

NEWSLETTER

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CORPORATE LAW

Effects of LLC quorum reduction

The Parliament of Ukraine made amendments to the Law of Ukraine “On Business Entities” (the “Law”) concerning reduction of quorum of general meeting in limited liability companies (LLCs) from 60% to 50%. Such amendments aim at reducing effects of abuse of rights by minority shareholders, who own the blocking shareholding and use their rights in abusive manner by way of preventing convocation of general meetings and adoption of key resolutions. The amendments became effective on 13 December 2015.

Thus, the shareholder owning 50%+1 vote is independently and solely able to call for general meeting, to hold general meeting and to resolve the majority of issues regarding the company’s economic activity. Respectively, the owner of 49% of votes is not capable to influence the general meeting by its absence and to block adoption of decisions at such meeting.

It is worth considering implications of practical implementation of such changes, in particular by way of comparison of the similar mechanisms in joint-stock companies (JSCs) and LLCs.

Quorum in JSC

For JSCs, the similar provision in relation to 50% quorum of general meeting became effective on 27 March 2015. However, changes to the Law “On JSC” (the “JSC Law”) and to the Law in relation to reduction of quorum have different effects for already registered JSCs and LLCs.

Charters of all JSCs, until complied with requirements of the JSC Law, are applied in part, which does not contradict provisions of the JSC Law. In other words, if the charter of JSC provides for quorum of general meeting of shareholders to be 60% or more votes, such charter, until complied with requirements of the JSC Law, is applied only in part, which does not contradict the JSC Law, i.e. the provision of the JSC Law, which establishes quorum of 50%+1 vote prevails over any provision of the charter.

Quorum in LLC

The approach is different towards LLCs. Charters of LLCs, until complied with requirements of the Law, are applied in part, which does not contradict the Law, but at the same time the shareholders are entitled to establish other threshold for quorum. Therefore, the Law applies only if otherwise is not specified in the charter. The reduced quorum of 50%+1 vote becomes mandatory exclusively upon amendment of the charter. At the same time, the Law does not specify any consequences or sanctions in the event if no such amendments take place.

It is also worth mentioning that the obligation to make such amendments to the charter is only applicable to those LLC wherein the state has its shareholding.

Corporate relations scenarios

Thus, the new changes result in the following scenarios for development of corporate relations within LLC:

1. Everything remains as it was prior to such changes;
2. Shareholders of LLC voluntarily reduce quorum required for convocation of general meeting;
3. Upon establishment of new LLC, there is a possibility to lower down influence of minority shareholders, who aggregately own 49% and fewer votes, in order to avoid blocking of general meeting and failure to adopt important decisions by such minority shareholders.

Alternative approach

In addition, there is an alternative option aimed at protection from abusive actions of minority shareholder, who blocks general meeting. Such option is based on the following notion.

The newly adopted changes to the Law introduced new threshold, upon which the general meeting is competent, and, therefore, requires the charters of LLCs to be complied with the new requirements. At the same time, the Law allows the shareholders to deviate from the established threshold, but, however, only upon appropriate specification of such deviation in the charter. This brings us to conclusion that the Law obliges shareholders of LLC to convene general meeting and to specifically resolve whether to update or leave unchanged the number of votes required for quorum of general meeting.

CURRENCY LEGISLATION

Updated NBU's restrictions on the currency market

On 5 March 2016, the Resolution of the National Bank of Ukraine "On stabilization of credit and currency control markets of Ukraine" No. 140 dated 3 March 2016, extending restrictions on currency market. At the same time, some provisions of the Resolution No. 140 amended several restriction measures aimed at stabilization of the situation on the currency market of Ukraine. The Resolution will be effective until 9 June 2016.

The National Bank of Ukraine (the NBU) resolved to increase the upper limit of cash, which might be issued through cash desks and ATMs, to UAH 500,000 (approx. USD 18,500) per one day per one client. The exceptions include payment of salaries, costs of business travels, social payments and payments of the guaranteed sums to the depositors by the Deposit Guarantee Fund.

The banks are still prohibited to sell foreign currency to clients (except individuals) that have funds in foreign currency on current and deposit accounts with this or other banks. However, this restriction is not applicable when the aggregate amount of

client's funds in foreign currency is less than USD 25,000. Such amount does not include those funds property rights to which are under pledge; funds on the accounts with banks in temporary administration or liquidation; funds under arrest; and funds on the deposit accounts prior to 3 March 2016.

The mandatory requirement for legal entities, individual entrepreneurs and representative offices (except for official representative offices) to sell 75% of the foreign currency proceeds received from abroad has remained in force. However, the NBU cancelled the mandatory sale of foreign currency proceeds on interbank market of Ukraine:

- which were granted to a resident borrower under loan agreements involving a foreign export-import agency to fulfil its obligations under an import contract with a non-resident without these funds being credited to the resident borrower's account;
- which were received as guarantee deposit from a non-resident participant of the auction (bidding) for privatization of state property to the account of the organizer of such auction (bidding) or cash collateral in public procurement auction (bidding);
- which were received as charity aid for its recipients.

Residents are still precluded from early repayment of loans in foreign currency under loan agreements with non-residents. This restriction is also applicable to payment of interest under such agreements. The NBU refuses to register amendments to loan agreements with non-residents in relation to shortening the maturity period under such agreements or their early performance.

Requirements of the NBU concerning registration of changes to loan agreements in foreign currency between a resident-borrower and a non-resident-lender shall not apply to early repayment of loans:

- in the amount of funds attracted by the resident-borrower under the new loan agreement with the non-resident, if such new loan agreement provides for a later term of repayment compared with the previous loan agreement, and such funds are not used by the borrower for any purposes other than early repayment under previous loan agreement and respective purchase of foreign currency;
- for the benefit of international financial organizations, wherein Ukraine is a member, or international financial organizations, in relation to which Ukraine has agreed to ensure the same legal framework as provided to the other financial organizations;
- in the amount that corresponds to the part of such loan, which is issued with the involvement of a foreign export-import agency.

The NBU has also prolonged its restrictions, inter alia, in relation to:

- purchase of foreign currency for the purposes of repatriation of dividends to foreign investors abroad;
- purchase of foreign currency for the purposes of repatriation of proceeds received by foreign investors from the sale of corporate rights, other than

- shares, of legal entities, decrease of the charter capital of legal entities, withdrawal from a legal entity;
- purchase of foreign currency for the purposes of repatriation of proceeds received by foreign investors from the sale of securities of Ukrainian issuers (except for sales of bonds conducted on a stock exchange);
 - transfer of foreign currency abroad by individuals under current non-commercial transactions without confirming documents. The upper limit amount is UAH 15,000 (approx. USD 555) per day. This restriction is not applicable to transfer of funds received as salary payments by non-residents in Ukraine;
 - sale of cash in foreign currency to one person in a bank office during one business day in the amount of over UAH 6,000 (approx. USD 220).

Cash under electronic means of payment is issued only in UAH on the territory of Ukraine.

The Resolution No. 140 also prohibits authorized banks from purchasing foreign currency under import of goods transactions, if customs clearance of such goods was completed prior to 1 January 2015, and the borrower and / or lender was substituted. Such obligations shall be fulfilled by the residents out of their own funds in foreign currency.

Pursuant to the Resolution No. 140, purchase and transfer of foreign currency is prohibited, except if they are performed on the basis of an individual licence of the NBU and the total amount of such transactions shall not exceed USD 50,000 (or the equivalent in any other currency at the official exchange rate established by the NBU at the day of transaction) per calendar month per one individual licence.

In addition, provisions of the Resolution No. 140 stipulate that settlements under export and import of goods transactions, specified in Articles 1 and 2 of the Law of Ukraine "On the procedure of settlements in foreign currency", shall further continue to be carried out within 90 calendar days.

The discount rate of the NBU is remained at 22%.

DOING BUSINESS

Protection of investors' rights

On 1 May 2016, the Law of Ukraine concerning protection of investors' rights becomes effective. As previously reported, adoption of the Law aims at strengthening of protection of investors' rights in Ukraine.

Among its key provisions the Law provides for the right of the claimant to obtain reimbursement of its expenses from the company, if such expenses were incurred as a result of a court hearing in case of a claim to the company's officer regarding reimbursement of losses suffered by the company due to illegal actions of such officer in the amount of actual damage to the company. In addition, a possibility of derivative

claims is established, which provides for the right of a minority shareholder to submit a claim on reimbursement of losses in the interests of the company.

[Find more details of the Law concerning protection of investors' rights](#)

Improvement of state property privatization process in Ukraine

The Law on improvement of privatization process dated 16 February 2016 became effective on 6 March 2016.

The Law establishes that legal entities and their affiliates, registered in countries, which are defined by the Parliament of Ukraine as aggressors, are not allowed to participate in privatization. In addition, no persons from the states under sanctions are allowed to participate in privatization process. Such restrictions also apply to individuals and their related persons, who are citizens of an aggressor state or a state under sanctions.

In order to prevent fragmentation of shares and to accelerate the process of privatization, provisions concerning mandatory offer for sale at stock exchange of shares representing 5-10% of charter capital of joint stock companies prior to privatization auction were excluded.

The Law envisages a possibility of involvement of external counsels for preparation of privatization and sale of strategic enterprises under the procedure established by the Cabinet of Ministers of Ukraine. This will improve privatization process in line with the international standards.

Ratification of the WTO Agreement on Government Procurement

On 16 March 2016, the Verkhovna Rada of Ukraine ratified accession of Ukraine to the WTO Agreement on Government Procurement.

This Agreement is one of the most important among agreements in the area of public procurement and specifies the legal framework for government procurement by the states, which are the parties to the Agreement (EU member states, the USA, Japan, Canada, Hong Kong, Singapore, Korea, etc.).

In accordance with the Ukrainian law, the market of public procurement in Ukraine is open for all states, which are the parties to the Agreement; however, the markets of the signatories to the Agreement, until now, were closed for Ukrainian business. Following ratification of the Agreement the Ukrainian companies will have access to new international markets with the annual volume of procurement of around USD 1.7 trillion.

In addition, the other purposes for ratification of the Agreement are reforming of public procurement system and creation of effective and clear trade environment with decrease of corruption practices. Moreover, implementation of the provisions of the Agreement will lead to more active integration of Ukraine with EU.

Ratification and further implementation of the Agreement will increase competitiveness of Ukraine at international markets, increase volumes of Ukrainian export, ensure use of best international practices in the area of public procurement.

Simplification of entry to Ukraine for citizens of certain countries

Pursuant to its Resolution No. 145 dated 2 March 2016, the Cabinet of Ministers of Ukraine amended the Rules for issuing visas for entrance and transit through the territory of Ukraine.

The amendments broadened the list of states, citizens of which can apply for a short-term visa without submission of appropriate invitations to the diplomatic missions and consulates of Ukraine. Such countries include Australia, the Republic of Albania, the Kingdom of Bahrain, the Republic of Guatemala, the State of Qatar, the State of Kuwait, Malaysia, the United Mexican States, New Zealand, the United Arab Emirates, the Sultanate of Oman, the Kingdom of Saudi Arabia, the Republic of Singapore and the Republic of Turkey.

In addition, the citizens of Australia, Antigua and Barbuda, the Commonwealth of the Bahamas, Barbados, the Republic of Mauritius, New Zealand, the United Arab Emirates, the Republic of Palau, the Republic of El Salvador, the Republic of Seychelles, the Federation of Saint Kitts and Nevis, the Republic of Trinidad and Tobago and the Republic of Turkey, who travel to Ukraine for the purposes of tourism, can apply for a visa at the state border checkpoint provided they have appropriate documents certifying the purpose of their visit.

The consular fee for a visa is 30 non-taxable minimum incomes of citizens (equals to UAH 510 or USD 20).

Establishment of the German-Ukrainian Chamber of Commerce and Industry

On 16 March 2016, the Verkhovna Rada ratified the Agreement between the Government of Ukraine and the Government of the Federal Republic of Germany on establishment of the German-Ukrainian Chamber of Commerce and Industry. The Agreement was approved on 23 October 2015 at the Ukrainian-German business forum in Berlin.

The main intentions of the parties upon signing of this Agreement were creation of means for development of trade and economic relations between German and Ukrainian entities with mutual protection of business interests in both countries.

In addition, execution of the Agreement confirms recognition of Germany as the valuable economic partner of Ukraine and creates basis for further development of mutual collaboration between Ukraine and Germany.

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This newsletter is intended to provide a brief overview of current changes to the Ukrainian legislation and should not be viewed as legal advice. For more details or if you would like a specific advice, please, e-mail the named contact persons or use our contact form.

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