

CEIF (closed-end investment fund) Shareholders' Agreement. What tasks can the business solve and what features should be taken into account when preparing it



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Companies are looking for effective ways to protect their assets. One of these solutions is to transfer the property to the CEIF (closed-end investment fund). The main reasons for this are confidentiality, tax advantages, maintaining control, and protecting against bankruptcy risks. Sofia Sinyakova, an associate, and a colleague talked about what agreements can be transferred to the CEIF (closed-end investment fund) and what features of the shareholders ' agreement should be taken into account.

Business owners are increasingly transferring assets in the form of shares or shares of business entities to the trust management of management companies. However, such a transfer of property to CEIF (closed-end investment fund) raises questions. In particular, what to do with the existing agreements of asset owners that are fixed in corporate agreements or shareholder agreements at the level of Russian or foreign structures.

An agreement between shareholders can help transfer business partners ' agreements to the CEIF (closed-end investment fund) structure. At the same time, when drafting it, you need to take into account the specifics of such an agreement. On the one hand, it is necessary to fix the legal and financial aspects of how shareholders will interact both with each other and with the CEIF (closed-end investment fund) management company. On the other hand, it is necessary to make sure that all these agreements comply with the requirements of the legislation on mutual investment funds and do not contradict the rules of trust management of CEIF (closed-end investment fund).

Let's talk about what can be done with the help of a shareholders ' agreement to preserve existing business agreements. Let's explain what restrictions a business may face if it wants to transfer existing agreements to the CEIF (closed-end investment fund) structure using a shareholders ' agreement.

Determining the procedure for appointing members of the Board of Directors

If the company whose shares or shares were transferred to the CEIF (closed-end investment fund) had a board of directors, this familiar structure can be preserved in the agreement between the shareholders. Moreover, it can also fix the agreements that the corporate agreement of the participants of the business entity provided for. For example, the order of appointment and special rights of participants for appointing members of the board of directors.

It is important to note that the rules of trust management should specify that the appointment of members of the Board of directors of subsidiaries of CEIF (closed-end investment fund) is the competence of the investment committee. They should have the right to approve the decisions of the management company as a member of such a company. It is the management company that will become a member of the company on behalf of the CEIF (closed-end investment fund), whose shares or interests were transferred to this fund. Accordingly, the Criminal Code also votes at general meetings.

In the rules of trust management, it can be established that the investment committee has the right to form a will CC for voting at general meetings. The investment committee determines how the management company should vote on behalf of the CEIF (closed-end investment fund) immediately before voting.

The shareholders' agreement should specify the procedure for nominating members of the board of Directors, list the requirements for them, and establish other rights or obligations of shareholders when selecting and appointing them. The agreement can also specify the obligation to vote against candidates for members of the board of directors if they meet or, conversely, do not meet certain criteria.

The regulator recognized the role of CEIF (closed-end investment fund) as a tool for structuring private and corporate capital

The CEIF (closed-end investment fund) is already attracting an increasing number of investors. First, shareholders who actually retain control over the assets included in the CEIF (closed-end investment fund) can be sure that information about them remains confidential. Secondly, investors can be sure that the assets are protected, since they are managed by a management company, whose activities are closely monitored by the special depository and the Central Bank. Third, shareholders do not lose the opportunity to become owners of their assets again when adding assets to the CEIF (closed-end investment fund).

Restriction of shareholders ' right to dispose of shares

In some cases, restrictions on the disposal of shares cannot be fixed in the rules of trust management. For example, if a special depository or management company considers that such restrictions violate the rights of shareholders to dispose of shares. In this case, you can set such restrictions in the shareholders' agreement.

As opposed to joint-stock company and limited liability company shareholders of CEIF (closed-end investment fund) do not currently have a pre-emptive right to purchase. Owners of investment units will be able to use it only from March 1, 2026, after making appropriate changes to the rules of trust management of the CEIF (closed-end investment fund). Then amendments to Federal Law No. 156-FZ of 29.11.2001 "On Investment Funds" will come into force.

There is an alternative way to limit the shareholders' use of shares. Such a mechanism can be provided for in the agreement before the amendments to the legislation on investment funds come into force. Provide at the level of trust management rules that you can only dispose of shares with the consent of the management company. It will be able to issue such consent only if all the owners agree to alienate the shares. At the same time, the shareholders' agreement can provide for the pre-emptive right of shareholders to buy out a share if they receive a similar request from the management company. This pre-emptive right of repurchase can be structured through mutual call options. And in the agreement, you can also oblige shareholders not to give consent if any of the shareholders express a desire to buy out the share.

From March 1, 2026, when the amendments come into force, and the pre-emptive right to purchase a share is fixed at the level of trust management rules, the shareholders' agreement can be used to regulate the pre-emptive right to purchase. For example, it can stipulate that certain shareholders are required to waive their pre-emptive right to purchase a share in certain cases, when certain circumstances occur or do not occur.

In 2026, the CEIF (closed-end investment fund) will become an even more flexible tool

From March 1, 2026, progressive amendments to Federal Law No. 156-FZ of 29.11.2001 "On Investment Funds", hereinafter referred to as the Law on Investment Funds, will come into force. There will be different types of shares, and shareholders will be able to have different amounts of rights. You can apply a pre-emptive right of purchase to the shares in order to limit the alienation of shares to third parties. In addition, the approach to income distribution will change: now it can only be distributed in proportion to shares.

Profit distribution is not proportional to units

Currently, the profit of CEIF (closed-end investment fund) must be distributed among shareholders in proportion to their share shares. The current regulations do not allow the legislator to distribute profits disproportionately. However, this can be done from March 1, 2026 with the help of units of different classes, which will require making appropriate changes to the rules of trust management of the fund and converting units into units of different classes.

You can distribute profits disproportionately even before the amendments come into force. With the help of a shareholders' agreement, you can take profit-sharing arrangements outside the rules of trust management. In this case, it is possible to structure the issue of disproportionate profit distribution using other, additional mechanisms. It all depends on several factors: why CEIF (closed-end investment fund) is created, what assets are transferred to it, and who its shareholders are (only beneficiaries or, for example, managers). The process of developing mechanisms for the operation of CEIF (closed-end investment fund) is based on an analysis of the future structure and tax analysis.

Repurchase of shares of a shareholder who objected to a major transaction

If an limited liability company can buy back its shares in certain cases, then a closed-end mutual investment fund does not have the opportunity to buy back its shares. However, with the help of an agreement between shareholders and a call option, such a mechanism can be implemented.

The shareholder and the company whose shares were included in the CEIF (closed-end investment fund) enter into a call option on the shares of the shareholder. Such an option is exercised when the shareholder votes against the approval of a major transaction. If this happens, the investment committee will decide whether to approve the decision of the management company at the general meeting of the company's participants to exercise the option. This is necessary because the option acceptance will be a major transaction for the subsidiary.

The agreement should provide that shareholders should convene an investment committee through the management company and vote for the approval of a major transaction, that is, for the acceptance of the option. As a result, the company will receive shares, and the shareholder — their value, which will be agreed in the option.

It is important to keep in mind that not all the mechanisms that are available in business entities can be used in the same way in CEIF (closed-end investment fund). Sometimes additional structuring is necessary, even if there is a shareholder agreement. Its development, in turn, needs to be approached scrupulously, so that the shareholders' agreement maintains the stability of the CEIF (closed-end investment fund) and helps the fund solve business issues that transfer assets there.

In the shareholders ' agreement, you can specify almost all the nuances of legal relations

So that the agreement works smoothly, and the agreements are valid, when entering into an agreement, you must remember some features.

The management company may not sign the agreement. The probability that the management company will agree to be a party to the agreement is extremely low. Relations between the management company and shareholders on issues of fund management are regulated by the rules of trust management. They are checked and controlled by a special depository and the Central Bank.

The management company is at risk if it signs third — party agreements-especially those that relate to financial issues or affect the fund's assets. This can lead to potential conflicts of interest and cause dissatisfaction of shareholders who invest their funds in the fund. In addition, this reduces confidentiality and complicates the process of agreeing on an agreement between shareholders, since if the management company becomes a party to it, the agreement must be disclosed to a special depository and the Central Bank.

The shareholders ' agreement is subject to other acts. It should not contradict the legislation on investment funds and the current rules of trust management. If there are such contradictions, then it will be impossible to enforce the provisions of the agreement.

The Criminal Code has the right to disregard the provisions of the agreement. It should be remembered that a closed-end mutual fund exists under mandatory regulation. It is managed by the management company, which is obliged to act in the interests of shareholders. If the management company suspects that the shareholders ' demands contradict their interests, it may request clarification.

The management company has a high degree of autonomy in the implementation of trust management. It cannot be formally forced to comply with the shareholders ' agreements. Even the investment committee's decisions are not binding on the Criminal Code. There is no leverage to force the management company to enter into a contract, even if it is approved by the investment committee.

In addition, the management company has discretionary powers that allow it to make some decisions at its discretion. For example, decisions on the partial allocation of property in kind, on the qualification of income, on signing documents when implementing trust management of the fund.