessing an intangible asset (particularly, the exclusive right to results of intellectual activity) are deemed as the main subjects of a Business partnership. For instance, an investing partner performs financing (including on a phased basis) by way of making a money contribution, and the other partner contributes an intangible asset to the charter capital. Their relations are regulated on a contractual basis by the Partnership Operating Agreement.

The number of Business partnership members shall be at least two and not more than fifty (unless a smaller number is stipulated in the Partnership Operating Agreement).

Both members of a partnership and other persons who have rights and obligations in relation to the partnership under the Partnership Operating Agreement may be entitled to participate in management of Business partnership’s current activities. The number of other persons participating in such Partnership’s management under the Operating Agreement is not restricted.

Participation in a Business partnership of only foreign individuals at the stage of incorporation may entail risks related to compliance with the labour and migration laws. These risks can be avoided in case of admitting an individual who is a Russian national as a member or election as the sole executive body.

There is uncertainty in respect of applicability of restrictions on participation of foreign legal entities in Business partnerships involved in strategic types of activity.

5.1. SUBJECT COMPOSITION
Potential subjects of a Business partnership are its members and other persons who are vested with rights and obligations in relation to this partnership under the Partnership Operating Agreement.

From the perspective of the concept of Business Partnership, an investing partner and a partner possessing an intangible asset (particularly, the exclusive right to results of intellectual activity) are deemed as the main subjects of a Business partnership. For instance, an investing partner performs financing (including on a phased basis) by way of making money contribution, and the other partner contributes an intangible asset to the charter capital. Their relations are regulated on a contractual basis by the Partnership Operating Agreement.

The Partnership Operating Agreement may provide for creation of a partnership’s management bodies composed only of other persons, as well as for compulsory approval by such of resolutions of the sole executive bodies, and this may entail actual removal of the members of such partnership from decision-making. This position of the authors of the law is frequently criticised by the legal community.

Both individuals and legal entities, irrespective of their nationality or country of incorporation, are permitted to participate in a Business partnership. The Law provides for a possibility of stipulating prohibition or restrictions of participation of particular categories of individuals or
Necessary restrictions to participation of foreign legal entities

5.2.1. SPECIFIC FEATURES OF PARTICIPATION OF FOREIGN INDIVIDUALS

The Law requires functions of a sole executive body of a Business partnership to be performed by its member who is an individual. When a Business Partnership is incorporated, its sole executive body is elected by a resolution of the Partnership’s founding members. Functioning of a Business Partnership in case of absence of an elected sole executive body is not allowed.

A person acting as a sole executive body is an employee of a Business Partnership; an employment agreement is signed between him/her and the Business Partnership.

For this reason, in practice difficulties can arise in a situation where among the members of a Business partnership at the time of incorporation there are no Russian nationals (for example, a Business Partnership is created by Russian investors who are legal entities and an individual who is a foreign national holding the exclusive rights to the results of intellectual activity). In such a situation, in accordance with the requirements of Article 8, Clause 2 of the Law, the individual who is a foreign national is to be elected the sole executive body of a Business Partnership at the time of incorporation of the latter which creates risks related to compliance with the labour and migration laws.

In terms of labour law, the election of a person to the position of a sole executive body is deemed to create labour relations with such a person (i.e. employment of such a person). Foreign nationals are not entitled to enter into labour relations with Russian legal entities, unless the requirements of migration law are complied with and the required permitting documents (employment visa, labour permit, as well as, in some cases, a permit for a Russian legal entity to engage foreign labour) have been obtained. The required documents are applied for by a relevant Russian legal entity. In its turn, it has an opportunity to apply for such documents only (a) upon its state registration and (b) provided it has a settlement account with a bank (in practice, opening of a settlement account takes, as a rule, from one to several weeks following the issuing by the tax authority of registered documents of a legal entity upon completion of state registration).

Employment of a foreign national in the absence of a permit to engage foreign labour and/or labour permit entails administrative penalties.

In order to avoid the risks specified above, members of a Business partnership being created need to accept an individual who is a Russian national as a member and elect as a sole executive body even if this is not necessitated by business purposes.

5.2.2. SPECIFIC FEATURES OF PARTICIPATION OF FOREIGN LEGAL ENTITIES

The Law permits introduction of special requirements at the level of a federal law in relation to the procedure for incorporation of Business partnerships with the participation of foreign legal entities. No requirements of this kind currently exist.

Business Partnership is an independent legal form of incorporation with a general legal capacity, i.e. entitled to carry out any types of activity not prohibited by the law, provided that the requirements for carrying out particular types of activity set forth by the law are complied with. In particular, Business partnerships are entitled to carry out activities of strategic importance for national defence and state security (under Federal Law No. 57-FZ “On the Procedure for Foreign Investment into Companies of Strategic Importance for National Defence And State Security” (hereinafter – “The Law on Strategic Companies”).

The Civil Code of the Russian Federation mentions Business partnerships among commercial entities, along with Companies, therefore, Business partnership is not a variation of Company.

According to a literal interpretation of the Law on Strategic Companies, it may be concluded that the Law on Strategic Companies is applicable to Companies and, therefore, does not embrace Business partnerships. However, such interpretation is unlikely to conform to the meaning of the Law on Strategic Companies. Such uncertainty creates risks for foreign investors with regard to Business partnerships. Respective amendments to the Law on Strategic Companies or an official interpretation on its applicability to Business partnerships would make it possible to resolve this uncertainty.

5.2.3. PARTICIPATION OF FOREIGN ORGANISATIONS LACKING THE STATUS OF LEGAL ENTITIES

The Law contains an exhaustive list of persons entitled to act as members of a Business partnership and mentions only individuals and legal entities among such persons (Article 4, Clause 1). At the same time, the Law has a provision that specific features of incorporation of Business partnerships with the participation of foreign organisations lacking the status of legal entities can
be provided for by a federal law (Article 6, Clause 8) (at present no relevant federal law has so far been adopted). Therefore, it is not clear due to the absence of appropriate legislative regulations whether foreign organisations lacking the status of legal entities are entitled to become members of Business partnerships.

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Liability of the officers of a corresponding legal entity in the amount of up to 50,000 rubles is provided for. Moreover, if such officers are foreign nationals, imposition of an administrative penalty on them may entail further difficulties with receiving a labour permit for another period as well as employment and other visas (if necessary). A legal entity’s liability shall be in the form of a penalty in the amount of up to 800,000 rubles or administrative suspension of activities for a period of up to 90 days. For a foreign national a penalty in the amount of up to 5,000 rubles with or without administrative removal (deportation) from the Russian Federation is possible. Furthermore, imposition of an administrative penalty on a foreign national may entail further difficulties with receiving a labour permit for another period, as well as employment and other visas (if necessary).
Charter capital of a partnership consists of the actual value of contributions made by its members and is divided into respective stakes among its members. The Articles of Partnership shall contain information about the total amount and composition of the charter capital; and the Partnership Operating Agreement shall contain information about the amount, composition, the deadlines and procedure for making individual contributions.

The absence of requirements to the minimum amount of charter capital and correlation of net assets and the charter capital amount in the context of venture investments should be positively evaluated, since this makes Business Partnerships a convenient form of business venture which can be unprofitable at the initial stage.

The possibility of making a contribution to the charter capital in the form of exclusive rights to results of intellectual activity together with their exceptional protection from partnership’s debt recovery and with the right to non-proportional participation in the partnership’s management facilitates efficient implementation of innovative (including venture-type) projects.

In practice, difficulties may arise in the course of monetary valuation of intangible assets (due to the absence of a universal method for valuation of such assets) and the necessity of confirming the monetary value established by a resolution of the members in the event of subsequent transfer of the assets.

Business Partnerships as a legal form are advantageous as the Law not only allows maximum flexibility when it comes to setting forth obligations of partnership members with regard to making contributions to the charter capital, but also provides for effective penalties for violation of such obligation. Apart from that, an important feature of the procedure for the formation of a Business partnership’s charter capital is the possibility of phased contributions in accordance with the provisions of the Partnership Operating Agreement. Moreover, the Law does not contain any time limits for paying up the charter capital.

In case of expulsion of a member due to failure to fulfil the obligation to make an in-kind contribution (for example, in the form of exclusive rights), the obligation to make a contribution goes over to other members, and such obligation may remain outstanding unless the Partnership Operating Agreement provides for a possibility of the monetary equivalent of such contribution being paid. This should be taken into consideration when drafting partnership’s documents.

The consequences of a member’s failure to fulfil the obligation to make initial and further contributions (in case the Partnership Operating Agreement provides for phased contributions) stipulated by the Law can be changed in (or excluded from) the Partnership Operating Agreement.

As the possibility of increasing or reducing the charter capital of a Partnership is not expressly stated in the Law, and, therefore, these procedures are not regulated by the Law, it is recommended to set them forth in the Partnership Operating Agreement.

To attract debt financing, it may be necessary to provide the members with the right to pledge their stakes (parts of stake). It would, therefore, be appropriate to develop relevant provision in the partnership’s documents.

In case a project is successful and further attraction of a wide range of investors and/or issuance of securities are needed, the Law permits transformation of a Business partnership into an Open Joint-Stock Company.
6.1. 
**CHARTER CAPITAL FORMATION**

6.1.1. 
**DEFINITION, AMOUNT AND OTHER INFORMATION CONCERNING CHARTER CAPITAL**

There is no definition of charter capital of a partnership in the Law; according to the provisions of the Law, it can be concluded that charter capital consists of contributions made by members and is divided into corresponding shares among such members. Such stakes do not have a par value and are evaluated in accordance with their actual value. The amount of separate contributions is specified in the Partnership Operating Agreement based on the contribution value assessment by the founders (members) according to the actual value of the contribution being made. As no procedure is provided for changing the value of contributions, the amount of a member’s stake is determined depending on the value of the contribution at the time when it is paid to the charter capital.

The Law does not stipulate a minimum amount of charter capital, nor does it contain requirements regarding correlation of a partnership’s net assets and the charter capital amount. Therefore, for Business partnerships there are no risks known to Companies which have a large charter capital and cut out activity which is unprofitable at the initial stage.

At the same time the Law provides for a possibility of the Government of the Russian Federation setting Business partnership’s capital adequacy standards for partnerships engaged in particular types of activity. Capital adequacy standards are compulsory for professional participants of the securities market, credit institutions, investment fund management companies, mutual investment funds and non-governmental pension funds, i.e. for entities whose activities are attended with increased risk, and are a tool which allows defining the company’s good standing in respective sectors.

Among the negative consequences of non-compliance with such standards, special emphasis should be on administrative penalties and the risk of a licence to perform the respective type of activity being revoked. Capital adequacy standards, as well as corresponding types of activity, have not been established so far. Even though establishing such standards can be justified in the fields of activities attended with increased risk, this goes against one of the main goals of introducing Business partnerships which consists in avoiding overregulation. In practice, the charter capital amount in many cases does not actually ensure safeguarding creditors’ interests, and in order to get guarantees of solvency in any case it is necessary to carry out due diligence on the contracting party.

Information concerning the total amount and composition of a Partnership’s charter capital shall be found in the Articles of Partnership. Terms and conditions concerning the amount, composition, deadlines and procedure for making contributions to such charter capital by members, as well as the procedure for changing the stakes of members of a partnership in its charter capital are all covered in the Partnership Operating Agreement. Information concerning the charter capital amount and members’ stakes are not entered into the EGRUL.

6.1.2. 
**ASSETS MAKING UP THE CHARTER CAPITAL**

Contributions to the charter capital can be made in the following forms:

- money;
- other assets;
- property rights;
- other monetisable rights, including property leasehold and exclusive rights to results of intellectual activity and intellectual property designations equated to them, goodwill.

The possibility of making a contribution to partnership’s charter capital in the form of exclusive right to the results of intellectual activity is essential for implementation of innovative (including venture-type) projects. First of all, in an area so specific these objects of rights can play a critical role and be the activity base. This circumstance, together with the possibility to entrench in the Partnership Operating Agreement the right of participation in management that would be disproportionate to the stake in the charter capital (as well as the right of veto in relation to certain issues and the right to non-proportional participation in profit distribution), makes positions of an investing partner and a partner holding the exclusive rights equal for successful project implementation. Secondly, these rights being provided to a partnership acquire exclusive immunity from partnership’s debt recovery.

As a general rule, valuation of in-kind contributions is carried out by a unanimous resolution of all members of partnership. The Law does not contain requirements as to the necessity of involvement of an independent appraiser in order to appraise a contribution made in the form of property, property rights or other monetisable rights (as opposed, for example, to making in-kind contributions to the charter capital of a Limited Liability or a Joint-Stock Company). Such appraisal shall be unanimously approved by a resolution of all members of such partnership, and in case of failure to achieve unanimous approval of such appraisal or if an appraiser is involved to carry out such appraisal, contributions are made in monetary form.

In practice, monetary valuation of intangible assets can cause difficulties since there is no common method for their valuation. Since generally valuation of intangible assets contributed is carried out by members without involvement of an independent appraiser, when they are further transferred, the issue of necessity to have this valuation certified for tax purposes may arise. Taking into account that the special procedure for monetary valuation of contributions to the charter capital is set forth in the text of the Law, a members’ resolution on approval of monetary valuation of intangible assets can be considered sufficient for endorsement of their value in case of further transfer. However, any judicial practice or
interpretations of competent authorities confirming this point of view are not available to date.

The following forms of contribution to the charter capital of a partnership are not acceptable:
- securities (except for Company bonds);
- stakes in charter capitals of other legal entities (since partnership is not entitled to be a member of other legal entities except for unions and associations);
- property and other objects of civil law rights specified in the Partnership Operating Agreement.

6.1.3. PROCEDURE FOR THE CHARTER CAPITAL FORMATION UPON INCORPORATION OF A PARTNERSHIP AND MEMBERS’ LIABILITY FOR VIOLATION OF THE OBLIGATION TO MAKE CONTRIBUTIONS TO THE CHARTER CAPITAL

Members of a partnership shall be obliged to make contributions to the charter capital in accordance with the procedure, in the amount and within the time limits set forth in the Partnership Operating Agreement. Termination of this obligation is not allowed. The Law does not contain requirements that a certain part of a partnership’s charter capital shall be paid up until state registration of such partnership (as opposed to the Law on LLC). The maximum payment time limit is not established by the Law either.

The distinctive characteristic of the procedure established for Business partnership’s charter capital formation is the possibility of phased contributions in accordance with the provisions of the Partnership Operating Agreement, and not subject to strict deadlines established by the law like it is in the case of a stake or a limited liability company.

The Partnership Operating Agreement can provide for phased contributions by members. The Law sets forth the following sanctions for non-fulfilment of the obligation to make a contribution (part of contribution) in case the Partnership Operating Agreement provides for phased contributions:
- Initial contribution – (a) payment of interest on the outstanding amount at the current refinancing rate of the Russian Central Bank, along with a penalty in the amount of 10% per annum from the outstanding amount for each day of delay, as well as (b) exclusion of a partnership’s breaching member from a partnership without recourse to the court;
- Further contribution – (a) exclusion of a breaching member of the Partnership from such partnership without recourse to the court as well as (b) transfer of the part of stake of a member in violation corresponding to the part of contribution that was not made to other members of a partnership in proportion to the amount of stakes they own or their value together with transfer to the of the obligation on making the corresponding contribution.

It is obvious that in the event when the obligation to make an in-kind contribution (for example, the exclusive rights are contributed) is transferred to other members, the fulfilment of the obligation to make such contribution can actually become impossible. Therefore, to avoid uncertainty, it is recommended for such cases to provide in the Partnership Operating Agreement for a possibility for other members to make either (a) a contribution most closely matched in its nature to the contribution that was not made (which, however, can be problematic, particularly, from the point of view of proportional allocation of the obligation) or (b) a contribution in a monetary equivalent in proportion to the corresponding part of contribution not made. For the purpose of fulfilment of the obligation to make a contribution of a member being excluded by other Partnership’s members, it would be appropriate to provide in the Partnership Operating Agreement for the possibility of their contribution of a money equivalent in proportion to the part of in-kind contribution that was not contributed.

The Partnership Operating Agreement may provide for other consequences of non-fulfilment of the obligation to make a contribution (part of contribution) including absence of such. Further information on liability for violation of the terms and conditions of the Partnership Operating Agreement can be found in Section 9.2.9 of the Memorandum.

6.1.4. INCREASING AND REDUCING THE CHARTER CAPITAL

The possibility of increasing or reducing the charter capital of a Partnership is not expressly stated in the Law, and, therefore, the procedure for increasing or reducing the charter capital is not regulated by the Law.

We believe that provision of a Partnership with additional financing by increasing its charter capital is possible by amendment of the Articles of Partnership and the Partnership Operating Agreement.

Taking into account that general information about the amount and composition of the charter capital is included in the Articles of Partnership (which can be amended pursuant to a unanimous resolution of members of a partnership⁴), and information concerning the amount, composition, deadlines procedures for members’ making contributions to the charter capital are given in the Partnership Operating Agreement (amendment of the terms and conditions of which is allowed upon agreement of the parties to the said Agreement, among who may be third persons⁵), resolutions on increasing the charter capital requires unanimity on the part of both all members of a partnership and third persons. Therefore, whenever necessity to increase the charter capital arises, any of the members of a partnership, as well as any third persons who are parties to the Partnership Operating Agreement, are entitled to block resolution on increasing the charter capital, and this can significantly complicate the additional financing of such Business partnership. It is allowed to entrench in the Partnership Operating Agreement a possibility of compulsion of a third person who is a party to the Partnership Operating Agreement to vote for amendments to the Partnership Operating Agreement provided all the members have unanimously adopted a resolution on increasing the charter capital. However, due to the specific characteristics of the Russian
procedural law, compulsion to fulfil such obligation is difficult to be implemented in practice.

In the context of change of a partnership’s charter capital the following situations may arise: (a) the already contributed capital may be reduced, or (b) the charter capital may be reduced in case the Partnership Operating Agreement provides for phased contributions by members, and after paying part of their contributions at certain stages members decide against paying the remaining amounts of contributions by way of introducing amendments into the Partnership Operating Agreement. As the possibility and procedure of reducing the charter capital are essential for a partnership to perform its activities, it would be appropriate to entrench in the Agreement the procedure for effecting such reduction (in particular, a possibility for members to decide on reducing the charter capital, the required number of votes, consequences of such decision and their effect on the Agreement and the Articles of Partnership).

It should be noted that since the Law does not contain provisions on reducing a partnership’s charter capital, it does not therefore provide for protection of creditors’ interests in case – such reduction is implemented either. Although the Law does not expressly set forth the obligation to introduce amendments into a partnership’s Articles of Partnership in the event of increasing or reducing its charter capital, it follows from consistent interpretation of the provisions of the Law that changes in the total amount and composition of a partnership’s charter capital shall be reflected in such partnership’s Articles of Partnership, as well as entered into the EGRUL.

6.2. PROVISION OF OTHER FINANCING

Among the key advantages of Business Partnerships as a legal form of incorporation mentioned in the Explanatory Note to the draft Law there is a possibility of Partnership’s flexible financing (on account of phased contributions to the charter capital). The Law indeed significantly increases attractiveness of Partnership as a legal form of incorporation in this aspect providing for a possibility to set forth an obligation of members to make contributions to a partnership’s charter capital with maximum flexibility and setting forth effective penalties for violation of such obligation (interest charge, penalty, risk of loss of a member’s right to the entire stake or a part thereof). The Law does not provide for an obligation to introduce amendments into the Articles of Partnership at every stage of the charter capital formation in order to register changes in its amount and composition. We believe that a resolution on introducing amendments to the Articles of Partnership reflecting the actual amount and composition of a partnership’s charter capital after making contributions shall be made in advance (i.e. before contributions are made) and no additional changes shall be necessary in the course of the charter capital formation.

The Partnership Operating Agreement may stipulate a procedure of increasing the charter capital on account of contributions made by members and/or third persons (including parties to the Partnership Operating Agreement).

It stands to mention that the Law does not provide for such an instrument of financing as contribution to Business partnership’s assets (as opposed to the case of Limited Liability Company). Below it is considered why such financing method may prove to be inefficient.

Provision of debt financing to a Partnership can result in some practical difficulties. Thus, when providing borrowed funds, credit institutions often expect to receive security in the form of pledge of stake in the Borrower’s capital. Pledge of stake in a partnership’s charter capital is generally not allowed. Other provisions may be contained in the Operating Agreement. In such case pledge of stake requires approval of all members of a partnership (unless a smaller number is provided for by the Operating Agreement). Therefore, at parties’ discretion the Operating Agreement may provide for the right of members to pledge his/her stake and set forth the number of members’ votes required for approval of such pledge.

In accordance with the Law on JSC, if the value of a company’s net assets remains lower than its charter capital as of the end of the financial year following the second financial year and each subsequent financial year at the end of which the value of the company’s net assets proved to be lower than its charter capital, the company shall be obliged, within six months following the end of the corresponding year, to resolve either: (1) on reduction of its charter capital to an amount not exceeding the value of its net assets or (2) on its liquidation. If at the end of the second financial year or each subsequent financial year the value of a company’s net assets proves to be lower than its charter capital, such company shall be obliged to resolve on its liquidation within six months after the end of the financial year. If a company fails to fulfil its obligations in time, its creditors shall be entitled to demand from such company early fulfillment of its respective obligations and, in the event that early fulfillment is impossible, termination of obligations and compensation of all related losses, while competent authorities or local self-government authorities shall be entitled to submit to the court a demand for liquidation of such company (See Article 35 of the Law on JSC). The same rules are set forth in the Law on LLC.

Thus, for example, in accordance with Decree of the Bank of Russia No. 139-I dd. December 3, 2012 “On Mandatory Ratios for Banks”, capital adequacy standard of a bank specifies requirements for a minimum amount of the bank’s capital necessary to cover credit, operating and market risks and is defined as correlation of the bank’s capital and its risk-weighted assets.

This issue is considered in greater detail in Section 12 of the Memorandum.

In accordance with the Law on JSC, in case of stake being paid in kind, for the purposes of fair market valuation of the property contributed as payment for the stake, an independent appraiser shall be involved unless otherwise provided by a federal law. In this case monetary value received in the result of property valuation carried out by founders and the Board of Directors (Supervisory Board) of a company shall not exceed the value received in the result of property valuation carried out by an independent appraiser. In accordance with the Law on LLC, an independent appraiser shall be involved for the purpose of valuation of member’s in-kind contribution, if par value (or par value increase) of the member’s stake in the company’s charter capital paid up in kind is over twenty thousand rubles, and unless otherwise provided by a federal law. In this case par value or par value increase) of the member’s stake paid up in kind shall not exceed the value received in the result of property valuation carried out by an independent appraiser.

See Article 9, Clauses 2, 4 of the Law.

See Article 6, Clauses 2, 6 of the Law.

See Section 13.2 of the Memorandum.
SECTION 7.
STAKES IN THE CHARTER CAPITAL OF A PARTNERSHIP

SUMMARY CONCLUSIONS OF THIS SECTION

In general, regulation of the procedure for accounting and transfer of stakes in the charter capital of a Business partnership seems to be adequate to the needs of turnover, also in the context of venture investment. Thus, a partnership keeps a register of members and their stakes; information about the members is also entered into the EGRUL maintained by tax authorities. Transfer of stake is effected based on notarised transactions. Transactions with a view of subsequent disposal of stakes also need to be notarised for the purposes of abuse fighting (so called raiding). The Law provides members with ample opportunities to regulate the procedure for stake transfer stakein a partnership’s documents; this should be taken into consideration when a partnership’s documents are drawn up.

The procedure of new member admission to a partnership as a result of them making a contribution to the charter capital is not regulated by the Law; it is, therefore, recommended to stipulate this specifically in the Partnership Operating Agreement.

Among the key differences between the procedure for exercising the property right in the framework of Business partnerships and that in the framework of Companies is the possibility of (a) exclusion of a member’s property right and/or a member him/herself regarding the acquisition of a stake; (b) introduction of an alternative procedure for exercising the property right instead of the one established by the Law; and (c) as a general rule, absence of requirements concerning the necessity of notarial certification of the authenticity of the signature on the statement of waiver of the property right.

As opposed to Limited Liability Companies, Business partnerships have a wider range of instruments for regulation of stake transfer due to the possibility of setting different prices of stake for different purchasers and different procedures for obtaining approval of stake (part of stake) transfer depending on the grounds for transfer and other circumstances.

As opposed to Limited Liability Companies, a person who has purchased a stake in a partnership’s charter capital acquires membership (and, correspondingly, a member’s rights and obligations) not from the time of notarial certification of the stake transfer agreement, but from the time of partnership’s notification of a stake transfer having taken place. This difference is rather of administrative nature and is not significant.

To avoid situations where, as a result of disposal of stake by a person acting as the sole executive body, a partnership is not entitled to carry out its operations, it would be appropriate to set a deadline for notification by such person of disposal of his/her stake, which will provide an opportunity to timely assign their powers to another person.

It would be appropriate to entrench in the Partnership Operating Agreement a prohibition for a person purchasing stake in a public bidding process to perform apportionment in kind of a part of such partnership’s assets corresponding to the stake they acquired or to regulate what subsequently becomes of such stake (for example, whether it is transferred to the partnership) and to set forth a procedure for payment of compensation to the purchaser of such stake.

Cessation of membership by way of withdrawal is possible only in case this option is provided for in the Operating Agreement; the stake of a member who ceased their membership is transferred to the partnership which acquires the obligation to pay to such member the fair value of their stake; as a general rule, apportionment of a corresponding stake in kind is not allowed.
The Law contains some restrictions with regard to possibility of new members being admitted to a Business partnership, as well as possibility of termination of membership which are explored in greater detail below.

A person may acquire membership in a Partnership by way of (a) admission as member, and (b) purchase of stake in its charter capital from another member of such partnership or from such partnership itself.

It stands to mention that the composition of membership of a Business partnership, as well as their details, are entered into the EGRUL. The scope of details of Business Partnership's members in general conforms to the scope of details of the members of other legal entities to be entered into the EGRUL in accordance with Article 5, Clause 1, Sub-clause "d" of the Law on State Registration. As opposed to Limited Liability Companies, information about stakes in the charter capital owned by Business partnership's members (including the amount and value of stakes) are not entered into the EGRUL. A partnership shall keep a register of members with each member’s details, information about the amount of their stake in the partnership’s charter capital and their contribution. We believe that information about the amount of member’s stake shall be specified as a percentage ratio of monetary valuation of the contribution made by a member into the partnership charter capital and total amount of the charter capital.

### 7.1. ENTRY INTO A PARTNERSHIP BY MAKING A CONTRIBUTION TO THE PARTNERSHIP’S CHARTER CAPITAL

The Law provides for acquisition of membership in an exiting partnership by unanimous resolution of other members (Article 11, Clause 1 of the Law). It is referred to the cases when a third person wishes to enter into a partnership bymaking a contribution to its charter capital but not to the cases when a person purchases a stake in the charter capital of a partnership from partnership's members or a partnership itself (as these cases are a subject of separate regulation, as it is considered below).

As was mentioned above, the procedure for new member admission into a partnership as a result of his/her contribution to the charter capital (i.e. actually increasing of the charter capital based on willingness of a third person) is not regulated by the Law, it is, therefore, recommended to stipulate it in the Partnership Operating Agreement.

### 7.2. PURCHASE OF STAKE IN PARTNERSHIP’S CHARTER CAPITAL

Disposal by a member of his/her stake in the partnership’s charter capital, as a general rule, is possible, in case of the relevant willingness of such member. The Law also provides for a possibility of mandatory buyout of member’s stake as part of performance of an option agreement in relation to stakes or transfer of stake in case of member’s failure to fulfil payment obligations.

Unless otherwise provided by the Partnership Operating Agreement, a partnership and its members enjoy the pre-emption right in respect of stake in the charter capital alienated by a member or such partnership to a third person. In general, the procedure for exercise of the pre-emption right to stake provided by the Law is the same as the one set forth for Limited Liability Companies. The key difference of the procedure applied in case of Business Partnerships is the possibility of (a) exclusion of the stake pre-emption right of a member and/or a partnership itself by introducing a relevant provision into the Partnership Operating Agreement; (b) establishment of a procedure for the exercise of the pre-emption right alternative to that set forth by the Law in the Operating Agreement; (c) absence of a requirement to mandatory notary certification of authenticity of signature on the statement of waiver of pre-emption rights (assuming that a requirement to that effect can be set forth in the Operating Agreement).

In connection with exercising the pre-emption right to stake, the Law provides for a possibility of fixing the price of stake as a set amount or based on the amount of the partnership’s net assets. This is different from regulation of the Law, for instance, from the Law on LLC, which also allows using other pricing criteria the list of which is open. There is no special regulation in relation to the procedure for valuation of net assets. Therefore, we believe that, like in the case with Limited Liability Companies, the procedure established for Joint-Stock Companies may be applied. It is important that in the context of exercise the pre-emption right the Law provides for different stake purchase prices for different persons.

A Partnership Operating Agreement may also set forth the necessity to obtain a partnership’s members’ approval of transfer of stake in the charter capital to third persons and provide for a variety of procedures for such approval depending on the grounds for transfer and other circumstances. The Law, therefore, provides a wider range of instruments for regulation of stake transfer (acquisition of membership in a partnership by
third persons) than the Law on LLC does. In particular, for example, the Law allows setting a requirement for mandatory members’ approval of purchase of a stake (part of stake) in the charter capital of a Partnership belonging to another member, who is an individual, by the spouse of such person in case of division of community property, which is not expressly provided for Limited Liability Companies.

A transaction aimed at transfer of stake in the charter capital of a partnership, as well as a transaction providing for an obligation to perform a transaction aimed at disposal of stake in certain circumstances or performance of counter obligation by the other party is to be concluded in writing and is subject to compulsory notary certification. Therefore, the Law contains increased requirements to the form of settlement of transactions with stakes in a Business Partnership compared to the Law on LLC.

As opposed to Limited Liability Companies, a person who has purchased a stake in the charter capital of a partnership acquires membership (and, correspondingly, a member’s rights and obligations) not upon the notary certification of the stake transfer agreement but upon notification of the partnership of the stake transfer that has taken place, executed in writing with evidence of such transfer enclosed before the end of the business day following the day of settlement of the transaction. The Law does not specify who shall notify the partnership and tax authorities in order to introduce changes into the composition of the members to the EGRUL. As the Purchaser of stake is more interested in notification, it is reasonable that the Purchaser shall ensure notification unless the transaction parties agree otherwise.

### 7.5. TERMINATION OF MEMBERSHIP IN A PARTNERSHIP

The Law allows termination of membership by withdrawal only in case this possibility is provided for in the Operating Agreement, and establishes an obligation of a member to notify of such withdrawal three months before the expected cessation of membership in a partnership. Stake of a member who ceased his/her membership is transferred to a partnership, which acquires the obligation to pay to such member the fair value of the stake in accordance with the accounting statements data as of the last accounting date preceding the submission of statement on termination of membership. Apportionment of a corresponding stake in kind is not allowed (including the case when property rights or the exclusive rights were contributed to partnership’s charter capital; such rights remain in partnership’s use for the period they were contributed) unless otherwise provided by the Partnership Operating Agreement.

### 7.6. EXPULSION OF A MEMBER FROM A PARTNERSHIP

A member may be excluded from a partnership with or without recourse to the court. Judicial procedure is applied in cases in general the same as those set forth by the Law on LLC, namely in case when a member violates his obligations imposed on him by the Law or the Partnership Operating Agreement, or by his action (inaction), undermines partnership’s business or makes it difficult.

Extrajudicial procedure is applied in case of failure to timely fulfil the obligation to make the initial or further contributions or part of contribution to the charter capital, and a unanimous resolution of all members is required for that.

In both cases stake of an excluded member is transferred to the partnership which acquires an

### 7.4. PLEDGE OF STAKE IN PARTNERSHIP’S CHARTER CAPITAL

As a general rule, a member of a partnership is not entitled to pledge his/her stake in the partnership’s charter capital to another member of that partnership or to a third person. At the same time the Law allows setting forth in the Partnership Operating Agreement a member’s right to pledge his/her stake with the consent of all or some of the members of a partnership (according to the procedure stipulated by the Partnership Operating Agreement). In accordance with the Law, in case of foreclosure the pledged stake in a partnership’s charter capital or its sale through a public bidding process, a person who purchases such stake through a public bidding process acquires rights and obligations of a member with the consent of the other members. The Law does not regulate the case when members deny membership to the Purchaser of a stake. that it is impossible to apportion in kind for such a Purchaser of a part of Partnership’s assets corresponding to the stake he purchases, and to specify what happens further to such stake (for example, whether it is transferred to a Partnership) and set forth a procedure for compensation payment to the Purchaser of such stake.
obligation to pay its fair value to such member. In accordance with Article 11, Clause 6 of the Law, fair value is calculated in accordance with data contained in accounting statements as of the last accounting date preceding the date of coming into force of court decision on such member’s exclusion or the date of adoption of a resolution on exclusion of such member without recourse to the court, as relevant.

These rules are in general the same as the ones contained in the Law on LLC in respect of payment of stake value to a member excluded from a company. In relation to stakes purchased by a member as a result of contribution of assets to the charter capital there is a stable judicial practice protecting the right of such member to receive not the fair (i.e. calculated in accordance with data contained in accounting statements) but the market value of such stake confirmed by the findings of expert review and shown on the books of a company. This may be important in cases when the market value of a company’s assets is significantly higher than that calculated in accordance with data contained in accounting statements due to its value depreciation in statements. We believe that such practice should be applied also to Business Partnerships.

44 See Section 6.1.4 of the Memorandum.
45 See Article 15 of the Law, Article 21 of the Law on LLC.
47 The Law on LLC allows to restrict transfer of shares in charter capital of a company in case such transfer is performed as inheritance or other legal succession as well as to restrict such transfer in case of sale through a public bidding process (See Article 21 of the Law on LLC).
48 See Article 12, Clause 3 of the Law.
49 See Article 18, Clause 3 of the Law.
50 See Section 15 of the Memorandum.
51 See Article 16, Clause 1 of the Law.
52 See Article 16, Clause 2 of the Law.
SECTION 8.
CORPORATE MANAGEMENT MODELS IN A BUSINESS PARTNERSHIP

SUMMARY CONCLUSIONS OF THIS SECTION

The key characteristic of Business Partnership distinguishing it from other forms of incorporation is the maximum freedom of choice of the model of management by parties to the Partnership Operating Agreement and almost insignificant imperative (i.e. mandatory and restricting members’ freedom of discretion) requirements of the Law.

It is mandatory for a partnership to have a sole executive body (General Director, President, etc.), whose functions may be performed only by one of the members who is an individual. Powers of a sole executive body are specified in the Law. This is the only body that can act on behalf of a partnership when dealing with third persons.

Among the applicable management model options are the following ones: (a) model involving active participation of all members of a partnership and of other persons who have the right to manage its activities; (b) the partner model; (c) the corporate model and (d) other models, including a mixed one. Certainly, the chosen model may be reviewed and changed in the course of development of partnership’s activities.

When choosing a management model, it is also necessary to take into account (1) the specific nature of a partnership’s activities and related risks; (2) the number of members of a partnership and of other persons participating in its management; (3) whether they are individuals or legal entities; (4) whether they are Russian or foreign nationals; and (5) the possibility and reasonability of participation in management disproportionate to amounts of stakes.

8.1. MANAGEMENT MODEL OPTIONS FOR BUSINESS PARTNERSHIPS
The Law provides a choice of a management models at the discretion of the parties to Partnership Operating Agreement. The system, structure and powers of management bodies of a partnership, the procedure for their creation, performance and termination of activities are specified in the Partnership Operating Agreement, taking into account several imperative requirements set forth by the Law. The procedure and deadlines for election of a partnership’s sole executive body, operating procedures and its adoption of resolutions shall be established by the Articles of Partnership. The Law requires existence of a sole executive body in a partnership (General Director, President, etc.) whose functions can be performed only by one of the members who is an individual. This is the only body that may act on behalf of a partnership when dealing with third persons.

A sole executive body shall be elected in accordance with the procedure and for the period specified by the Articles of Partnership, and if such procedure and time period are not specified by the Articles of Partnership, by a unanimous resolution of all members of a partnership for the entire duration of a partnership. When a partnership is incorporated, its sole executive body shall be elected by a resolution of its founding members. The competence of a sole executive body includes the following:

- acting on behalf of the partnership without a power of attorney, including representation of its interests and settlement of transactions on behalf of a partnership, participation in the Partnership Operating Agreement on behalf of a partnership;
- issuance of powers of attorney on behalf of a partnership;
- employment of the partnership’s employees, their transfer and dismissal, use of incentives and imposition of disciplinary sanctions;
- informing creditors and other persons who enter into civil law relations with the partnership the content of the Partnership Operating Agreement; and
- maintenance of a partnership’s membership register.

The system of other management bodies may include the board of directors, supervisory board, board of management, directorate, committee, presidium of a partnership and other bodies. Apart from that, the Partnership Operating Agreement may provide for the right of veto of certain persons (for example, a financial investor for protection of his
rights) in respect of certain issues. The specified list is approximate and may be amended at the discretion of the parties to the Partnership Operating Agreement. Depending on the essence of provisions set forth in the Partnership Operating Agreement, these bodies may vary in composition and include either all members of a partnership (their representatives) or some of them, as well as third persons who do not participate in the charter capital of such partnership.

When choosing a management model, the following aspects shall be taken into account:
- the profile of the partnership’s activities and related risks;
- the number of members and other persons entitled to participate in management in accordance with the Partnership Operating Agreement;
- whether the abovementioned are individuals or legal entities;
- whether the abovementioned are Russian or foreign nationals (entities); and
- the possibility and reasonability of participation in management disproportionate to amounts of stake.

Let us consider several management models. Since creating a sole executive body is compulsory, all these bodies are created in addition to it.

The models described below demonstrate options of management system construction, and in practice, certainly, combination of different models is possible. It is also necessary to note that apart from creation of a body, its competence is essential. The degree of involvement of such body into management of a partnership to a large extent depends on such competence.

8.2. THE MODEL INVOLVING PARTICIPATION OF ALL PERSONS ENTITLED TO TAKE PART IN ROUTINE MANAGEMENT OF BUSINESS PARTNERSHIP

This model envisages active involvement of all members of the partnership and of other persons in its management due to referring a range of decisions to the competence of the general meeting of members and other persons.

In accordance with the Law, a resolution on introducing amendments to the conditions of the Partnership Operating Agreement shall be adopted by the general meeting unanimously, and each member of the general meeting shall have one vote. In relation to other issues a different number of votes of members of the general meeting may be required to adopt a resolution, as well as non-proportional correlation of votes of members and other persons.

In relation to issues that, in accordance with the Law, shall be resolved by members of a partnership, it is necessary to stipulate that only members have the right to vote. In relation to other issues, the Partnership Operating Agreement may provide for separate voting of members and of other persons entitled to participate in management. As the Law does not regulate the procedure for adoption of a joint resolution by members and other persons, the procedure for the general meeting shall be set forth in the Partnership Operating Agreement.

In practice it would be appropriate to authorise the general meeting to approve a range of resolutions adopted by a sole executive body, including those pertaining to settlement of transactions essential for partnership’s operations (for example, transactions on disposal of intellectual property items, property important for a partnership, transactions in which the partnership may undertake significant obligations), transactions of stake for a person performing functions of a sole executive body.

This model allows taking into account the opinions of persons entitled to participate in management to the greatest possible effect. The difficulty of convening the general meeting if the number of members is large and potential protraction of terms for adoption of resolutions on issues put up for consideration at the meeting are the main disadvantages of such model. Therefore, the model considered is most suitable for Business Partnerships with a small number of persons entitled to participate in its management.

When this model is applied, the Partnership Operating Agreement shall provide for a procedure of convening and holding the general meeting, a quorum and number of members required for adopting resolutions, rules for record of votes (i.e. how the number of votes of persons who take part in voting is defined). For partnerships with a large number of members and other persons it would be appropriate to define the competence of the general meeting taking into account that excessively extensive powers of the general meeting may in practice protract terms for adoption of resolutions and impair management efficiency.

8.3. PARTNER MODEL

The partner model envisages involvement of all partnership’s members in management, and their meeting can be named, for example, the general meeting of members / council of partners. As opposed to the partner model applied by foreign organizations analogous of Business Partnerships, existence of a sole executive body in a Russian Business Partnership is mandatory.

The law provides for a number of issues to be resolved by the members of the council of partners unanimously. Among them are the following:
- Approval of fulfilment by a member (members) of partnership on behalf of the partnership of obligations before creditors if, in case of absence lack or insufficiency of property for extinguishment of a partnership’s debt, foreclosure upon the exclusive rights to the intellectual property owned by a partnership is required;  
- expulsion of a member from a partnership without recourse to the court;  
- introducing amendments to the Articles of Partnership;  
- monetary valuation of assets and other objects of civil law rights contributed to the charter capital of a partnership, unless otherwise provided by the Partnership Operating Agreement;  
- new members admission to a partnership;
SECTION 8

− approval of pledge of a stake in the partnership’s charter capital by its member66;
− election of a sole executive body, unless a different procedure is set forth in the Articles of Partnership67;
− reimbursement of a member’s expenses borne in connection with auditing and other services related to auditing activities in case of audit or inspection at its request68; and
− decision on reorganization in the form of transformation69.

To adopt resolutions on other issues which, in accordance with the Partnership Operating Agreement, shall be adopted by members of a partnership without other persons, a smaller number of votes of members of such partnership’s council may be required for adoption of a relevant resolution.

Similarly to the general meeting in the model described in Section 8.2 of the Memorandum, the council of partners may be authorised to approve certain resolutions of the sole executive body (including resolutions on settlement of major transactions and transactions of interest for the person who acts as the sole executive body). Other powers may be also referred to the competence of the council of partners by way of entrenching them in the Partnership Operating Agreement.

8.4. CORPORATE MODEL

The corporate model includes a system of management bodies consisting of a sole executive body, the general meeting, as well as the presidium (management board, top management, and committee) of a partnership. It can be organised in the same way as the management model applied by companies and the models applied at organisations that are analogous to Business Partnerships70. As opposed to the models discussed above, in addition to the sole executive body in a partnership more than one management body is created.

A sole executive body manages current operations of a partnership within the limits of its competence and authority. The general meeting consists of all members and other persons entitled to participate in management and adopts resolutions by voting as specified in Section 8.2 of the Memorandum. The presidium exercises overall management of a partnership’s business, except for resolutions on issues referred to the competence of the general meeting and the sole executive body. The presidium may consist of members of a partnership or managers who are not members, both elected or appointed for a period specified in the Operating Agreement.

When this model is chosen, it is necessary to provide in detail for accountability of the presidium to other management bodies of the partnership, procedures for election or appointment, liability of its members, as well as grounds for their potential removal.

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54 See Article 18, Clause 1 of the Law.
55 See Article 18, Clause 3, Article 9, Clause 2, Sub-clause 7 of the Law.
56 See Article 19, Clause 1 of the Law.
57 See Article 6, Sub-clause 10, Clause 7 of the Law.
58 See Article 6, Clause 2 of the Law.
59 See Section 8.3 of the Memorandum.
60 See Article 3, Part 4 of the Law.
61 See Article 3, Part 4 of the Law.
62 See Article 7, Part 2 of the Law.
63 See Article 9, Part 4 of the Law.
64 See Article 10, Part 4 of the Law.
65 See Article 11, Part 1 of the Law.
66 See Article 15, Part 2 of the Law.
67 See Article 18, Part 3 of the Law.
68 See Article 20, Part 1 of the Law.
69 See Article 24, Part 2 of the Law.
70 See Section 2.5 of the Memorandum.
SECTION 9.
DOCUMENTS REGULATING ACTIVITIES OF A BUSINESS PARTNERSHIP

SUMMARY CONCLUSIONS OF THIS SECTION

The Articles of Partnership are a constituent document of a partnership. It shall contain a number of provisions specified in the Law and is subject to state registration.

The Partnership Operating Agreement is not a constituent document; it regulates the rights and obligations of members of a partnership, as well as (if applicable) the rights and obligations of persons who are not members of such partnership, a procedure and time limits for the exercise of rights and fulfilment of obligations, the limits and extent of participation of members and other persons involved in partnership management.

The Partnership Operating Agreement is a binding document, as are the Articles of Partnership; the Articles of Partnership and the Operating Agreement are of complementary nature, and their scopes shall not overlap either fully or partially.

The requirement for notary certification of the agreement at the location of a partnership’s registered office may in practice cause difficulties due to common unwillingness of notaries public to deal with agreement forms unknown to them.

Special attention needs to be paid to the initial development of the Partnership Operating Agreement as a unanimous resolution by the parties shall be required to amend it, while any of the parties may block the adoption of corresponding respective resolution.

All members of a partnership shall be parties to the Partnership Operating Agreement; other persons and the partnership itself may also be parties thereto (if this possibility is provided in its Articles of Partnership).

The scope of Operating Agreement is covered in the Law in greater detail than that of Shareholders’ Agreement and Participation Agreement.

If there is a foreign entity, the Operating Agreement can be subject to the foreign law; in this case the risk of invalidation of its provisions due to contravention of some mandatory provisions of Russian law is in general lower than the corresponding risk in respect of shareholders’ agreements.

The terms and conditions of the Partnership Operating Agreement related to restriction of rights to financial, personal labour or other forms of participation of the parties to the agreement in activities of other legal entities or individual entrepreneurs may violate the provisions of the Russian competition law.

If a number of characteristic features specified in the Competition Law are present, entering into the Partnership Operating Agreement, as well as further transfer of stake (part of interest) in the charter capital of a partnership may require prior approval of the Federal Antimonopoly Service of the Russian Federation (hereinafter – “the FAS”) or its subsequent notification.

Entering into the Partnership Operating Agreement may also require approvals, in accordance with the Law on Foreign Investments and the Law on Strategic Companies.

Enforcement of certain obligations under the Operating Agreement may be problematic in Russia, taking into account its legislation and law enforcement practice.

The possibility of invalidation of resolutions by a partnership’s management bodies in case of violation of the terms and conditions of Operating Agreement makes it a more efficient instrument of corporate regulation than Participation Agreement and Shareholders’ Agreement.
In this section we analyse the main documents regulating activities of Business Partnerships (the Articles of Partnership and the Partnership Operating Agreement).

9.1. ARTICLES OF PARTNERSHIP

The Articles of Partnership are the only constituent document of a Business Partnership and is signed by all founders of a partnership.

The Law contains minimum requirements for the Articles of Partnership, as well as for the scope of the Articles of Partnership. Thus, the Articles of Partnership of a partnership shall obligatorily include the following information:

- the full legal name of a partnership;
- the objectives and types of the activity carried out by the partnership;
- the partnership’s location;
- the total amount and composition of the partnership’s charter capital;
- details about the partnership’s filing system, the licence number and the location of the notary public at the place of partnership’s registered office who certifies and keeps the Partnership Operating Agreement;
- details of the existence, or absence, in a partnership of the Partnership Operating Agreement and participation or non-participation of the partnership itself in such Operating Agreement;
- the procedure and deadlines for election of the sole executive body of a partnership, its operating procedure and its adoption of resolutions.

According to a literal interpretation of the Law, it can be concluded that this list is exhaustive, however, the Law does not provide for any adverse effect if additional provisions are included into the Articles of Partnership. Apart from that, as follows from the implication of the
Law, Business Partnerships are a discretionally regulated legal form of incorporation, that is why it would be appropriate to consider inclusion of other (not provided by the Law) provisions allowable into the Articles of Partnership.

Any amendments to the Articles of Partnership shall be made only pursuant to a unanimous resolution of all members of a partnership and are subject to state registration.

9.2. 
**PARTNERSHIP OPERATING AGREEMENT**

9.2.1. 
**OVERVIEW COMMENTS**
The Partnership Operating Agreement regulates the rights and obligations of members of a partnership, as well as the rights and obligations of persons who are not members of this partnership, a procedure and time limits for the exercise of rights and fulfilment of these obligations, limits and extent of participation of the members and other persons involved in partnership management. The Partnership Operating Agreement in its legal nature is a bilateral (in case there are two members of a partnership) or multilateral civil law agreement and, therefore, is governed by the general provisions of the Civil Code of the Russian Federation on obligations and agreements.

To amend the Agreement, mutual consent of all parties is required, and each party to the Agreement, regardless of the member status in a partnership (and in case of having such status – regardless of the stake in the partnership’s charter capital) has one vote when such resolution is being adopted which equals the rights of the parties. This is the fundamental distinction between Business Partnerships and companies in which the number of votes a member (shareholder) is entitled to directly depends on the number of shares s/he owns (the amount of stake). In practice, difficulties may arise in case of amendments being introduced into the provisions of the Agreement on proportionality of members’ participation in management of a partnership because even one dissenting party who is not a member of the partnership may block the adoption of such resolution. In such cases, where parties fail to reach an agreement, the Law provides for a possibility of amendment of terms and conditions of the agreement by virtue of a court decision. That is why, in practice it is of utmost importance to pay serious attention to development of the partnership’s documents at the initial stage, prior to its creation. In practice situations may arise in which it is necessary for the parties to the Operating Agreement to have guarantees that a planned resolution on amendments to the Operating Agreement will not be blocked by one of the parties (this may, for example, be important for fundraising reasons because financial investors need predictability of a member’s conduct in relations to certain issues). If members initially agree to such rules of conduct, in order to implement them, the obligations of the parties to vote in a certain way as well as ensure issuance of irrevocable power of attorney/powers of attorney for voting on a certain range of issues could be stipulated in the Partnership Operating Agreement. A Partnership Operating Agreement shall be concluded when a partnership is incorporated by virtue of a resolution of the meeting of its founding members on incorporation of a partnership. The Operating Agreement shall be executed in writing and is subject to notary certification (failure to comply with the mentioned requirement entails invalidation of the agreement). Notary certification and storage of the agreement shall be performed by a notary public at the location of the partnership’s registered office. The requirement for notary certification at a specific location may in practice cause difficulties due to the common unwillingness of notaries public to deal with agreement forms – unknown to them.

As the Operating Agreement is not a constituent document of a partnership, state registration of the Agreement and entering its details into the EGRUL is not required (just as in case of Shareholders’ Agreements and Participation Agreements).

Entering into this Agreement is a compulsory condition of participation of third persons who were later accepted as members in a Business Partnership, and such persons accede to the Agreement by signing an accession agreement. In practice, it is possible to try and simplify the procedure for new members admission to a Business Partnership by setting forth in the Partnership Operating Agreement a mechanism of accession of new parties without making all parties to the Agreement sign an accession agreement (i.e. in this case a signature of a new member will suffice). But it should be taken into account that in practice this mechanism may cause difficulties, for example, due to refusal of a notary public to certify an accession agreement not signed by all parties to the Operating Agreement.

As the Partnership Operating Agreement is a non-public document, parties to the Operating Agreement are not entitled to refer to its provisions when dealing with third persons except for cases when they prove that such third person was aware or should have been aware of the content of the Agreement. A sole executive body of a partnership is responsible for briefing the partnership’s creditors and other persons who enter into civil law relations with the partnership with the relevant provisions of the Operating Agreement. As the Law mentions this among the authorities of a sole executive body and does not contain explicit reference that it is an obligation of a sole executive body of a partnership, it would be reasonable to entrench these authorities of a the sole executive body as his/her obligations in the Articles of Partnership.

Previously the authors of the Law provided members (shareholders) of Companies with an opportunity to enter into Participation agreements and Shareholders’ Agreements. Let us consider below the main distinctive features of Partnership Operating Agreement from these instruments of corporate regulation and the specific features of regulation of partnership’s operations by means of Operating Agreement.
9.2.2. CORRELATION WITH THE ARTICLES OF PARTNERSHIP AND REQUIREMENT TO ENTER INTO SUCH AN AGREEMENT
The Law does not explicitly stipulate whether entering into an Operating Agreement is compulsory limiting itself to the wording "shall be entered into when a partnership is incorporated".

The Law sets forth that the Operating Agreement may contain provisions on any issues not in conflict with the law, except for cases where, in accordance with the Law, such provisions shall be contained in the Articles of Partnership. Hence, it follows that, as a general rule, the scope of the Articles of Partnership and the Operating Agreement shall not overlap (fully or partially) and the Articles of Partnership and the Operating Agreement are of complementary nature. If, nevertheless, provisions on certain issues are duplicated in the Articles of Partnership and the Operating Agreement, it is important to ensure that such provisions are not in conflict with each other.

Moreover, the Partnership Operating Agreement contains the essential conditions for creation of a partnership and its operation (such as information about the scope of a partnership’s operations, provisions on the amount and composition of contributions to the charter capital of a partnership and the deadlines and procedures for making such, etc.) without which a partnership is, obliquely, unable to carry out its activities.

In view of the foregoing, the Partnership Operating Agreement may be considered an obligatory document of a partnership along with its Articles of Partnership.

9.2.3. PARTIES
In accordance with the Law, all members of a partnership are obligatorily parties to the Agreement. In case the stake of a member of partnership member is transferred to a third person, the rights and obligations of such member under the Operating Agreement are automatically transferred to the transferee of the stake, in accordance with the procedure and to the extent provided for by an agreement between members of the partnership and the transferee of the stake which constitutes an integral part of the Partnership Operating Agreement. Therefore, the Law provides members of a partnership and transferee of a stake in its charter capital with a possibility to regulate at their own discretion the amount of rights and obligations transferred to the transferee. Since a member alienating a stake may have outstanding obligations before Business Partnership (for example, related to violation of the obligation to paying part of contribution), the agreement between the members and the transferee may provide for obligations accruing by an ex-member before a transferee of such member’s stake joined the Operating Agreement not to be transferred to the transferee. In accordance with the general provisions of the Civil Code of the Russian Federation on agreements, such agreement shall be notarised.

Furthermore, other persons lacking the member status in the partnership may become parties to the Operating Agreement and thus acquire, in particular, the right to participate in Partnership’s management and/or distribution of the partnership’s operating profit. “Other persons” whose participation is provided for may be in labour or civil law relations with the partnership and be, for example, employees or act as advisers of such partnership, as well as lenders, financial investors.

In respect of issues related to introducing amendments into the Partnership Operating Agreement, such “other person” has a vote equal to the vote of a member regardless of the terms and conditions of the Agreement stipulating his/her rights to participate in routine management of partnership’s operations. Thus, a person who is not a member of a partnership is entitled to block the adoption of a resolution on making amendments to the Agreement concerning such aspects of Business Partnership’s operation as terms and procedures for exercise of rights and fulfilment of obligations by members of such partnership, proportionality of participation in management, distribution of profits and compensation of expenses incurred by a partnership, the procedure for creating management bodies, restriction of the right to free disposal of stakes, etc. Therefore, it is necessary to set forth in the Partnership Operating Agreement a possibility of compulsion of a person who is not a member of Partnership to vote in favour of amendments to the Operating Agreement in case such amendments are formally necessary as a result of a resolution adopted by the members, and these amendments do not aggravate the situation of such “other person”.

A Business Partnership itself may be a party to an Operating Agreement if such possibility is provided for in its Articles of Partnership. This is the main feature distinguishing Business Partnerships from Companies which, in accordance with the Law on JSC and the Law on LLC, may not be parties to Shareholders’ Agreement or Participation Agreement. Such Agreement shall be signed on behalf of the partnership by its sole executive body.

9.2.4. SCOPE
The Law allows for Partnership Operating Agreement to have an unlimited scope. The relevant provisions of the Operating Agreement shall be in compliance with the law and the provisions of the Articles of Partnership to be included in the Articles of Partnership in accordance with the Law. Furthermore, the Law provides for the scope of aspects to be covered by the Operating Agreement on a mandatory basis and for the scope of aspects that may be covered by it. The structure of the Agreement, as well as its material and optional terms and conditions, are described in more detail in Annex 3 hereto.

Among the aspects to be mandatorily included in the scope of the Operating Agreement the following ones are stipulated by the Law:
− information about the scope of Partnership’s activities;
− provisions on the amount and composition for contributions made by its members to the charter
capital and the deadlines and procedure for making them, procedure for changes in members’ stakes in the charter capital;

- provisions on members’ liability for violation of obligations to make contributions to the charter capital;

- provisions guaranteeing confidentiality of information about the terms and conditions of participation of members and other persons in a Partnership, the scope of its operations, as well as liability for breach of confidentiality; and

- the procedure for settling possible disputes between parties to the Operating Agreement.

These terms and conditions are material and their absence shall result in the Agreement being deemed void.

The Law furthermore contains an open list of optional issues which may be included in the scope of the Operating Agreement including:

- members’ rights to participation in management that are disproportionate with the stake in the charter capital owned by them, including the right of veto, as well as the right to non-proportional participation in distribution of profit, compensation of expenses and different expenditures related to partnership’s operations;

- obligations restricting within a certain period of time the rights of members and other persons to financial, personal labour or other forms of participation in activities of other legal entities or individual entrepreneurs who are engaged in activities that belong to the scope of partnership’s activity, as well as sanctions for violation of such obligations;

- terms and procedures for the exercise of members’ rights and fulfilment of obligations, including those related to participation in partnership management, disposal of stake, including the right to demand sale of stake by other members to predetermined members and third persons;

- the cases, terms and procedure for buyout (including mandatory) of participation interest belonging to a member by other members; and

- the procedure for creating management bodies of a partnership, the creation of which is not obligatory in accordance with the Law, their competence, procedure for their operation and termination of their activity, as well as procedure for appealing against resolutions adopted by them.

Provided by the Law possibility to set forth the terms and procedure for members’ exercise of rights and fulfilment of their obligations related to participation in management of a partnership makes it possible to entrench members’ obligations on voting in a certain way. For example, in case a project is successful and more investors need to be attracted and/or securities need to be issued, the Operating Agreement may provide for mandatory voting of all members on transformation of a Business Partnership into an open / public joint-stock company (for purposes of further distribution of shares among the investor community), as well as on other related issues.

In accordance with the Law on JSC and the Law on LLC, provisions of the agreement concerning exercise of rights to shares (stakes) ma provide for, in particular, (a) an obligation to refrain from disposal of shares (stakes) until certain circumstances occur; (b) the parties’ obligation to acquire or dispose of shares (stakes) at a predetermined price (on predetermined terms) and/or upon occurrence of certain circumstances. Since there is no concept of circumstances in the Russian civil law, and the Russian legal doctrine and existing legal practice often declare conditions depending on the will of one party invalid, there is a risk of declaring circumstances depending on the will of one party invalid. The same risks in relation to transactions concluded under a condition are applicable to Operating Agreements in respect of Business Partnerships.

9.2.5. APPLICABLE LAW

Since the Partnership Operating Agreement is a civil transaction, as a general rule, the provisions of the Civil Law of the Russian Federation are applicable to it. Also, the possibility for the Partnership Operating Agreement to be governed by the foreign law if there is a foreign person (for example, one of the parties to the Agreement is a foreign legal entity or individual) shall be applied. In this case it is necessary to take into account that a number of issues, including internal affairs of a legal entity (as well as relations between a legal entity and its members), shall be governed by the law of the country of its incorporation. Apart from that, in case the Partnership Operating Agreement is governed by the foreign law, it is necessary to take into account that the provisions of such agreement shall be in compliance with the imperative provisions (so called “super-imperative provisions” applicable even to agreements governed by the foreign law, for example, certain provisions of the competition law) of the Russian law, as well as the public policy of the Russian Federation.

Since the scope of the Partnership Operating Agreement may cover the internal affairs of a Business Partnership, there is a risk of invalidation of its provisions. It should be noted that the existing judicial practice in relation to Shareholders’ Agreements governed by the foreign law follows the path of invalidation of such agreements due to “incompliance with the public policy of the Russian Federation and mandatory application of the law of the country where the legal entity in question was incorporated to "internal affairs, including relations between a legal entity and its members”.

In other words, in case some issue regulated by the Law on JSC is regulated by the Shareholders’ Agreement in a different way, there is a risk of invalidation of the corresponding provisions of the Shareholders’ Agreement.

The situation is quite different in the case of Business Partnerships. Since, as opposed to the Law on JSC, the Law provides an opportunity for members of a Business Partnership to regulate many aspects classified as internal affairs on their own, the risk of invalidation of the corresponding provisions of the Operating Agreement due...
to incompliance with the imperative provisions of Russian law is significantly lower or totally lacking (due to almost total absence of such imperative provisions in the Law).

9.2.6. COMPLIANCE OF THE PROVISIONS OF PARTNERSHIP OPERATING AGREEMENT RESTRICTING THE RIGHT TO COMPETITION WITH THE COMPETITION LAWS OF THE RUSSIAN FEDERATION

In accordance with Article 6, Part 6, Clause 5 of the Law, an Operating Agreement may provide for obligations restricting the rights of members of a partnership or other persons to financial, personal labour or other forms of participation in activities of other legal entities or individual entrepreneurs who perform activities that belong to the scope of partnership’s activity.

The matter of compliance of the above-mentioned provision with the provisions of Federal Law No. 135-FZ dd. July 26, 2006 "On Protection of Competition" (hereinafter – "Competition Law") in relation to agreements restricting competence is disputable due to the conflict of laws.

Prevalence of the provisions of the Law over the provisions of the Competition Law is supported by an argument that the corresponding provisions of the Law are special if compared with the general restrictions set forth by the Competition Law due to specific focus of the Law on the area of innovation (including venture-type) projects. As a counterargument it can be specified, however, that the specific focus of the Law has no legislative recognition, and the Law itself has no reference to areas of activity in which it is to be preferably applied.

The inclusion of obligations intended to restrict participation in activities of competing persons into the agreement between business entities may potentially entail violation of the prohibitions on agreements restricting competence set forth in Article 11, Part 4 and Part 1 of the Competition Law. The signing by a business entity of an agreement unallowable under the competition law, as well as being a party to it, entail administrative liability provided for by Article 14.32 of the Code of Administrative Offences, as well as criminal responsibility in accordance with Article 178 of the Criminal Code of the Russian Federation. The competition law provides for a number of cases when such provisions may be allowable. At the same time, these exclusions are applicable depending on certain circumstances.

The procedure and methods for analysis of joint venture agreements, for purposes of their compliance with the provisions of the competition law of the Russian Federation are described in the explanations issued by the FAS not long ago. The explanations provided by the FAS concern agreements between business entities signed under the Russian and foreign law, including agreements providing for the creation of a new legal entity and/or participation of parties in an existing entity, as well as other agreements mediating joint activities of parties and assuming that (1) the parties join their resources to achieve the objectives of their joint activity; (2) jointly bear risks related to joint activity; and (3) information about performance of joint activity or creation of a legal entity is available to the public. Therefore, these explanations are also applicable to Partnership Operating Agreements.

It should be noted that the parties intending to enter into a Partnership Operating Agreement are entitled to submit to the FAS (its local office) an application for inspecting the compliance of the draft agreement in writing with the requirements of the competition law.

9.2.7. APPROVAL FOR PURPOSES OF THE COMPETITION LAW

Depending on the content of the Partnership Operating Agreement, its signing may lead to the acquisition by a party to the Agreement (its group of persons) of the rights enabling them to determine the terms and conditions of performance of business operations by a partnership. If in this case the criteria provided for by Federal Law 135-FZ "On Protection of Competition" dd. July 26, 2006 as amended and supplemented (hereinafter – "Law on Competition") are complied with, a person acquiring such rights shall apply to the FAS (its local office) to get a prior approval of entering into a Operating Agreement or to provide subsequent notification of its signing.

In case a prior approval of the FAS was required for entering into the Operating Agreement but was not received, and the signing of the Operating Agreement has led to or may lead to restriction of competition, the Operating Agreement can be invalidated in a judicial proceeding under the claim of the FAS. The FAS may moreover impose in respect of the person acquiring rights under the Operating Agreement administrative liability in the following amounts:

- for failure to submit to the FAS an application for prior approval of entering into an Operating Agreement:
  - for individuals – penalty in the amount from 1,500 to 2,500 roubles;
  - for officials – penalty in the amount from 15,000 to 20,000 roubles;
  - for legal entities – penalty in the amount from 300,000 to 500,000 roubles;
- for failure to notify the FAS of entering into an Operating Agreement:
  - for individuals – penalty in the amount from 800 to 1,200 roubles;
  - for officials – penalty in the amount from 5,000 to 7,500 roubles;
  - for legal entities – penalty in the amount from 150,000 to 250,000 roubles.

Depending on the content of the Operating Agreement, prior approval or notification of the FAS may also be required in case of disposal of a stake (part of stake) in the charter capital of a partnership following its incorporation.

9.2.8. APPROVAL FOR PURPOSES OF THE LAW ON FOREIGN INVESTMENTS AND STRATEGIC COMPANIES

"Law on Foreign Investments") sets forth that transactions settled by foreign states, international organisations or organisations controlled by them as a result of which the right to dispose of more than 25% of the total number of votes attaching to voting shares (stake) in the charter capital of a Russian company is acquired, as is another opportunity to block resolutions by management bodies of such company are subject to prior approval in accordance with the procedure set forth by the Law on Strategic Companies.

Furthermore, the Law on Strategic Companies requires approval of instituting control over Russian strategic companies on the part of a foreign investor or a group of persons of which a foreign investor is a member. Since a Business Partnership may not be a member of a company, including a strategic one, cases of application of the corresponding provisions of the Law on Foreign Investments and the Law on Strategic Companies are limited. However, it is necessary to obtain an approval if a Business Partnership acts as a managing authority of a company under an agreement with it and (a) foreign states, international organisations or organisations controlled by them receive an opportunity to block resolutions of management bodies of a Russian Company; or (b) a foreign investor gets through a Business Partnership an opportunity to determine resolutions adopted by a strategic company.

In both cases an approval is issued by the FAS on the basis of a decision of the government commission which makes a strategic decision on (a) approval of a transaction; (b) approval of a transaction on the condition of fulfilment of certain conditions (obligations) by an applicant in the future; such conditions (obligations) shall be set forth in a separate agreement between the FAS and the acquirer; or (c) refusal to approve a transaction.

The Law on Strategic Companies sets forth several possible effects of failure to obtain the required approval. The general rule is nullity of a transaction settled without approval. That is to say, the Operating Agreement (or its certain provisions) entered into without the required approval is null and void, and the consequences of invalidity of a null and void transaction shall apply to it.

As additional consequences of nullity of a transaction settled in violation of provisions of the Law on Strategic Companies, there is the possibility of challenging by the FAS in court of resolutions of management bodies of a Business Partnership as well as transactions settled by such Business Partnership after instituting by a foreign investor or a group of persons, in which a foreign investor is a member, in violation of provisions of the law. It should be noted that the Law on Strategic Companies does not establish any criteria for invalidation of resolutions of management bodies and transactions of a Business Partnership. Therefore, the FAS is entitled to challenge any resolutions of management bodies of a Business Partnership and any transaction of such partnership just on the basis of violation of the requirement for approval. We believe that the fact of such violation can be sufficient for invalidating the corresponding resolution or transaction by a court.

9.2.9. CONSEQUENCES OF VIOLATION AND SANCTIONS APPLIED IN CASE OF VIOLATION OF TERMS AND CONDITIONS OF PARTNERSHIP OPERATING AGREEMENT

Parties to the Partnership Operating Agreement may provide for means to ensure fulfilment of obligations arising from such Agreement, as well as civil sanctions or application of other sanctions in connection with violation of such Agreement.

The Law specifies consequences of violation of terms and conditions of Partnership Operating Agreements which may be applied independently from civil sanctions for such violation.

(A) The Right to Demand Enforcement of Execution of the Agreement by the Defaulting Party

Application of civil sanctions for violation of the terms and conditions of the Partnership Operating Agreement does not preclude the right to demand enforcement of execution of the Agreement by the defaulting party in a judicial procedure or in accordance with another procedure set forth by the Agreement. The enforcement of specific performance of an obligation involves enforcing a party to perform actions it is supposed to under the Agreement, and is one of the means of civil law remedies. However, the practicability and efficiency of enforcement measures in respect of a party to the Operating Agreement to make it fulfill its obligations depend on the nature of such obligations.

For example, in case of breaching the obligation of a party to the Agreement concerning disposal of a stake in favour of another party, the affected party shall be entitled to seek legal recognition of the right to stakes in a judicial proceeding or (depending on the provisions of the Operating Agreement) file a lawsuit on compulsion of the defaulting party to enter into a relevant agreement on sale and purchase of stake/lawsuit on transfer of the corresponding stake to the affected party to the Operating Agreement. Furthermore, in case of violation of a member’s obligation to make a contribution (part of contribution), enforcement of the obligation to make a contribution shall allow to compensate for the negative effect of the breach and avoid expulsion of such member.

At the same time, enforcement of the obligations related to the exercise of rights arising in connection with possessing stakes, for example, the obligation to vote, in practice is likely to be difficult due to the specific nature of the Russian procedural law (a mechanism for adoption of judgments compensating for or replacing the will of the party that failed to fulfil what was due under the Agreement is unknown in the Russian legal order, and a mechanism of injunctive remedies hardly can be successfully implemented as courts try not to take measures “predetermining” settlement of a dispute on the merits). Fulfilment of such an obligation later may moreover lose its practical meaning, for example, in case of compulsion to vote in a certain way on the issue of approval of a transaction if a transaction has already been settled and fulfilled.

The concept of an irrevocable power of attorney introduced by the recent amendments to the Civil Code
of the Russian Federation may be applied as a solution which makes it possible to avoid the necessity of enforcement of the obligation on voting in the future. One of the parties to the Agreement or a third person may be authorised to vote in a certain way on behalf of respective parties to the Agreement, at the same time such party to the Operating Agreement itself is not entitled to vote on this issue.

(B) Invalidation of Resolutions by Management Bodies of a Partnership
The Law provides for a possibility of invalidation of resolutions by management bodies of a partnership in a judicial proceeding in cases provided for in the Agreement. Such consequence of violation of the terms and conditions of the Agreement is one of the key features of Partnership Operating Agreement distinguishing it from Participation Agreement or Shareholders’ Agreement which makes it a more efficient instrument of corporate regulation.

(C) Invalidation of Transactions Settled by a Partnership or a Party to the Operating Agreement
The Law provides for a possibility to challenge a transaction settled by a partnership or a party to the Operating Agreement in violation of the provisions of the Partnership Operating Agreement on the basis of a lawsuit filed by the interested party in case the other party to the Agreement was aware or had to be aware of the specific provisions the violation of which resulted in the transaction in question being challenged.

In practice the requirement concerning awareness of the other party to the Agreement of the content of the Partnership Operating Agreement may make the challenging of transactions complicated. For effective implementation of this provision of the Law it is recommended to set forth in the Articles of Partnership the obligation of the sole executive body of a partnership to brief third persons entering into civil law relations with this partnership on the relevant provisions of the Operating Agreement. It is further recommended to include in the resolution on appointment to the position of the chief executive officer of a partnership and a reference to the documents restricting his/her powers.

(D) Other Consequences and Sanctions Applied in Case of Violation of the Terms and Conditions of Partnership Operating Agreement
The Law provides that the Parties to the Operating Agreement are entitled to choose among, but not limited to, such sanctions for breaching the terms and conditions of the Agreement as: compensation for losses, penalty recovery and compensation payment.

In respect of recovery of losses suffered as a result of violation of the Agreement or penalties (fines), it is necessary to take into account the difficulty in proving and limitations of their amount. Moreover, in practice, in the absence of other sanctions, these will be inefficient for protection against certain violations (for example, it is not always possible to prove losses resulting from violation by a party of the obligation to vote or change control in relation to one of the breaching members of the partnership of the Operating Agreement).

At the same time, fines and penalties may be used to supplement other sanctions set forth in the Operating Agreement, including:
- compensations;
- transfer of a stake (part of a stake) in the charter capital of a partnership by a breaching member to another member (members) or a partnership;
- expulsion of a breaching member from the partnership; and
- an option agreement.

Compensation is an independent sanction for violation of the Partnership Operating Agreement and, by implication of the Law, unlike penalty, it shall not be subject to the rule of reduction of its amount by a court. However, judicial practice in respect of application of compensation payment as a sanction for violation of contractual obligations is not established. Therefore, in case of inconsistency of its amount with the monetary valuation of the adverse consequences of breaching the obligations, there is a potential risk of recognition by a court of the condition on compensation payment as penalty (regardless of the terms and definitions adopted by the parties to the Agreement) and consequent reduction of its amount.

The Law provides for transfer of a part of member’s stake in the charter capital of a partnership to other members as a consequence of his/her failure to fulfil his/her obligation to make further contribution (in case staged contributions are provided for). In this case, as opposed to the case of business companies where transfer of unpaid stakes (shares) to a company itself, with further imposition on such company of the obligation to sell this stake (shares) is provided, a part of stake in the charter capital of a Business Partnership equivalent to the unpaid part of a contribution, is transferred to other members. Parties to the Operating Agreement may provide for the transfer of a stake as a consequence of violation of other provisions of the Operating Agreement. Transfer of the corresponding stake (part of staket) to a certain member (members) or a partnership may also be provided for.

Expulsion of a member of Partnership without recourse to the court is allowed only if s/he fails to timely fulfil the obligation to make the initial or further contributions to the charter capital (part of contribution). In order to avoid formalistic application of this sanction (for example, expulsion of a member who was one day in delay with the payment of contribution but at the same time is actively involved in the partnership’s operations), it would be appropriate to set additional deadlines (conditions) under which the obligation to make a contribution shall be deemed unfulfilled.

Provisions on options may be included in the Partnership Operating Agreement as a means to ensure fulfilment of obligations. Based on the international practice of application of option agreements, one or several of the following options may be offered: (a) the right of a party to demand that the other party purchases the stake it owns in the charter capital (put option),
(b) the right of a party to demand that the other party sells the stake in the charter capital owned by such party (call option), (c) the right of a party to the Partnership Operating Agreement selling its stake to a third person to demand that the other party to the Partnership Operating Agreement sells its own stake to a third person (drag-along right), and (d) the right of a party to the Partnership Operating Agreement to sell its stake) to a third person in case of sale by another party to the Agreement of its own stake to such third person (tag-along right). Examples of implementation of the above-mentioned options are to be found in the draft Partnership Operating Agreement (Annex 3 to the Memorandum).

9.2.10. EXERCISE OF THE RIGHTS TO JUDICIAL PROTECTION
In accordance with Article 6, Part 2, Clause 5 of the Law, the Operating Agreement governs the procedure for settlement of possible disputes which allows parties to set forth a strictly extrajudicial procedure for settlement of disputes between them. Taking into account that the Operating Agreement should comply with the requirements of the Law, the possibility of judicial settlement of the following issues is preserved:

- introduction of amendments to the Operating Agreement in the event that the parties to it fail to reach an agreement (Article 6, Part 2 of the Law);
- invalidation of transactions settled by a Partnership or a party to the Partnership Operating Agreement in violation of the Operating Agreement (Article 6, Part 9, Clause 3 of the Law);
- expulsion of members of a partnership who violate their obligations imposed on them by the Law or the Partnership Operating Agreement or who through their action (inaction) undermine the partnership's activity impedes it (Article 7, Part of the Law);
- transfer of a stake in the charter capital of a partnership to the transferee in the event that a member of partnership, who has entered into an agreement establishing an obligation to settle a stake in the charter capital of a partnership, illegally avoids its settlement (Article 12, Part 4 of the Law);
- transfer to a member (members) of a partnership or a partnership of the rights and obligations of a Purchaser in case of sale of participation interest in the charter capital of a partnership in violation of the pre-emption right (Article 15, Part 8 of the Law);
- invalidation of a resolution of a partnership's management body adopted in violation of the requirements of the law, the Articles of Partnership, the Partnership Operating Agreement and violating the rights and legitimate interests of members of a partnership (Article 18, Part 5 of the Law); and
- compensation of losses caused to a partnership by members of such partnership's management bodies and its sole executive body (Article 22, Part 5 of the Law).

Therefore, parties to the Partnership Operating Agreement are entitled to choose the procedure for settlement of disputes at their own discretion; however, in accordance with the mandatory requirements of the law, certain specific issues may be settled only in a judicial proceeding.

9.2.11. COURTS FILLING THE GAPS IN LEGISLATIVE REGULATION
At the time when this Memorandum was written, there was no established judicial practice in respect of Business Partnerships. As a general rule, if any relations are not explicitly regulated by the law and an agreement between the parties, provisions that regulate similar legal relations shall be applied to them. We believe that it is possible to apply by analogy to Business Partnerships only the norms of the Civil Code of the Russian Federation which contain general provisions on legal entities, obligations and agreements. The possibility of by analogy application of provisions of the Law on JSC and the Law on LLC to Partnerships is disputable as the authors of the Law intentionally distinguished Business Partnerships from other forms of incorporation.

9.2.12. LOCATION FOR CONSIDERATION OF DISPUTES ARISING FROM THE PARTNERSHIP OPERATING AGREEMENT
The Partnership Operating Agreement shall stipulate the procedure for settlement of possible disputes between the parties to the Partnership Operating Agreement. The question whether the provision of the Agreement on referring disputes arising from the Operating Agreement for consideration by an arbitration court or the International Commercial Arbitration will be valid is considered below.

The current Arbitration Procedure Code of the Russian Federation establishes the rule of exclusive place of jurisdiction in respect to corporate disputes. Corporate disputes include disputes related to creation, management or participation in all commercial organizations and in some non-commercial organizations. Since the Partnership Operating Agreement may include provisions related to management of a partnership, its operations, reorganization and liquidation, disputes which can arise from the Agreement are most likely to be defined as “corporate disputes” in accordance with the above definition.

In practice, there is a risk that a decree of an arbitration court or the International Commercial Arbitration in a corporate dispute may be cancelled (if it was delivered in the Russian Federation) or not recognised and not enforced (if it was delivered outside of the Russian Federation). The currently existing judicial practice in respect of arbitrability of corporate disputes is rather contradictory. As long as such uncertainty persists, any clause on referring disputes arising from the Operating Agreement for consideration by an arbitration court or the International Commercial Arbitration may potentially be declared invalid. In such case the general rules of jurisdiction of arbitration courts of the Russian
Federation over disputes shall apply. According to the rule of exclusive place of jurisdiction, a lawsuit shall be filed at the location of a Partnership’s registered office.

An exception could be the situation when a dispute arising from the Operating Agreement or in connection with it will be considered by arbitration outside of Russia and a decree of such arbitration will be recognised and enforced outside of Russia; in such case a decree may be enforced in other countries where the defendant’s assets are located. Taking into account the specific nature of the Partnership Operating Agreement and its close connection with the partnership itself, such a situation may occur in a restricted number of cases (for example, in case of application of countervailing sanctions to a member of a Partnership, such being a foreign legal entity).

SECTION 9

71 See Article 2 and 6 of the Law.
72 See Article 8 of the Law.
73 See Part 1 Article 6 of the Law.
74 See Article 452, Clause 1 of the Civil Code of the Russian Federation.
75 See Article 8, Part 3 of the Law on LLC, Article 32.1, Part 1 of the Law on JSC.
77 See Article 1186 of the Civil Code of the Russian Federation.
78 See Article 1202 of the Civil Code of the Russian Federation.
79 See Article 1193, 1210 of the Civil Code of the Russian Federation.
81 See Article 1202 of the Civil Code of the Russian Federation.
82 See Article 13 of the Competition Law.
84 See Article 35 of the Competition Law.
85 See Article 28, Part 1, Clause 8 of the Competition Law.
86 The necessity of getting prior approval of the FAS is determined by the following criteria: (a) the total value of assets under the recent balance sheets of a person acquiring rights or his/its group of persons as well as a person rights in respect of whom are acquired and his/its group of persons exceeds seven billion rubles, or (b) aggregate receipts from marketing goods for the last calendar year exceed ten billion rubles, and at the same time, the total value of assets under the recent balance sheets of a person rights in respect of whom are acquired and his/its group of persons exceeds two hundred fifty million rubles, or (c) one of the specified persons is included in the Register of Business Entities Whose Shares of Particular Product Markets Exceed 35%.
87 Notification of conclusion of the Operating Agreements shall be sent if (a) the total value of assets under the recent balance sheets or aggregate receipts from marketing goods of a person acquiring rights or his/its group of persons as well as a person rights in respect of whom are acquired and his/its group of persons for the calendar year preceding the year of conclusion of the Operating Agreement exceeds four hundred million rubles and at the same time acquiring rights or his/its group of persons acquiring rights as well as a person rights in respect of whom are acquired and his/its group of persons exceeds sixty million rubles.
88 See Article 6 of the Law on Foreign Investments.
89 See Article 4 of the Law on Strategic Companies.
90 See Article 2, Clause 7 of the Law.
91 See Article 6, Clause 8 of the Law.
92 See Article 6, Clause 9 of the Law.
93 See Article 12 of the Civil Code of the Russian Federation.
94 See, for example, Decree of the Arbitration Court for the Rostov Region dd. March 1, 2012 in Case No. A53-25814/11.
96 See Article 188.1 of the Civil Code of the Russian Federation.
97 See Article 32.1, Part 4 of the Law on JSC.
98 In case of presenting claims for compensation of losses a claimant shall prove the illegality of the violator’s conduct, his/her guilt (in accordance with the provisions of Article 401 of the Civil Code of the Russian Federation), the nature and amount (assessment) of adverse effects, as well as the cause-and-effect relationship between the actions (inaction) of the violator and the ensuing consequences.
99 In case of claims for payment of a penalty being presented, a creditor is not obliged to prove that damage has been caused, however, if a penalty to be paid is disproportionate to the consequences of violation of an obligation, the court is entitled to reduce its amount. As a general rule, losses are compensated to the extent not covered by the penalty.
100 Compensation as an alternative sanction to penalty is provided for in Article 6, Clause 9 of the Law and defined as a fixed amount of money or an amount to be defined in accordance with the procedure specified in the Partnership Operating Agreement.
101 See, for example, Decree of the Ninth Arbitration Appeal Court No. 09AP-24142/2009-GK, 09AP-24973/2009-GK dd. December 22, 2009 in case No. A40-71697/09-41-497, upheld by the Decree of the Federal Arbitration Court of the Moscow District dd. March 25, 2010. In that case the parties to the agreement established the amount of liquidated damages. The court stated that the sanction chosen by them corresponds to the definition of penalty and the provisions of Chapter 23, Article 2 of the Civil Code of the Russian Federation shall be applied to it.
102 See Article 6 of the Civil Code of the Russian Federation.
105 See Article 6, Clause 1 of the Law.
106 The dispute was declared non-arbitrable: case of NLMK OJSC versus N.V. Maksimov (No. A45-3864/2011-69-313); possibility of consideration of a dispute by arbitration courts is not excluded – See case of Bank Vozrozhdenie OJSC versus M.B. Smurov and Murmansk Shveiny Kombinat OJSC (No. A42-4871/2011).
107 Such general jurisdiction rules shall be defined in accordance with Chapter 4 of the Arbitration Procedure Code of the Russian Federation.
SECTION 10.
LIABILITY OF A BUSINESS PARTNERSHIP AND LIABILITY OF SUBJECTS ENTITLED TO MANAGE OPERATIONS OF A BUSINESS PARTNERSHIP FOR OBLIGATIONS OF A PARTNERSHIP TO THIRD PERSONS

SUMMARY CONCLUSIONS OF THIS SECTION

A Business Partnership is liable for its obligations to the extent of all its property; a partnership is not liable for obligations of its members.

Liability of members of a partnership is restricted by the value of their contributions to the charter capital of the partnership, in the absence of requirements to the minimum amount of the charter capital of a partnership, as well as, usually, requirements for mandatory monetary valuation of contributions by an appraiser. This aspect is very important taking into account the focus of the form of a partnership on application in the framework of implementation of innovative (including venture) business activity.

In case of insolvency (bankruptcy) of a partnership resulting from actions of its members there is a potential risk of imposition on them of subsidiary liability for such partnership’s obligations in case of insufficiency of the partnership’s property.

For the same reasons, there is a potential risk of imposition of subsidiary liability for partnership’s obligations on other persons participating in the management of a partnership in case of their recognition as persons who are entitled to give binding instructions to a partnership.

There is a potential risk of invalidation of the provision on full or partial termination of partnership’s obligations before creditors which are business entities upon occurrence of conditions specified in the agreement due to incompliance of such provision with the provisions of the Civil Code of the Russian Federation.

Liability of a partnership and its members is governed, first of all, by the general regulations contained in the Civil Code of the Russian Federation in accordance with which a partnership is liable for its obligations to the extent of all its property; a partnership is not liable for obligations of its members; members of a partnership, as a general rule, are not liable for its obligations (Article 56, Clauses 1 and 3 of the Civil Code of the Russian Federation). However, if insolvency (bankruptcy) of a partnership results from actions of its members or other persons entitled to give instructions binding for it or otherwise define its actions, subsidiary liability for the partnership’s obligations may be imposed on such persons in case of insufficiency of the partnership’s property (Article 56, Clause 3 of the Civil Code of the Russian Federation).

Therefore, liability of members of a partnership is actually limited to the value of their contributions to its charter capital. The Law does not set forth any requirements to the minimum amount of the charter capital of a partnership, nor does it generally require mandatory monetary valuation of property and other objects of civil rights contributed to the charter capital of a partnership by an appraiser.

Along with members of a partnership, who are obliged to make contributions to the charter capital and bear the risk of losses related to the partnership’s activities within the limits of their contributions, the law provides for participation in the partnership’s management of persons who are not members of this partnership, provided they are parties to the Partnership Operating Agreement. In the absence of (a) corresponding legislative regulation, (b) corresponding provision in the Partnership Operating Agreement and (c) in a situation where such persons are not members of the partnership’s management bodies, which, as a general rule, are liable before the partnership for losses caused by their wrongful acts, such persons are not liable before the partnership and third persons for the partnership’s obligations.

As part of the civil law reform it is planned to strengthen the provisions on property liability of persons who actually determine (supervise) operations of a legal entity. In case of adoption of the proposed amendments to the Civil Code of the Russian Federation these persons will be obliged to compensate losses that a legal entity suffers as a result of their actions if it is proved that in the course of exercise of their rights and fulfilment of their obligations they acted in bad faith or unreasonably, as well as that their actions (inaction) did not conform to the usual conditions of civil transactions or usual business risk.
Until adoption of relevant amendments to the Civil Code of the Russian Federation, a possibility of holding the abovementioned persons liable appears in cases where such persons are entitled to give binding instructions to a partnership in accordance with Article 56, Clause 3 of the Civil Code of the Russian Federation.

The Civil Code of the Russian Federation does not provide for disclosure of the names of such persons. The existing judicial practice specifies among persons entitled to give binding instructions the following ones:

- a person who has purchased an option for the right of buyout of 100% stake in the charter capital of a legal entity and with whom management activities for such legal entity shall be coordinated under an agreement for provision of an option\(^{112}\);
- members of the management board\(^{114}\);
- members, chief executive officers, members of the board of directors (supervisory board)\(^{115}\);
- a person who holds in trust the controlling block of shares (stakes)\(^{116}\).

Therefore, there is a potential risk of recognition by a person entitled to give instructions binding for a Business Partnership, in particular, of a person with whom actions on partnership’s management shall be coordinated or who is entitled to make managerial decisions on certain issues due to non-proportional allocation of participation in partnership’s management in favour of such person (also if such person has the right to buyout of majority interest in the charter capital of a partnership) under the Partnership Operating Agreement, either having the status of a member or not.

In order to avoid uncertainty with regard to holding persons who are parties to the Operating Agreement but not members of a Partnership liable, it is recommended to stipulate these aspects in the Partnership Operating Agreement.

The Law moreover provides for a possibility to include in an agreement with creditors which are business entities provisions on full or partial termination of Partnership’s obligations before such creditors upon occurrence of conditions specified in the agreement from which the relevant obligations have arisen\(^{117}\).

The issue on compliance of the specified norm with the provisions of the Civil Code of the Russian Federation regulating the procedure for termination of certain types of agreements is ambiguous. In particular, there is extensive judicial practice on various types of civil law agreements interpreting the possibility of termination of an agreement by one of the parties restrictively (i.e. confirming that such party gains the right to unilateral non-performance of an agreement only in cases explicitly provided for by the law).

Inclusion in agreements with third persons entered into by a partnership of provisions providing for a special procedure for their termination (in particular, special grounds for unilateral non-performance of an agreement by an Agreement upon occurrence of certain circumstances) may contradict the corresponding provisions of the Civil Code of the Russian Federation. It is necessary to take into account that, in the context of the doctrine, the Civil Code of the Russian Federation as a codifying statute has more legal force than the Law; at the same time, however, the corresponding provisions of the Law can potentially prevail over the provisions of the Civil Code of the Russian Federation due to the fact that the Law is a special and later adopted act. It is not clear what position on this issue will be taken by courts.

Moreover, the provisions of the Civil Code of the Russian Federation regulating consequences of unfair obstruction of fulfilment of obligations or facilitation of the happening of conditions terminating Partnership’s obligations before third persons\(^ {118}\) will not allow Business Partnerships to abuse this possibility. It is commonly known that the Russian doctrine and the existing judicial practice often declare conditions depending on the will of one party invalid\(^ {119}\), which also creates the risk of circumstances depending on the will of one party being declared invalid.

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109 See Article 10, Clause 4 of the Law.

110 See Article 5, Clause 2, Sub-clause 1, Article 2, Clause 2 of the Law.


113 Decree of the Federal Arbitration Court for the Moscow District dd. February 14, 2013 in case No. A41-20269/12.


115 Follows from Article 14, Clause 1 of the Federal Law No. 137-FZ dd. October 26, 2002 “On Bankruptcy”: “If bankruptcy of a credit institution is caused by wrongful acts or inaction of its executive officers, members of the board of directors (supervisory board), founders (members) and other persons entitled to give instructions binding for this credit institution...”. See also: Decree of the Federal Arbitration Court for the Moscow District dd. January 10, 2012 in case No. A60-94681/08-88-249; Decision of the FAS for the Moscow District dd. November 21, 2011 in case No. A41-40552/09; Decree of the Federal Arbitration Court for the Moscow District dd. April 1, 2009 No. KG-A60/13380-08 (case No. A60-41229/07-86-131).


117 See Article 3, Clause 3 of the Law.

118 See Article 157, Clause 3 of the Civil Code of the Russian Federation.

SECTION 11.
INFORMATION CONFIDENTIALITY IN RELATION TO BUSINESS PARTNERSHIPS

SUMMARY CONCLUSIONS OF THIS SECTION

The Partnership Operating Agreement shall mandatorily contain provisions on information confidentiality, as well as on liability for breach of confidentiality.

According to the Law, confidential information includes information about the terms and conditions of participation of members and other persons in a partnership, the scope of its activity, and this list may be expanded by virtue of relevant provisions in the Partnership Operating Agreement.

The sanctions for disclosure of confidential information shall not be applied in case of its disclosure pursuant to legitimate requests from authorised state authorities or local self-governing authorities of the Russian Federation.

The Law sets forth the obligation of members of a partnership not to disclose confidential information about the partnership’s operations; however, it does not specify what information shall be deemed as confidential.

Article 6, Clause 6, Sub-clause 4 of the Law refers to this category information about the terms and conditions of participation of members and other persons in a Partnership, and about the scope of its activity. The list of such information may be expanded by virtue of relevant provisions in the Partnership Operating Agreement which, in accordance with the Law, has an unlimited scope.

The Operating Agreement shall mandatorily contain provisions on confidentiality of information as well as on liability for breach of confidentiality.

Sanctions for disclosure of confidential information provided in the Operating Agreement shall not be applied if a party discloses confidential information pursuant to lawful requests from authorised state authorities or local self-governing authorities of the Russian Federation.

The fact that information about the scope of partnership’s operations, as well as members’ contributions (including their amount, composition, value, procedure and time limits) is not included in the Articles of Partnership and/or in the EGRUL and can be found only in the Partnership Operating Agreement helps to keep information confidential. The Operating Agreement is kept on file by a notary public at the location of the partnership’s registered office; therefore, for third persons access to it is restricted.
SECTION 12.
SPECIFIC CHARACTERISTICS OF PROTECTION OF THE EXCLUSIVE RIGHTS OWNED BY A BUSINESS PARTNERSHIP

SUMMARY CONCLUSIONS OF THIS SECTION

A specific feature of Business Partnerships is higher level of protection of exclusive rights to results of intellectual activity owned by a partnership in case of foreclosure by a partnership’s creditors upon the exclusive rights owned by the partnership, as well as in case of cessation of membership or expulsion of members from the partnership who had contributed such rights to its charter capital. The purpose of this characteristic is to enhance the attractiveness of a partnership for participants in innovative (including venture-type) business activity.

The Law provides for a higher level of protection of exclusive rights to results of intellectual activity owned by a partnership in case of foreclosure by a partnership’s creditors upon the exclusive rights owned by such partnership, the respective obligations of the partnership may be fully or partially fulfilled on behalf of the partnership by all or several or one of its members (in the latter two cases – with the consent of all members, and, in cases provided for by the Operating Agreement, also with the consent of other persons). Partnership’s creditors may not block such fulfilment. Disputes arising in the framework of such fulfilment between a member (members) of a partnership and its creditors may be referred to court for consideration; foreclosure upon corresponding exclusive rights to results of intellectual activity is not allowed until a relevant court decision enters into force. Members of a Partnership who have fulfilled its obligations have the right of recourse to the partnership in the amount of the satisfied claim. In case of liquidation of the, partnership they also have the pre-emption right to obtain the exclusive rights to results of intellectual activity on the account of the partnership’s property remaining after settling claims from its creditors.

Moreover, in case of termination of membership or expulsion of a member from a partnership, the exclusive rights contributed by such member to the charter capital of the partnership remain in its use for the period for which they were transferred to a partnership (unless otherwise provided by the Operating Agreement).
SECTION 13.
SPECIFIC CHARACTERISTICS OF TAXATION OF BUSINESS PARTNERSHIP’S ACTIVITY AND ACTIVITIES RELATED TO PARTICIPATION IN A BUSINESS PARTNERSHIP

SUMMARY CONCLUSIONS OF THIS SECTION

Being a legal entity, a Business Partnership is recognised as payer of income tax, as well as other taxes. Business Partnerships’ income are taxed in the Russian Federation with income tax at the rate of 20%.

The Tax Code of the Russian Federation does not provide for any special tax exemptions applied to Business Partnerships’ activities. At the same time, in the context of implementation of venture-type projects, such exemptions may be additionally set forth by the law with due account of the specific characteristics of implementation of certain projects but not in relation to the legal form of a legal entity in general.

A contribution made to the charter capital of a Business Partnership does not entail tax consequences in the Russian Federation either for a partnership or for its members. Income in the form of assets (property rights) in the amount of their value in monetary terms transferred to a partnership for the purpose of increasing its net assets (as opposed to the case of Companies) are taxed according to the standard procedure with income tax at the rate of 20%.

Dividends payable to members of a Business Partnership are taxed in the Russian Federation according to the standard procedure at the rate of 0%, 9% or 15% (as appropriate). Reduced tax rates may be provided for in a double taxation agreement.

In case of disproportionate distribution of profits among members of a Business Partnership, payments in excess of the amount calculated using the proportional method are not recognised as dividends for taxation purposes and are taxed at the rate of 20% if paid to legal entities and at the rates of 13% and 30% for individuals being residents and non-residents respectively. If there is an applicable double taxation agreement, payments in excess of the amount calculated using the proportional method may be recognised as dividends and taxed at source at the relevant reduced rate.

Revenues from the sale of stakes in a Business Partnership are taxed with income tax or profit tax (as applicable) according to the standard procedure.

The Tax Code of the Russian Federation does not provide for exemption from income tax of property (property rights) received by members in case of liquidation of a Business Partnership. In the absence of explanations and judicial practice on this issue, Russian tax authorities usually consider that such assets (property rights) shall be taxed with income tax according to the standard procedure at the rate of 20%. Income received by foreign members of a Business Partnership may be treated as “other income” not subject to taxation at source in accordance with the majority of applicable double taxation agreements.

In respect of taxation of incomes of members who are individuals received as a result of liquidation of a Business Partnership, the approach developed by the tax authorities in relation to Companies is most likely to be applied.

13.1. GENERAL COMMENTS

In accordance with the provisions of the Russian Law, a Business Partnership is deemed to be a legal entity and a taxpayer for the purposes of Russian corporate taxes. Business Partnerships’ incomes are taxed in the Russian Federation at the level of Partnership, as will be explored in more detail in Section 12.3 below. Profits distributed by a Business Partnership among its Russian members are taxed with income tax (for members who are legal
entities) or profits tax (for members who are individuals). Dividends paid out to foreign members of a Business Partnership are subject to taxation at source in the Russian Federation.

The Russian tax law does not provide for any special tax exemptions applicable to Business Partnerships’ activities. Business Partnerships are taxed according to the standard procedure, applying tax rates standard for legal entities. Furthermore, Business Partnerships are vested with an obligation to maintain tax records executed according to the standard procedure.

Below we will examine the procedure for taxation of Business Partnerships’ activities in the Russian Federation in more detail.

13.2. TAXATION OF CONTRIBUTIONS TO THE CHARTER CAPITAL OF A BUSINESS PARTNERSHIP

In accordance with Article 251, Clause 1, Sub-clause 3 of the Tax Code of the Russian Federation, when determining the taxation base, income in the form of property, monetisable property rights or non-property rights, which are received in the form of contributions (deposits) to the authorised (charter) capital (fund) of an organisation (including income in the form of an excess of the price of placement of shares (stake) over their par value (initial amount) is not included. Article 39 of the Tax Code of the Russian Federation also provides that transfer of property is not deemed to be sale of such property for the purposes of taxation if such transfer has the nature of an investment. In other words, contribution to the charter capital of a Business Partnership shall not entail tax consequences in the Russian Federation.

Regarding other financing methods applicable to Business Partnerships, the following should be noted. As a general rule, in accordance with Article 251, Clause 1, Sub-clause 3.4 of the Tax Code of the Russian Federation, profits in the form of value of property (property rights), which are transferred by a member for the purpose of increasing the net assets of a subsidiary organisation, are not taxed with income tax. At the same time, as it follows from the above-mentioned wording, this provision covers only companies and partnerships. In the opinion of the Ministry of Finance of the Russian Federation, Business Partnerships are not entitled to use the above exemption, and profits in the form of value of property (property rights), which are transferred to a Business Partnership for the purpose of increasing its net assets, shall be taxed with income tax according to the standard procedure at the rate of 20%.

13.3. TAXATION OF INVESTMENT ACTIVITIES OF A BUSINESS PARTNERSHIP

In accordance with the Tax Code of the Russian Federation, a Business Partnership shall pay income tax at the rate of 20%, value-added tax at the rate of 18% in the event of sale of goods (works, services) in the Russian Federation and/or when goods are imported into the Russian Federation, property tax at a rate below 2.2% (in case it has real property in its books, as well as movable property entered onto its register before January 1, 2013), as well as other taxes, including land tax and transport tax. Furthermore, Business Partnerships are obliged to make insurance payments to the social insurance funds at the aggregate rate of 30%.

Provided certain conditions are fulfilled, a Business Partnership is also entitled to switch to the simplified taxation system.

The Russian tax law does not provide for any special tax exemptions related to application by taxpayers of the legal form of Business Partnership. At the same time, taxpayers who are Business Partnerships are entitled to common tax exemptions available to corporate taxpayers regardless of the legal form (for example, tax exemptions for taxpayers engaged in innovative activities, tax exemptions provided at the regional level to participants in investment projects, etc.).

13.4. TAXATION IN CASE OF DISTRIBUTION OF PROFITS AMONG MEMBERS OF BUSINESS PARTNERSHIPS

Taxation of members of a Business Partnership will, in particular, depend on the jurisdiction within which members are considered to be residents for taxation purposes and the type of income received from such Business Partnership. If a member of a Business Partnership is a Russian company, dividends payable by a Business Partnership shall be taxed at the rate of 9% or 0% (if such member of the Business Partnership continuously has ownership of at least 50% interest in the charter capital of a Business Partnership for longer than 365 days[20]).

Dividends payable to a member of a Business Partnership who is an individual shall be taxed with personal income tax at the rate of 9% (for individuals who are tax residents of the Russian Federation).

In accordance with the Tax Code of the Russian Federation, in case of distribution of dividends from a Business Partnership between foreign members (if any are available), such dividends shall be taxed at source at the rate of 15% (this rate is applied in respect of members who are legal entities or individuals alike). The specified tax rate may be reduced to 10% or 5% depending on the provisions of an applicable double taxation agreement.

In accordance with the Law, the Partnership Operating Agreement may provide for the right of members of a partnership to participation in disproportionate distribution of Partnership’s profits. It should be noted that, in accordance with Article 43 of the Tax Code of the Russian Federation, dividends are deemed to be after-tax income received in the course of profits distribution in proportion to stake of shareholders’ (members) stake. In respect to companies, the Ministry of Finance of the Russian Federation in its letters takes the position that in case of disproportionate distribution of profits among members of a Business Partnership, payments in excess of the amount calculated using the proportional method are not deemed to be dividends for taxation purposes and are taxed at the rate of 20%, if paid out to legal entities and at the rates of 13% and 30% if applied to individuals in the Russian Federation, property tax at a rate below 2.2% (in case it has real property in its books, as well as movable property entered onto its register before January 1, 2013), as well as other taxes, including land tax and transport tax. Furthermore, Business Partnerships are obliged to make insurance payments to the social insurance funds at the aggregate rate of 30%.

Provided certain conditions are fulfilled, a Business Partnership is also entitled to switch to the simplified taxation system.

The Russian tax law does not provide for any special tax exemptions related to application by taxpayers of the legal form of Business Partnership. At the same time, taxpayers who are Business Partnerships are entitled to common tax exemptions available to corporate taxpayers regardless of the legal form (for example, tax exemptions for taxpayers engaged in innovative activities, tax exemptions provided at the regional level to participants in investment projects, etc.).

TAXATION OF CONTRIBUTIONS TO THE CHARTER CAPITAL OF A BUSINESS PARTNERSHIP

In accordance with Article 251, Clause 1, Sub-clause 3 of the Tax Code of the Russian Federation, when determining the taxation base, income in the form of property, monetisable property rights or non-property rights, which are received in the form of contributions (deposits) to the authorised (charter) capital (fund) of an organisation (including income in the form of an excess of the price of placement of shares (stake) over their par value (initial amount) is not included. Article 39 of the Tax Code of the Russian Federation also provides that transfer of property is not deemed to be sale of such property for the purposes of taxation if such transfer has the nature of an investment. In other words, contribution to the charter capital of a Business Partnership shall not entail tax consequences in the Russian Federation.

Regarding other financing methods applicable to Business Partnerships, the following should be noted. As a general rule, in accordance with Article 251, Clause 1, Sub-clause 3.4 of the Tax Code of the Russian Federation, profits in the form of value of property (property rights), which are transferred by a member for the purpose of increasing the net assets of a subsidiary organisation, are not taxed with income tax. At the same time, as it follows from the above-mentioned wording, this provision covers only companies and partnerships. In the opinion of the Ministry of Finance of the Russian Federation, Business Partnerships are not entitled to use the above exemption, and profits in the form of value of property (property rights), which are transferred to a Business Partnership for the purpose of increasing its net assets, shall be taxed with income tax according to the standard procedure at the rate of 20%.

TAXATION IN CASE OF DISTRIBUTION OF PROFITS AMONG MEMBERS OF BUSINESS PARTNERSHIPS

Taxation of members of a Business Partnership will, in particular, depend on the jurisdiction within which members are considered to be residents for taxation purposes and the type of income received from such Business Partnership. If a member of a Business Partnership is a Russian company, dividends payable by a Business Partnership shall be taxed at the rate of 9% or 0% (if such member of the Business Partnership continuously has ownership of at least 50% interest in the charter capital of a Business Partnership for longer than 365 days[20]).

Dividends payable to a member of a Business Partnership who is an individual shall be taxed with personal income tax at the rate of 9% (for individuals who are tax residents of the Russian Federation).

In accordance with the Tax Code of the Russian Federation, in case of distribution of dividends from a Business Partnership between foreign members (if any are available), such dividends shall be taxed at source at the rate of 15% (this rate is applied in respect of members who are legal entities or individuals alike). The specified tax rate may be reduced to 10% or 5% depending on the provisions of an applicable double taxation agreement.

In accordance with the Law, the Partnership Operating Agreement may provide for the right of members of a partnership to participation in disproportionate distribution of Partnership’s profits. It should be noted that, in accordance with Article 43 of the Tax Code of the Russian Federation, dividends are deemed to be after-tax income received in the course of profits distribution in proportion to stake of shareholders’ (members) stake. In respect to companies, the Ministry of Finance of the Russian Federation in its letters takes the position that in case of disproportionate distribution of profits among members of a Business Partnership, payments in excess of the amount calculated using the proportional method are not deemed to be dividends for taxation purposes and are taxed at the rate of 20%, if paid out to legal entities and at the rates of 13% and 30% if applied to individuals in the Russian Federation, property tax at a rate below 2.2% (in case it has real property in its books, as well as movable property entered onto its register before January 1, 2013), as well as other taxes, including land tax and transport tax. Furthermore, Business Partnerships are obliged to make insurance payments to the social insurance funds at the aggregate rate of 30%.

Provided certain conditions are fulfilled, a Business Partnership is also entitled to switch to the simplified taxation system.

The Russian tax law does not provide for any special tax exemptions related to application by taxpayers of the legal form of Business Partnership. At the same time, taxpayers who are Business Partnerships are entitled to common tax exemptions available to corporate taxpayers regardless of the legal form (for example, tax exemptions for taxpayers engaged in innovative activities, tax exemptions provided at the regional level to participants in investment projects, etc.).
who are residents and non-residents respectively. At present no specific explanations have been so far offered by Russian tax authorities in relation to taxation in case of disproportionate distribution of profits among members of a Business Partnership. Russian tax authorities are most likely to take the same position on this issue as in respect of Companies, as it was considered above.

In our opinion, if there is an applicable double taxation agreement in respect of payments to foreign members of Business Partnerships, dividends and the corresponding tax rate shall be defined as in the applicable double taxation agreement. In the majority of double taxation agreements in the Russian Federation the definition of the term “dividends” does not contain any reference to their proportional nature. Therefore, for the purposes of an applicable double taxation agreement, payments in excess of the amount calculated using the proportional method shall be deemed to be dividends and shall be taxed at source at the corresponding rate. The corresponding amounts of tax should be calculated, withheld and transferred to the budget by a Business Partnership paying out dividends and acting as a tax agent. In relation to recipients of dividends that are legal entities such approach is also confirmed in letters of the Ministry of Finance of the Russian Federation and in the existing judicial practice.

In our opinion, this logic is applicable also to recipients of dividends who are individuals.

The table above provides the rates of income tax or profit tax (as applicable) applied to dividends payable to Business Partnership’s members as well as in relation of payments in excess of the amount calculated using the proportional method.

### 13.5. TAXATION OF PROFITS OF MEMBERS IN CASE OF TERMINATION OF MEMBERSHIP IN A BUSINESS PARTNERSHIP

#### 13.5.1. SALE OF STAKE IN THE CHARTER CAPITAL OF A BUSINESS PARTNERSHIP

Revenues from the sale of stake in the charter capital of a Business Partnership are taxed with income tax at the rate of 20%. The taxation base is determined as difference between the amount of revenues and the amount of expenses for acquisition of stake. Incomes of members who are individuals and tax residents of the Russian Federation from sale of their stakes in a Business Partnership are defined as the difference between documented investments of members into the charter capital of such Partnership and the selling price of the stake and are taxed with the income tax in the Russian Federation at the rate of 13% (in respect of individuals who are residents).

Revenues from the sale of stake in the charter capital of a Business Partnership derived by its foreign member are usually exempt from tax at source in the Russian Federation under an applicable double taxation agreement.

Transactions on sale of stake in a Business Partnership shall not be subject to VAT.

#### 13.5.2. TERMINATION OF MEMBERSHIP IN A BUSINESS PARTNERSHIP OR ITS LIQUIDATION

In accordance with Article 39, Clause 5 of the Tax Code of the Russian Federation, transfer of assets within the limits of the initial contribution made by a member of a Company or a Partnership (its successor or heir) upon the
withdrawal of such member the company or partnership, as well as in case of distribution of the assets of a liquidated company or partnership among its members, shall not be considered sale for the purposes of taxation. Similarly, Article 251, Clause 1, Sub-clause 4 of the Tax Code of the Russian Federation provides that, when determining the taxation base of a taxpayer, revenues in the form of property or property rights received within the limits of the initial contribution made by a member of a company or a partnership (by his/her legal successor or heir) upon his/her withdrawal from the company or partnership, or if the assets of a liquidated company/ partnership are distributed among its members, shall not be taken into account.

Therefore, in relation to a company or a partnership, the value of property received by members in case of liquidation of such should not be taken into account for the purposes of taxation of income if the value of such property is equal to the value of the contribution made by such members to the authorised (charter) capital of a company or a partnership.

Based on Article 43, Clause 1 of the Tax Code of the Russian Federation, Russian courts and tax authorities have developed an approach according to which a taxpayer’s income exceeding the initial contribution to the authorised (charter) capital of a company or partnership shall be recognised as dividends.

At the same time it should be noted that the abovementioned provisions of Article 39, Clause 5 and Article 251, Clause 1, Sub-clause 4 of the Tax Code of the Russian Federation are not applicable to Business Partnerships. This is also the position of the Ministry of Finance of the Russian Federation in its letters. At present no clarifications have been provided Russian tax authorities in relation to taxation of income if the assets of a liquidated company (charter) capital of a company or partnership are distributed among its members, as well as in case of distribution of the assets (property rights) received in case of liquidation, (these letters focus on liquidation of Companies, however, in our opinion, this approach may be applicable to Business Partnerships as well). According to the position of the tax authorities expressed in these letters, the amount of taxable income received by a taxpayer in case of liquidation of a company should be calculated on the basis of the market value of the assets transferred to him/her as a result of liquidation of the company excluding expenses. This conclusion of the tax authorities is based on the fact that a taxpayer is entitled to reduce the amount of his/her taxable income by the amount of actually incurred and documented expenses related to receipt of such income in case of sale of his/her stake in the liquidated company’s charter capital. As in the case of liquidation, no sale of a stake in the charter capital of a company takes place, revenues received from a company being liquidation shall be taxed with personal income tax according to the standard procedure out of the total amount of such revenues at the rate of 13% in respect of tax residents of the Russian Federation. At present judicial practice in this respect is also lacking.

120 See, for example, Letter of the Ministry of Finance of the Russian Federation No. 3-03-07/25624 dd. July 4, 2013.

121 At present there are no explanations of Russian tax authorities and judicial practice in respect of application of the rate of 0% in relation to dividends paid out by a Partnership to its members.

122 See, for example, Letter of the Ministry of Finance of the Russian Federation No. 3-03-10/84 dd. July 30, 2012.


126 We are aware of only one letter of tax authorities in which they would take the positions in favour of a taxpayer on this issue: See Letter of the FAS of the Russian Federation No. 3-5-04/70@ dd. January 27, 2010.
SECTION 14.
STATISTICS OF APPLICATION OF BUSINESS PARTNERSHIP AS A LEGAL FORM OF INCORPORATION IN THE RUSSIAN FEDERATION

It is known to us from open sources that as of November 16, 2013 nine Business Partnerships had been incorporated. The list of Business Partnerships, details of their founders and primary types of activity entered into the Unified State Register of Legal Entities are given in the table below.

<table>
<thead>
<tr>
<th>№</th>
<th>Full legal name, location, date of state registration</th>
<th>Primary types activity</th>
<th>Founders</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Business Partnership “Regional Association of Specialised Parking Lots” (Moscow Region) Date of state registration: August 16, 2012.</td>
<td>– operation of garages, parking lots for vehicles, bicycles, etc. (main) – retreading – vehicle trading – vehicle maintenance and repair – trading of automobile spare parts, units and accessories – trading of motorcycles, their spare parts units and accessories – maintenance and repair of motorcycles – storage and warehousing – cargo forwarding</td>
<td>Legal entities</td>
</tr>
<tr>
<td>2.</td>
<td>Business Partnership “Production Association of Specialised Parking Lots” (Moscow Region) Date of state registration: November 9, 2012.</td>
<td>– operation of garages, parking lots for vehicles, bicycles, etc. (main) – retreading – vehicle trading – vehicle maintenance and repair – trading of automobile spare parts, units and accessories – trading of motorcycles, their spare parts units and accessories; maintenance and repair of motorcycles – operations of other overland transport – storage and warehousing – cargo forwarding</td>
<td>An individual and a legal entity</td>
</tr>
<tr>
<td>3.</td>
<td>Business Partnership “Pulse” (Ukhta) Date of state registration: November 6, 2012.</td>
<td>– retail of pharmaceutical goods (main) – retail of pharmaceutical goods and orthopaedic appliances</td>
<td>Individuals</td>
</tr>
<tr>
<td>4.</td>
<td>Business Partnership “Consolidation” (Saint Petersburg) Date of state registration: November 19, 2012.</td>
<td>– legal activity (main) – financial industrial groups management – holding companies management</td>
<td>Individuals</td>
</tr>
<tr>
<td>№</td>
<td>Full legal name, location, date of state registration</td>
<td>Primary types activity</td>
<td>Founders</td>
</tr>
<tr>
<td>----</td>
<td>----------------------------------------------------</td>
<td>------------------------</td>
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</tr>
</tbody>
</table>
| 5. | Business Partnership “KillFish Trademark” (Saint Petersburg) Date of state registration: December 14, 2012. | - provision of services (main)  
- public catering (restaurants and cafes)  
- public catering (bars)  
- food supply  
- business activity and management counselling  
- financial industrial groups management  
- holding companies management | Individuals |
| 6. | Business Partnership “KillFish Management Company” (Saint Petersburg) Date of state registration: December 25, 2012. | - financial industrial groups and holding companies management (main)  
- public catering (restaurants and cafes)  
- public catering (bars)  
- food supply  
- business activity and management counselling | Individuals |
| 7. | Business Partnership “Guild of Merchants” (Izhevsk) Date of state registration: May 29, 2013. | - food wholesale including beverages and tobacco products (main)  
- wholesale through agents (for an economic consideration or on contractual basis)  
- wholesale of agricultural raw materials and live stock  
- wholesale of non-food consumer goods  
- wholesale of non-agricultural intermediate products, waste and scraps  
- wholesale of machinery and equipment;  
- other wholesale  
- retail in non-specialised stores mainly of food including beverages and tobacco products  
- other retail on non-specialised stores  
- cargo handling  
- storage and warehousing  
- cargo forwarding  
- other financial intermediation  
- lease of other vehicles and equipment  
- lease of shop equipment  
- legal, accounting and auditing activity  
- business activity and company management counselling  
- advertising  
- employment and recruitment | Individuals |
| 8. | Business Partnership “Borovlyansky Forestry” (the Altai Territory) Date of state registration: August 21, 2013. | - forestry and logging (main);  
- provision of services in forestry and logging  
- timber production, apart from profiled, over 6 mm thick;  
- production of untreated railroad and tram sleepers of wood  
- production of wooden building structures and millwork  
- general construction work  
- wholesale of timber  
- other wholesale | Legal entities and an individual |
<table>
<thead>
<tr>
<th>№</th>
<th>Full legal name, location, date of state registration</th>
<th>Primary types activity</th>
<th>Founders</th>
</tr>
</thead>
</table>
| 9. | Business Partnership “Gasification” (Volgograd) Date of state registration: August 29, 2013. | - general construction work on mainlaying, cable-laying and power line laying (main)  
- general construction work on mainlaying, cable-laying and power line laying including related supporting activities;  
- financial intermediation not included in other groups  
- capital investments into property  
- stake register maintenance (registrar’s activity)  
- provision of efficient performance of financial markets  
- other activity related to management of financial markets not included in other groups  
- other supporting activities in financial intermediation  
- financial intermediation counselling  
- preparation for sale of private real estate  
- preparation for sale of private non-residential real estate  
- sale and purchase of private real estate  
- sale and purchase private non-residential premises  
- lease of private non-residential real estate  
- agency’s activities on real estate operations  
- marketing research and opinion survey  
- marketing research  
- public opinion research  
- business activity and management counselling  
- architectural activity  
- geological exploration, geophysical and geochemical works in the area of subsurface study and rehabilitation of mineral resources  
- hydrographical exploration  
- activity related to collection, processing and preparation of cartographic and space information and aerial photography  
- engineering investigations for construction  
- land arrangement  
- activity in the area of standardisation and metrology  
- provision of employment services  
- provision of recruitment services | Individuals |

Taking into account the main types of activities carried out by existing Business Partnerships, it can be concluded that so far this legal form of organisation is not applied for implementation of innovative (including venture-type) projects, i.e. for its intended purpose.

The Law requires at least one individual to be a member of a Business Partnership. Probably, the Unified State Register of Legal Entities contains incomplete or incorrect details of founders or the Business Partnership was incorporated in violation of the requirements of the Law.
SECTION 15.
DRAFT AMENDMENTS TO THE LAW ON BUSINESS PARTNERSHIPS

SUMMARY CONCLUSIONS OF THIS SECTION

The Russian Venture Capital Association (hereinafter – “RVCA”) developed and in June 2013 submitted for consideration by the Ministry of Economic Development of the Russian Federation a set of amendments to the Law intended to strengthen the discretionary nature of regulation of Business Partnerships activities.

As of October 20, 2013 these amendments have not yet been submitted for consideration by the State Duma of the Russian Federation.

On June 4, 2014 RVCA experts submitted for consideration by the Ministry of Economic Development of the Russian Federation a set of amendments to the Law. These amendments are intended to enhance the discretionary nature of regulation of Business Partnerships’ activity.

First of all, it is proposed to amend the general provisions on Business Partnerships. In particular, it is proposed to lift the prohibition of creation of a Partnership by one party (an individual or a legal entity), on participation of a Partnership in other legal entities, as well as to allow advertising and placement of bonds and other securities (except for shares). Furthermore, restriction of the requirement for compliance of the Partnership Operating Agreement with the laws of the Russian Federation exclusively by the requirement for conformity to the Law is provided.

Amendments also affect the procedure for protection of Partnership’s exclusive rights to results of intellectual activity from enforcement on the part of Partnership’s creditors. The procedure set forth by the Law at the moment provides for prior approval by all members (and other persons in cases provided for in the Partnership Operating Agreement) for the fulfilment of Partnership’s obligations before its creditors by Partnership’s member. It is proposed to make the possibility of such fulfilment without approval on the part of members and other persons, unless otherwise provided by the Operating Agreement, a general rule.

It is proposed to exclude the requirement to enter into the Partnership Operating Agreement when a partnership is incorporated, as well as to cancel the requirement for notary certification and storage of this document by a notary public. It is moreover offered to cancel the obligation to agree upon an auditor when a partnership is incorporated.

The set of amendments modifies the provisions concerning management bodies. For example, important amendments have been proposed allowing the fulfilment of the sole executive body’s duties and responsibilities by the management company or a person who is not a member of partnership.

Moreover, a member of a partnership shall be entitled to act on behalf of such partnership when dealing with third persons only on the basis and within the competence set forth by a power of attorney issued to such member by a person acting as the sole executive body.

It is proposed to mention in the text of the Law the right of a member to receive information by means of familiarisation with different documents of a Partnership, as well as a possibility to restrict this right by virtue of relevant provisions of the Operating Agreement depending on certain criteria (for example, on the amount of such member’s stake).

The list of mandatory provisions to be found in the Articles of Partnership is also being modified: the obligation to specify in the Articles of Partnership the composition of the charter capital and the existence of a Operating Agreement was excluded (it is only necessary to indicate the fact of participation or non-participation of a partnership itself).

The amendments describe in detail the procedure for transfer of a member’s stake, allowing for transfer of a stake as a result of legal succession. Provisions concerning the possibility of, and procedure for, changing the charter capital amount, as well as regulating the procedure and time limits for distribution of Partnership’s profits shall be added.

It is proposed to establish the presumption of validity of information included onto the register of members of Partnership for third persons.

As of October 20, 2013, no official draft laws providing for amendment of the Law have been submitted to the State Duma of the Russian Federation.

The set of amendments proposed by the RVCA is aimed at enhancing the discretionary nature of regulation of Business Partnerships’ activity, eliminating the restrictions special for this legal form of incorporation. The positive effect of the specified discretionary nature consists in cancellation of the procedures impeding operation of such Partnerships as economic agents, in particular, storage of the Operating Agreement with a notary public, the necessity of seeking by a counterparty
for a written consent for familiarisation with the Operating Agreement, etc.

However, it should be noted that some amendments have been prepared without regard of the civil law reform being implemented which significantly restricts opportunities of members of a Business Partnership provided by the Civil Code of the Russian Federation as amended. For example, the amendments provide for issuance of a power of attorney to members on behalf of a partnership only by a sole executive body, thought the Civil Code of the Russian Federation contains more progressive provisions allowing to set forth powers of an attorney by members themselves in the Operating Agreement or by resolution of a meeting (partnership’s collegiate body).^{128}

In general, the draft document of the RVCA is intended to make Business Partnerships’ one of the most attractive forms of business operation which is in general aimed at the attraction of investments and increase of interest of venture investors to this legal form of organisation. The reverse side of this process can be unpreparedness of certain counterparties to enter into relations with a partnership and may request additional securities of partnership’s fulfilment of its obligations related to transactions as well as extra time for verification of powers of a signatory on behalf of a partnership.

Taking into consideration the analyses presented in this document, we also consider it reasonable to make amendments to the Law clarifying the issue of correlation of the provisions of Articles of Partnership and Operating Agreement (see Section 9.2.2 of the Memorandum); adding into the text of the Competition Law provisions on permissibility of terms and conditions of Operating Agreement restricting the rights of the parties to competition (see Section 9.2.6); as well as adding into the text of the Law on Strategic Companies provisions providing for its scope to cover Business Partnerships (see Section 5.2.2).

\textsuperscript{128} See Article 185, Clause 4 of the Civil Code of the Russian Federation.

**ANNEX**

**ANNEX 1.**
Structural Description of the Articles of Partnership and the Partnership Operating Agreement

**ANNEX 2.**
Sample Articles of Partnership of a Business partnership

**ANNEX 3.**
Sample Business Partnership Operating Agreement