

Significant Reform of the Belarusian Corporate Law

Summary:

- Bringing the companies' statutes to conformity with the new Law;
- Possibility to establish a one-member company;
- Possibility to conclude shareholders' agreement.

The Law of the Republic of Belarus of 15.07.2015 no 308-3 "On amendments and additions to the Law on companies" introduces significant and fundamental amendments to the Belarusian corporate law. These changes are of conceptual nature and

facilitate making of the Belarusian corporate law consistent with international standards.

DUTY TO AMEND STATUTES PURSUANT TO THE NEW PROVISIONS OF LEGISLATION

As a result of new developments, **companies are obliged** to bring their statutes into conformity with the new provisions of legislation which come into force in the future. The new law does not provide for any particular terms for modification of statutes. However, it clarifies that the modification should take place during the first amendment to the statute after entry into force of the new law (after 26 January 2016). Until amendment, the statutes are **effective only to the extent that does not contradict the new law**.

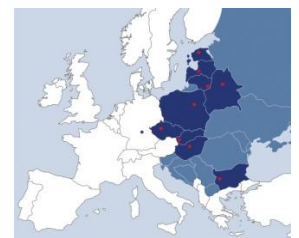
Increase in duties of the executive board

Prior to the annual general meeting, the company's executive board (a director, an executive, a managing company) is bound to prepare extensive information on company's activity in the period under review. This information has to cover:

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- Company's activity;
- Important processes/developments in the company;
- Important deals/transactions with the involvement of affiliated persons; plans and prognoses of the company for the forthcoming fiscal year.

Regulation of the right to appeal against decisions of the general meeting

Right to appeal against decisions is applicable only when two conditions are concurrently adhered to:

- Decision of the general meeting is made in breach of the laws in force or the company's statute;
- Statutory rights and interests of shareholders are violated.

Decisions of the general meeting of a joint-stock company can be appealed against within three months (six months previously), the right to appeal against decisions taken by the general meeting of limited liability and additional liability companies can be used within two months (same as before).

Right to appeal against decisions is vested in former shareholders to the same extent now. In practice, taken decisions can concern former shareholders (e.g., decisions which relate to obligations to pay dividends to former shareholders). The reform gives former shareholders the possibility to appeal against them.

Specification of powers of Board of Directors

Author's evaluation:

Shareholders or stockholders can elect a company's employee into the supervisory board. This legal rule is aimed to balance company's and employee's interests. Thus, the company can be administered not only by its shareholders but also by its employee which is already an established practice in Germany.

The following falls within the competence of the Board of Directors:

- Strategy determination and company development;
- Adoption of the annual financial plan and the annual economic development plan and follow-up control;
- Convening of the general meeting;
- Decision-making regarding other issues.

Recommendation:

Although the competence of the Board of Director is explicitly regulated by law, it is recommended that specified provisions about it are provided for by the company's statute.

Legal consequences of affiliated parties transactions

If an affiliated parties transaction is closed in breach of law and violates legitimate interests of a society or interests of company's shareholders, it can be held void by the court at the shareholders', company's suit or suit of members of the supervisory board.

If a transaction not in the interests of a society is concluded by an affiliated person or if nothing was undertaken to prevent such a transaction, the affiliated person will bear liability to the company for damages.

Important:

A member of the supervisory board who insufficiently counteracted conclusion of such a transaction, is liable to the same extent as a affiliated person.

Increase of the limited liability company's statutory fund

Decision on increase of company's statutory fund by way of additional contribution of all shareholders must be taken in a unanimous vote (at least two thirds of votes before the reform).

Since in reality not all the shareholders are able to follow day-to-day business of the company sufficiently (especially when quantity of shareholders is great), company's shareholders must be notified about intention to increase the statutory fund not later than 20 days prior to the holding of the general meeting. Therefore, timely prepared information summary on overall picture facilitates decision-making regarding possible voting.

ESTABLISHMENT OF A COMPANY WITH ONE SHAREHOLDER

After its entry into force, the Law of the Republic of Belarus of 15.07.2015 no 308-3 allows for establishment of a company by a sole founder/shareholder.

A unitary enterprise [унитарное предприятие], a little-known in the international practice form of incorporation, is defined by conceptual disadvantages. Due to the opportunity to establish the company with one shareholder, this organisational form may recede into the background.

The reform provides the following advantages for the sole founders:

- Legal form of organization which is well-known to foreign investors and concurrent facilitation of entrance to the Belarusian market by way of establishment of one-member company. Consequently, involve-

ment of a minority shareholder who owns, for example, 1% of the company's shares is not required;

- Better opportunities for capital raising by way of establishment of a company with one shareholder. The statutory fund can be increased due to the contribution of a third party. There against, the increase of unitary enterprise's capital implies its transformation into another legal form and additional expenses related hereto;
- The possibility to form a supervisory board (this possibility is not available in a unitary enterprise). The supervisory board is empowered to determine company's strategic objectives and exercise more effective control over director's activities;
- The possibility to alienate a share to a third party. As for a unitary enterprise, it is possible to alienate only the whole property complex or to transform a unitary enterprise into a company in order to be able to alienate a share;
- According to procedure currently in effect, a sole founder intending to establish a company is obliged to engage a minority shareholder (whose share often equals to 1%), what brings additional expenses with it. After the new Law enters into force, this obligation will be abolished;
If the second shareholder leaves the Company, it will continue to operate being a one-member company leaving its organisational form unchanged.

Note:

Both a natural person and a legal entity can act as a sole shareholder of a company. A sole founder exercises the powers of the general meeting of shareholders (if holding of general meeting of shareholders is not required!). Establishment of a company by the legal entity consisting of one shareholder is not permitted. The reason for setting this rule is to prevent the situation when the only shareholder individually makes decisions on the key issues of the company.

SHAREHOLDERS' AGREEMENT

Another key amendment relates to establishment of institution of shareholders' agreement, well-known in the international practice (for joint-stock companies), and the agreement on exercise of the rights of shareholders of a limited liability company (an additional liability company).

Important:

A shareholders' agreement does not substitute a statute.

Influence of the institution of the shareholders' agreement over company's economic activities is as follows:

- Due to this amendment to the Belarusian legislation, legal relations between parties, including foreign investors, can be regulated not only by the statute, but also by the shareholders' agreement (as it takes place in the generally accepted international practice);
- The shareholders' agreement is considered as a civil law contract and does not apply to third parties.

What issues can be regulated by the Shareholders' Agreement?

The legislation does not regulate the content of the shareholders' agreements. Nevertheless, parties to it can set different rights and obligations in the agreement, such as follows:

- establishment of the company's management bodies; the procedure for election of members of the supervisory body, etc.;
- procedure of shareholders voting at the shareholders' meeting; implementation of the mandatory procedure of prior consent on the issues of the general meeting of shareholders;
- terms of purchase and sale of stocks (shares) at a certain price and under certain conditions;
- prohibition to sale stocks (shares) before a certain date or a certain condition (prohibition to sale shares until the end of an investment project);
- rules for dispute resolution: election of the directors and the members of the supervisory body in case of so-called "deadlock".

It should be emphasized that only shareholders can be parties to the shareholders' agreement. Conclusion of the agreement between all shareholders and the company is not permitted.

CONCLUSIONS AND RECOMMENDATIONS:

- Statutes of companies (including joint-stock companies and limited/additional liability companies) should be examined and brought into conformity with provisions of the amended legislation in order to avoid inconsistency of statutes with statutory provisions after entry into force of the new law.

- Taking into account that it is possible to establish a one-member company from 26 January 2016, existing companies (e.g., a company with a minority shareholder/stockholder whose share equals to 1%) are subject to examination and optimisation.

We will be pleased to support you in the implementation of changes in legislation to your corporate documents.

Source: National Legal Internet-portal of the Republic of Belarus. 25.07.2015, 2/2306.

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