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LITHUANIA'S NEW COMPANY LAW

DURING this summer two important laws for business society shall enter into force in Lithuania: first, on 1 July a new Civil Code - based on Western laws (mostly on Canadian, Dutch and German) - will replace the 1964 Soviet era Civil Code. Second, on the same day, a new Company Law will enter into force.

Compared to changes in the field of civil law the reform in the field of company law will be less dramatic since Lithuania's currently in force Company Law was adopted in 1994 and was on constant changes to meet new requirements of developing business environment and its needs. In general terms, the old company law can be described to be quite modern and functional.

This article is mainly targeted to foreign businessmen and investors. Since most of the foreign owned Lithuanian companies are private companies, we will concentrate on amendment of rules applicable to private companies.

The list of business activities of a company

According to the old company law a company may engage into new business activities only upon inclusion of the new business activity into the articles of association. This has caused a need to have a long and detailed list of business activities in company's articles of association. According to the New Company Law the list of company's business activities can be more abstract and general.

Number of shareholders

The old company law states that a private company must limit the number of shareholders to 50. The New Company Law will increase the permitted number of shareholders to 100. In case this number is exceeded, the company should be reorganised into a public company or liquidated.

In kind contributions

According to old company law the amount of the authorised capital of a private company may not be less than LTL 10 000, which is equal to 2500 USD. (LTL is pegged to USD at the rate of 4:1. Lithuania is expected to re-peg LTL to EUR in early 2002).

According to the old company law the contributions to the authorised capital may be paid in cash or in kind contributions. However, at least 1/4 of the contributions must be paid in cash. In kind contributions must be evaluated by an inspector of the company or by an independent external expert or commission of experts. In principle, it has been possible to nominate a person without qualifications as of a property evaluator.
The situation will slightly change when New Company Law enters into force. Thereafter for the first share issue initial contributions in cash must not be less than 1/4 of the authorised capital and, in any case, not less than 10 000 LTL. In addition, the in-kind contributions must be evaluated by an independent and certified property evaluator.

Managing Director

One of the problematic provisions of the old company law is prohibition of a managing director to be a manager of another enterprise. The new Company Law provides for a possibility of a managing director to be appointed as a managing director of another company. However, before appointment to a second post, managing director must obtain consent from the managing body who has elected him/her. Depending on the management structure of a company this body can be Board of Directors, Supervisory Board or General Meeting of Shareholders.
According to the New Company Law the Register of Enterprises must be notified within two days about the appointment and dismissal of managing director.

Venue of the General Meeting of Shareholders

The old company law does not impose any restrictions on the freedom of shareholders to choose the place of General Meeting. Accordingly, it has been possible to hold general meetings abroad. The new Company Law imposes an obligation to hold General Meetings in Lithuania, in the territory of municipality of company's registered office.
Decision making in the General Meeting
Since 1 July 1998 the old company law required a 3/4 qualified majority voting requirement for the most number of important decisions in the General Meeting, so protecting minority shareholders' rights. However, these requirements were softened on 20 April 2001, when the amendments to the old company law provided for the almost the same voting requirements as the new Company Law.
According to the old company law and the new Company Law, when qualified majority is required, the decisions must be adopted by a majority of 2/3 of votes. Adoption of a resolution not to grant all the shareholders the pre-emption right to issued shares or convertible bonds, must be made by 3/4 majority of votes. However, it is possible to impose stricter requirements in the articles of association. First, it is possible to have a provision according to which resolutions that according to law require 2/3 majority of votes must be adopted by a greater majority. Second, it is possible to stipulate in the articles that resolution not to grant all the shareholders the pre-emption right, must be adopted by a greater than 3/4 majority of votes.

Company information

Upon entry into force of New Company Law companies must insert following information to their company documents and letters:
(a) official name of the company; (b) trade register number of the company, the name of the Register where the company is registered, and the address of the Registrar of the Register; (c) company's registered office address; (d) when a company is under liquidation procedure the wording "under liquidation" must be mentioned in connection with company's name; (e) amount of company's authorised share capital as well as paid up share capital in cases when share capital of company is mentioned in documents.

Pre-emption right in private companies

A striking feature of the old company law is the existence of rules regulating pre-emption or redemption rights. It is not even possible to insert pre-emption / redemption clauses to company's articles of association. Therefore, the only way to impose restrictions on the free transferability of shares has been to agree on the right of pre-emption in shareholders' agreement.

New Company Law introduces provisions regarding pre-emption right applicable to private companies. In cases where a shareholder is going to sell his shares to a third party who is not a shareholder of the company, the shareholder must notify the managing director of the company about his intention to sell the shares. The notification must be made in writing. It must contain at least the following information: number of to-be-sold shares, their class, the way of disposal and the sales price. The managing director has an obligation to inform other shareholders about the contemplated sale of shares. This notification must also be given in writing or in a way confirming receipt of the notification. The notification must indicate the conditions of contemplated sale, as well as the time limit for using pre-emption right. The time limit must be not less than 15 and no more than 30 days, calculated from the date of dispatch of notice to the shareholders.

The shareholder intending to sell his shares must be notified within 45 days about the other shareholders' decision to buy the shares, calculated from the date when the shareholder notified the managing director about his intention to sell the shares. If, within 45 days, the shareholder does not receive any notice from the managing director on the decision of the other shareholders to buy the shares, the shareholder is entitled to sell his shares to the buyer. The price must not, however, be lower than that indicated in the notification to the managing director.

In cases when other shareholders decide to use their pre-emption right, the purchase price of the shares must be paid within three months, calculated from the date when shareholder intending to sell his shares informed the managing director about the contemplated sale.

Steps to be taken, conclusions

The time limit to change articles of association of companies and to register the respective amendments with the Register of Enterprises is twenty four months from the entry into force of New Company Law.

However, it is noteworthy that after the new Company law enters into force, the old company law will still be applied to: (a) establishment of the companies, incorporation agreements of which have been signed prior the date of entrance into force of the new Company law; (b) increase, reduction of the authorised capital, reorganisation and liquidation of the companies when respective decisions have been taken prior the date of entrance into force of the new Company law.

Based on the foreign experience, it is very likely that new provision on pre-emption rights will be a cause of many legal disputes. One can, however, decrease the probability of disputes beforehand by inserting appropriate clauses to company's articles of association and/or to shareholders' agreement.

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