

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.

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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:

Everything remains as it was prior to such changes;

Shareholders of LLC voluntarily reduce quorum required for convocation of general meeting;

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.