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# **INCREASE OF THE AUTHORIZED CAPITAL OF LIMITED LIABILITY COMPANY**

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## 1. GENERAL PROVISIONS

Increase of the Authorized capital of a limited liability Company is regulated by articles 17, 18, 19 of the Federal Law "On limited liability companies" as well as by the Civil Code of the Russian Federation.

The Federal Law "On limited liability companies provides three methods of increase of the Authorized capital of a limited liability Company:

1. Increase of the Authorized capital at the expense of the Company's property.
2. Increase of the Authorized capital at the expense of additional contributions of the Company members.
3. At the expense of contributions of third persons admitted at the Company if it is not prohibited by the Company Charter.

At the time of taking the decision on increase of the Authorized capital the following conditions should be observed:

1. The initial Authorized capital is completely formed, even if one year has not passed (provided by the Constituent Agreement and the Charter) since the state registration. In this event, the founders should only meet their liabilities on making contributions to the Authorized capital.
2. Upon end of the second and each following financial year the value of the Company's net assets should not be less than its Authorized capital. Otherwise the Company must declare of reduction of its Authorized capital up to the amount not exceeding the value of its net assets, and register such reduction.
3. Upon end of the second and each following financial year the value of the Company's net assets should not be less than the minimum amount of the Authorized capital established at the time of state registration. Otherwise, the Company is subject to liquidation.

The legislation does not contain limitations of the minimum amount of the Authorized capital of a limited liability company.

In certain cases, it may be necessary to obtain a permit or notification from antimonopoly authority. For example, when a their person acquires a share in the Authorized capital of the Company, which gives in the aggregate with the available votes more than 20% of votes at the General members' meeting, when transferring the property as contribution to the Authorized capital which makes up more than 10% of the book value of fixed production assets and intangible assets of the transferor (see Federal Law dated March 22, 1991 N 948-1 "On competition and limitation of monopolistic activity in commodity markets" with amendments as of October 09, 2002).

## 2. INCREASE OF THE AUTHORIZED CAPITAL AT THE EXPENSE OF ITS PROPERTY

This method of increase of the Authorized capital is applied to the property listed in the Company's fixed assets as ownership. In Company's own property includes:

1. Property acquired by the Company itself under civil and legal agreements.
2. Property transferred to the Company in management from legal entities and natural persons.
3. Property created by the Company employees, received results, incomes from property used by the Company.
4. Property otherwise passed in the Company's ownership.

The following is not referred to the Company's property:

1. Property being in trust management with the Company.
2. Property kept by the Company under contract of custody.
3. Leased property irrespective of the term of lease.

The limited liability Company may acquire property and increase the Authorized capital at the expense of the property. True, it is not profitable, since when acquiring the property the Company has to pay a value-added tax which later on will not be included into the cost of the property but will be referred to a separate account.

Decision on increase of the Authorized capital at the expense of the Company's property may be taken only on the basis of the balance-sheet data for the previous year.

An amount by which the Authorized capital of the Company is increased at the expense of the Company's property should not exceed the difference between the value of net assets of the Company and the amount of the Authorized capital and the reserve fund of the Company.

Decision on increase of the Authorized capital at the expense of the Company's property is taken at the annual or extraordinary General members' meeting by a majority of not less than two thirds of the total number of votes of the Company unless a necessity of greater number of votes is provided by the Company Charter.

A specific feature of increase of the Authorized capital at the expense of the Company's property from increase of additional contributions is that this operation involves proportional increase of the nominal value of shares of all the Company members without change in amounts of their shares.

The agenda of the general members' meeting of the Company should include the following items:

1. On increase of the Authorized capital of the Company. The amount by which the Authorized capital is increased, and the source of formation of the Authorized capital should be stated.
2. On approval of distribution of shares in the Authorized capital among the Company members. Distribution should be proportional in respect to the available shares of the members.
3. On making amendments to the constituent documents of the Company.

### 3. INCREASE OF THE AUTHORIZED CAPITAL AT THE EXPENSE OF ADDITIONAL CONTRIBUTIONS OF THE COMPANY MEMBERS

Additional contributions to the Authorized capital may be made by the members both jointly and separately. The procedure of increase of the Authorized capital depends on this.

#### ***1. Making additional contributions to the Authorized capital by all the Company members.***

**This procedure may be divided into several stages.**

##### *Stage 1. Holding of the General members' meeting of the Company.*

Decision on increase of the Authorized capital at the expense of making additional contributions by the Company members is taken by the General members' meeting by a majority of not less than two thirds of votes of the total votes of the Company members unless a necessity of greater number of votes for taking such decision is provided by the Company Charter.

The following issues are put for decision by the members:

1. Intention of the members to increase the Authorized capital at the expense of contributions of all the members.
2. The total value of additional contributions.
3. Ratio which is common for all the Company members between the value of additional contribution of the Company member and the amount by which the nominal value of his share is increased.
4. Evaluation of non-money contributions of the members (if non-money contribution exceeds 200 minimum wages).

When taking the decision on increase of the Authorized capital the members should remember that at the end of the financial year net assets should not be less than the Authorized capital, otherwise in accordance with article 20 of the Federal Law "On limited liability companies" it is necessary to take a decision on reduction of the Authorized capital.

Restriction of the right of the Company member to make an additional contribution not exceeding a part of the total value of additional contributions in proportion to the amount of the share of this member in the Authorized capital is not allowed.

##### *Stage 2. Making additional contributions to the Authorized capital of the Company.*

Additional contributions should be made by the Company members within two months since the day of taking the decision on increase of the Authorized capital by the General members' meeting unless another term is established by the Company Charter or decision of the General members' meeting. Every member of the Company has the right to make an additional contribution not exceeding a part of the total value of additional contributions in proportion to the share of this member in the Authorized capital.

Contribution to the Authorized capital of the Company may be money, securities, other things or property rights or any other rights having money value. The member may not be released from his obligation to make a contribution to the Authorized capital of the Company, including by way setoff of demands to the Company.

The additional contribution in money form is transferred by the members to the Company's settlement account, after that the bank must issue a reference to the registration authority on making the additional contributions to the Authorized capital, the reference should contain the exact amount, date of contribution and person contributed the amount.

The additional contribution in non-money form is transferred in accordance with the acceptance certificate. As this takes place, if the cost of non-money contribution is more than 200 minimum wages an independent valuation is required.

If the cost of non-money contribution is 200 minimum wages and less, it is necessary only a decision on evaluation of this contribution by the General members' meeting taken by all the members unanimously.

*Stage 3. Approval of the results of making contributions to the Authorized capital.*

Not later than a month since expiration of the term of making the additional contributions the General members' meeting should take a decision on approval of the results of making the additional contributions by the Company members. At the same time a decision on making relevant amendments to the constituent documents of the Company is taken.

*Stage 4. State registration of amendments in the constituent documents of the Company.*

Documents for state registration of amendments in the constituent documents of the Company should be produced to the registration authority within a month since taking the decision on approval of the results of making additional contributions.

In case of failure to observe the dates the increase of the Authorized capital of the Company is considered as not taken place.

If the increase of the Authorized capital does not take place, the Company must within a reasonable period return to the Company members who made contributions in money their contributions, and in case of failure to return the contributions within the stated period the Company should also pay interest in order and within the dates as provided for by article 395 of the Civil Code of the Russian Federation.

The Company must within a reasonable period return to the Company members and third persons who made non-money contributions their contributions, and in case of failure to return the contributions within the stated period the Company should also compensate for lost profit stipulated by impossibility to use the property made as a contribution.

## ***2. Making additional contributions by separate members of the Company***

**This procedure may also be divided into several separate stages.**

*Stage 1. Submission of application to the Company for making additional contributions.*

The Company member or several members of the Company apply to the Company for making an additional contribution or additional contributions to the Authorized capital of the Company.

The application should contain the amount and composition of the contribution, procedure and period of its making as well the amount of share which the member would like to have, and other conditions of making an additional contribution.

*Stage 2. Convocation and holding of the General members' meeting of the Company.*

The following issues are put on the agenda of the General members' meeting:

1. Increase of the Authorized capital of the Company at the expense of making and additional contribution or additional contributions on the basis of applications submitted to the Company from the members. Decision on this issue should be taken unanimously by all the Company members;
2. Change in amounts of shares in the Authorized capital of the Company members;
3. Making relevant amendments to the constituent documents of the Company;

4. Dates of making additional contributions;
5. If required, decision on evaluation of non-money contribution made to the Authorized capital.

The nominal value of the share of every member of the Company applied for making an additional contribution is increased by the amount which is equal to or less than the value of his additional contribution.

*Stage 3. Making additional contributions.*

Additional contributions should be made by the Company members within the period stated in the application and confirmed at the General members' meeting.

Composition and form of contributions are determined in the application of the member (members) to the Company. The additional contribution in money form is transferred by the members to the Company's settlement account, after that the bank must issue a reference to the registration authority on making the additional contributions to the Authorized capital, the reference should contain the exact amount, date of contribution and person contributed the amount.

The additional contribution in non-money form is transferred in accordance with the acceptance certificate. As this takes place, if the cost of non-money contribution is more than 200 minimum wages (20 000 rubles) an independent valuation is required.

If the cost of non-money contribution is 200 minimum wages and less, it is necessary only a decision on evaluation of this contribution by the General members' meeting taken by all the members unanimously.

*Stage 4. State registration of amendments in the constituent documents.*

Documents for state registration of amendments in the constituent documents of the Company as well as documents which confirm making additional contributions by the Company members in full should be produced to the registration authority within a month since making the additional contributions in full by all the Company members, but not later than six months since taking the decision on increase of the Authorized capital.

The said amendments in the constituent documents shall be valid for the Company members and third persons since the date of their state registration.

In case of failure to observe the dates the increase of the Authorized capital of the Company is considered as not taken place.

If the increase of the Authorized capital does not take place, the Company must within a reasonable period return to the Company members who made contributions in money their contributions, and in case of failure to return the contributions within the stated period the Company should also pay interest in order and within the dates as provided for by article 395 of the Civil Code of the Russian Federation.

The Company must within a reasonable period return to the Company members and third persons who made non-money contributions their contributions, and in case of failure to return the contributions within the stated period the Company should also compensate for lost profit stipulated by impossibility to use the property made as a contribution.

#### **4. INCREASE OF THE AUTHORIZED CAPITAL OF THE COMPANY AT THE EXPENSE OF MAKING ADDITIONAL CONTRIBUTIONS BY THIRD PERSONS**

If the Company Charter does not prohibit to admit a third person to the Company and to make a contribution by him to the Authorized capital, the Authorized capital of the Company may be increased at the expense of the third person's additional contribution.

The third person applies to the Company for admitting him to the Company and making a contribution to the Authorized capital of the Company.

The application should contain the amount and composition of the contribution, procedure and period of its making as well the amount of share which the member would like to have, and other conditions of making an additional contribution.

After consideration of the application the annual or extraordinary General members' meeting should be held.

The following issues are put on the agenda of the annual or extraordinary General members' meeting:

1. Increase of the Authorized capital at the expense of making an additional contribution by the third person on the basis of application. Decision on this issue should be taken by all the Company members unanimously.
2. Determination of the nominal value and amount of the third person in the Authorized capital of the Company. The nominal value of the share acquired by the third person to be admitted to the Company should be equal to or less than the value of his contribution.
3. Change in shares of the Company members.
4. Making relevant amendments to the constituent documents of the Company.
5. Dates of making an additional contribution.
6. If required, decision on evaluation of non-money contribution made to the Authorized capital.

Additional contributions should be made by the Company member within the period stated in the application and confirmed at the General members' meeting.

Additional contributions should be made by the Company members within the period stated in the application and confirmed at the General members' meeting.

Composition and form of contributions are determined in the application of the member to the Company.

The additional contribution in money form is transferred by the members to the Company's settlement account, after that the bank must issue a reference to the registration authority on making the additional contributions to the Authorized capital, the reference should contain the exact amount, date of contribution and person contributed the amount.

The additional contribution in non-money form is transferred in accordance with the acceptance certificate. As this takes place, if the cost of non-money contribution is more than 200 minimum wages (20 000 rubles) an independent valuation is required.

If the cost of non-money contribution is 200 minimum wages and less, it is necessary only a decision on evaluation of this contribution by the General members' meeting taken by all the members unanimously.

Documents for state registration of amendments in the constituent documents of the Company as well as documents which confirm making additional contributions by the Company members and third persons in full should



be produced to the registration authority within a month since making the additional contributions in full by third persons submitted applications, but not later than six months since taking the decision on increase of the Authorized capital. The said amendments in the constituent documents shall be valid for the Company members and third persons since the date of their state registration.

In case of failure to observe the dates provided by the fifth paragraph of this item the increase of the Authorized capital of the Company is considered as not taken place.

If the increase of the Authorized capital does not take place, the Company must within a reasonable period return to the Company members and third persons who made contributions in money their contributions, and in case of failure to return the contributions within the stated period the Company should also pay interest in order and within the dates as provided for by article 395 of the Civil Code of the Russian Federation.

The Company must within a reasonable period return to the Company members and third persons who made non-money contributions their contributions, and in case of failure to return the contributions within the stated period the Company should also compensate for lost profit stipulated by impossibility to use the property made as a contribution.

## **5. STATE REGISTRATION OF AMENDMENTS IN THE CONSTITUENT DOCUMENTS OF THE COMPANY IN CONNECTION WITH INCREASE OF THE AUTHORIZED CAPITAL**

State registration of amendments in the constituent documents is carried out by tax authority at location of the legal entity, i.e. by the tax inspection where the organization is registered. The following documents should be produced for state registration:

1. Application for state registration of amendments made to the constituent documents of the Company (form P 13001).
2. New edition of the Charter and Constituent Agreement and amendments to them – 2 copies.
3. Decision on making amendments to the constituent documents of the Company (minutes or decisions on increase of the Authorized capital and making amendments to the constituent documents).
4. Original payment order of payment of government due at 2000 rubles.
5. Evidences of making additional contributions to the Authorized capital (payment orders, acceptance certificates etc.)

Application for registration should be signed by applicant (General director or head of permanent collective executive body). The applicant's signature should be authenticated by notary.

Documents for state registration should be produced personally by the applicant or authorized representative with power of attorney.

The applicant or authorized representative is provided with a certificate of state registration and registered constituent documents or amendments to the constituent documents. If the applicant fails to appear in the tax authority within the specified period, the tax authority has the right to mail the documents at the address stated in the application.

### **For information:**

1. If the member (members) of the limited liability Company is a legal entity and the cost of contribution to be made is more than 20 % of its assets as of the last reporting date, it is necessary to take a decision on approval of making a big deal executed by minutes of the General members' meeting (shareholders' meeting).
2. If the member (members) of the limited liability Company is a legal entity (natural person) fallen into the group of control persons, it is necessary to take a decision on approval of a deal with interest executed by minutes of the General members' meeting (shareholders' meeting).
3. If the sole member (members) of the limited liability Company is a legal entity (natural person) and the Authorized capital is increased at the expense of a contribution of a third person (third persons) admitted to the Company, it is necessary to conclude a constituent agreement which later on should be presented to the tax inspection with other documents for registration of amendments made to the constituent documents of the limited liability Company.