

# Legal update on amendments to the Law “On Commercial Companies”

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## Effective date of the amendments

On **26 January 2016** amendments to the Law of the Republic of Belarus No 2020-XII dated 09.12.1992 “On Commercial Companies” (hereinafter – the “Law”) will come into force according to the Law of the Republic of Belarus No 308-Z dated 15.07.2015 “On Amendments to Certain Laws of the Republic of Belarus on the Issues Related to Commercial Companies”.

The laws establish obligation for all existing commercial companies to bring their articles of association to compliance with the amended Law when amending them the first time after 26 January 2016.



## The most important recent amendments

1. possibility to establish a commercial company with the single shareholder;
2. the Law regulates the shareholders' agreement (hereinafter — Shareholders' Agreement);
3. some issues related to the activity of the commercial companies and its management are clarified;
4. mandatory audit for companies with foreign investments is abolished.



# 1. Possibility to establish a commercial company with the single shareholder

The commercial company may be established by the single shareholder or may consist of the single shareholder including cases of its establishment as a result of a reorganisation.

At the same time, the Law prohibits to establish the company where the single shareholder is another company consists of one shareholder.



## Positive aspects

- **an alternative to establishment of unitary enterprise (UE)**

(difficulties related to peculiarities of the legal regime of UE's property may be avoided)

- **the company's establishment procedure is simplified**

(the single shareholder makes decision on establishment solely => there is no need to conduct founders' meeting or to conclude the agreement on the establishment between the founders, as well as to conduct the founding meeting);

- **the company's management procedures are simplified**

(the single shareholder performs the functions of the supreme management body of the company=> there is no need to call and conduct the general shareholders' meetings => => the time for decision-making on key issues of the company's activity is reduced );

- **sale of the UE is easier**

(as an alternative to the asset deal, the UE may be easily transformed into a single-shareholder LLC and then a regular share deal becomes possible).



## Should be noted

- impossibility for the single shareholder to exit the LLC at any moment at its (his/her) own will: the single shareholder may leave the company only by alienation of its (his/her) 100 % share in the company to another shareholder or by liquidation of the company.



## 2. Shareholders' Agreement

**The Shareholders' Agreement** is an agreement on exercising the rights granted by the shares, and (or) on the peculiarities of using the rights to the shares. Parties to the Shareholders' Agreement may undertake to exercise the rights granted by the shares, and (or) the rights to the shares, in certain ways, and (or) to refrain from exercising these rights.



# Obligations of the parties to the Shareholders' Agreement

The Shareholders' Agreement may specify the following obligations of the parties thereto:

- to vote in a certain way at the general shareholders' meetings;
- to agree on voting in certain ways with other shareholders;
- to acquire or to dispose of the shares at a certain price and (or) upon occurrence of certain circumstances;
- to refrain from disposal of the shares upon occurrence of certain circumstances;
- to perform in agreed manner other activities related to the management of the company, its activity, reorganisation, and liquidation.





# Potential issues

- the commercial company itself cannot be a party to the Shareholders' Agreement;
- all shareholders of the commercial company at the same time cannot be parties to the Shareholders' Agreement;
- the Shareholders' Agreement shall be concluded in respect to all shares held by the party to the agreement;
- the obligations under the Shareholders' Agreement arise only for the parties thereto, and breach of the agreement cannot be the grounds for recognition of the company's decisions and transactions as invalid if the provisions of the articles of association and the laws are complied with;
- there is no clarity as to how the terms and conditions of the Shareholders' Agreement relate to the special rules of the laws, as well as the provisions of the articles of association, i. e. which will prevail in case of conflict.



### 3. Some issues related to the commercial companies' activity and management

- 1) transactions with affiliated persons;
- 2) competence of the general shareholders' meeting;
- 3) competence of the board of directors;
- 4) dependent companies;
- 5) annual general shareholders' meeting;
- 6) large transactions;
- 7) levying execution upon shareholder's share (part of the share).



## Transactions with affiliated persons

- in case of infliction of damages to the commercial company as a result of conclusion of the transaction with affiliated person, **members of the board of directors** that adopted such transaction **will be liable for the damages caused jointly with the affiliated person**;
- the Law provides more precise definition of the **transactions made in the normal course of the company's business activity**. These are the transactions made by the company more than 3 times in the last 12 months;
- preliminary and main agreements, as well as transactions one of which is a secured one **will no longer be considered as related transactions**.



## Competence of the general shareholders' meeting of the company

The general shareholders' meeting may delegate to other company's managing bodies the right to only **one-time decision-making** on issues referred to its non-exclusive competence => the issue on the possible extent of competence that may be delegated by the general shareholders' meeting is clarified.

In this connection it would be reasonable to pre-determine the list of specific issues will be decided on by other managing bodies on a regular basis, and to include it into the competence of the respective body in the articles of association of the company in order to avoid necessity to conduct general shareholders' meeting every time.



## Competence of the board of directors

The Law provides the list of issues referred to the **competence of the board of directors** for all types of the commercial companies. This amendment will significantly **facilitate the distribution and determination of powers between** the general shareholders' meeting, the board of directors, and the executive body of the LLC, since the competence of the board of directors is legally determined in detail only for joint stock companies at the moment.



## Dependent companies

A dependent company **may not hold the shares** in the company in relation to which it is recognized as dependent. In this connection, the dependent companies that do not meet the mentioned requirement, are obliged to dispose of the such shares not later than **1 July 2016**.



## Annual general shareholders' meeting

The Law introduces **additional obligation of the executive body** – to prepare **the information on the company's activity during the reporting period** for the annual general shareholders' meeting. Such information should include overview of the most important events in the company's activity during the reporting period, the company's large transactions, amount of the shares acquired by the company, company's plans and forecasts, and other related issues.



## Large transactions

The Law provides an opportunity to specify in the articles of association **more number of votes** required **to decide on the large transaction** at the general shareholders meeting than specified in the Law .





## Levying execution upon the LLC shareholder's share (part of the share)

The Law introduces the **additional limitation** on levying execution upon the share (part of the share) possessed by an LLC's shareholder. The shareholder's creditors have the right to demand levying execution upon the shareholder's share (part of the share) only **in case of insufficiency of other assets to cover the respective debt**. The amendment is aimed primarily at protecting the interests of the company and its shareholders in case of litigation in respect of one of the company's shareholder.



## Mandatory audit for companies with foreign investments is abolished

From **7 September 2015** mandatory audit for commercial companies with authorised capital formed partially or completely with foreign investments was abolished. It should be noted that companies with revenue from sales of goods (works, services) in the previous reporting year exceeding the equivalent of EUR 5,000,000 at the official rate of the Belarusian Ruble to Euro established by the National Bank of the Republic of Belarus on 31 December of the previous reporting year are not exempted from the mandatory audit.



# Thank you!

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