

Significant legal transactions in Ukraine

According to Ukrainian law, a significant legal transaction is a legal transaction where the value of property, works, or services that are the subject of the transaction exceeds 50% of the value of the net assets of a limited liability company, according to the latest approved financial statements. To sign an agreement that qualifies as a significant legal transaction, the will of the company's director is not enough – the consent of the general meeting of shareholders is also required.

Thus, the company's shareholders must convene a general meeting to adopt a resolution on granting the director the consent to enter into significant transactions. The resolution is to be formalised in the minutes of the general meeting. Only if such a resolution is in place, shall the company's director be entitled to enter into a significant transaction and sign the necessary agreements.

The value of the net assets of a limited liability company must be calculated on the basis of the latest financial statements approved by the company's general meeting. The company's financial statements do not provide for 'net assets' as a separate metric; in the company's financial statements, net assets correspond to 'equity'.

In practice, a situation may arise when the value of the net assets of a limited liability company is negative. In such circumstances, any transactions entered into by the company will be deemed significant since the value of services or goods under such transactions will in any case exceed the negative value of the net assets indicated in the company's financial statements.

Also, there may be cases where an LLC was established and registered within a period that is shorter than the statutory period for the preparation and approval of financial statements. Ukrainian legislation does not specify whether such a requirement is applicable to newly established companies that do not yet have approved financial statements. Consequently, a situation arises where any transaction for newly established companies may also be considered significant.

With the consent of the shareholders and the company's charter, other transactions may be included in the list of significant transactions. For example:

- gifting of property by the company;
- pledge of property by the company;
- company's guarantee of the fulfilment of an obligation by a third party;

- sale and purchase of real estate;
- purchase and sale of a vehicle;
- issue of securities by the company or purchase and sale of securities;
- provision by the company of real estate or a vehicle for use for a period exceeding 3 years;
- obtaining/granting a loan or credit by the company;
- other legal transactions.

Ukrainian law allows companies to determine the procedure for approving significant transactions on their own. For instance, a company may waive the prior approval procedure for major transactions altogether. Such a model is suitable for LLCs in which the shareholder is also the company's director. This will eliminate the need to prepare a resolution on granting consent to the director to sign agreements each time. Alternatively, the consent of the general meeting can be provided for a year in advance (e.g., at the beginning of the year, the minutes of the general meeting of shareholders authorise the director to independently enter into any transactions during the year, the price of which does not exceed the equivalent in the currency of Ukraine of EUR 100 thousand), or, conversely, the price threshold for a significant transaction can be reduced.

Entering into a major transaction without the consent of the general meeting of shareholders, if such consent was required pursuant to Ukrainian law or the provisions of the company's charter, does not automatically invalidate the agreement but makes it contestable. In other words, any interested party is entitled to apply to the court and demand that the agreement be declared invalid and, as a result, that the agreement be terminated and damages be compensated.

The negative consequences may affect not only the company, but also the director or other authorised person who signed the agreement. Under Ukrainian law, in case of violation of the procedure for approving significant transactions, the company's officers will be jointly and severally liable for the losses caused to the company.

It is worth entering information about the restrictions on the director's powers, such as thresholds for certain legal transactions, the possibility of entering into certain legal transactions only after the prior consent of the general meeting of the company's shareholders, into the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations.