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SETTING ACCENTS

Issue: December 2022

Amended legal framework of joint stock companies

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Content of this issue:

→ Foreword

Saeima (Parliament) of the Republic of Latvia has passed the law "Amendments to Commercial Law" (hereinafter - the "Amendments") on 16 June 2022. The Law will enter into force on 1 July 2023 and is intended for providing business friendly and stable legal environment by focusing particular attention to modernisation of the legal framework of joint stock companies. In this issue we will look at major changes in the legal framework of joint stock companies and new requirements to be set for stockholders.

→ Procedure of registration of stock and availability of information

Type, form and conversion of stock

According to the Commercial Law stock is divided into registered stock and bearer stock and it is provided that registered stock may be issued in printed form or dematerialised and bearer stock may only be dematerialised. Articles of Association of a joint stock company must contain data on the type and form of the stock of the company, as well as information about conversion of stock (if conversion of stock is allowed by the Articles).

The split of stock into registered stock and bearer stock is maintained by the Amendments. At present a joint stock company may choose to issue (I) only one type of stock (registered or bearer), or (II) to issue both types of stock, however, the Amendments provide that a joint stock company may only have one type of stock - either registered stock or bearer stock. Thus, in future a joint stock company will no longer be able to issue both types of stock. A transition period (1 year) will be provided to joint stock companies who have issued both types of stock to enable them to adjust to the new legal requirements.

The provision regarding the form of stock is excluded from the Commercial Law by the Amendments. The Law will no longer regulate the form of stock, and this will be integrated with the general procedure of registration of and accounting for stock.

The Amendments also change the information about stock to be stated in the articles of association. Only information about the type of shares (registered or bearer stock) will have to be stated on mandatory basis in the articles of association in future. Information about the form of stock and conversion of stock, including the procedure of conversion will no longer be the data to be entered in the articles of association.

At present the Commercial Law does not regulate the procedure according to which all the stock of a company can be converted from registered stock to bearer stock or vice versa at once. In compliance with the valid regulation, a stockholder has the right to request conversion of its stock if such right is provided for by the articles of association of the company. Accordingly, if such right is not entered in the articles of association of the company and a stockholder still wants to have its stock converted, the stockholder should propose to amend the articles of association of the company by providing for conversion of stock and its procedure. Following implementation of the above amendments in the articles of association, the stockholder obtains the right to claim conversion of its stock. In order to make conversion of stock easier and to make the procedure of conversion of stock compatible with the new framework, it is provided that a meeting of stockholders should decide on conversion of stock.

Accounting for registered stock

The Commercial Law obliges joint stock companies to maintain a register of stockholders and to enter data of registered stock and its holders in the register. The register of stockholders did not have to be submitted to the Register of Enterprises until now.

The Amendments provide that registered stock should be entered in the register of stockholders maintained by a joint stock company

in the same way as until now. However, this procedure is changed by the Amendments. In particular, in future individual serial numbers should be assigned to registered stock, entries in the register of stockholders should be made in chronological order, the register of stockholders will consist of individual sections, each section needs to be prepared in two counterparts, one of which should be submitted to the Register of Enterprises, signatures in the section of the register of stockholders should be attested by the notary or the section should be signed by a secure electronic signature.

In order to adjust to the new framework and to submit registers of stockholders to the Register of Enterprises, a transition period (1 year) is provided to joint stock companies, and updated registers of stockholders have to be submitted to the Register of Enterprises during this period. If a company has not complied with the above legal requirement, the Register of Enterprises will resolve on terminating the operation of the company and the so referred simplified liquidation will be applied to the company.

Information about stockholders will be included in the public part of the file and access to it will also be provided in the form of open data. The Amendments also stipulate that in cases when an international or national sanction is applied to a stockholder or if within the scope of criminal proceedings a stockholder has been deprived of the right to engage in any business operations, this information about stockholders is taken into account during the pre-registration check by assessing the tax risks of a company and providers of the services of establishment of legal entities and management services.

Accounting for bearer stock

Bearer stock may only be issued in a dematerialised form and must be registered in the central depository of securities providing the right to a stockholder to transfer it to its account of financial instruments with a credit institution or an investment broker company.

The Amendments maintain the procedure according to which bearer stock should be registered on accounts of financial instruments, accordingly, a decision on the central depository of securities where the stock should be registered is taken by a meeting of stockholders by means of a qualified majority of votes. Following adoption of a relevant resolution, the management board is obliged to submit an application to the Register of Enterprises regarding making an entry in the Commercial Register. Further on an entry will be made in the Commercial Register about the central depository of securities where the stock of a joint stock company are registered.

The Amendments provide an obligation for a stockholder holding bearer stock accounting for more than 5 per cent of the company stock to notify the company thereof. The stockholder's notification obligation is also applicable to acquisition of all further stock increasing his stockholding in the company by every next 5 per cent, as well as to reduction of a stockholder's stockholding. If a stockholder has not notified a company regarding acquisition or increase of stockholding, the stockholder may not exercise the voting rights arising from the stock the acquisition of which has not been notified to the company. A company is obliged to submit a stockholder's notice regarding acquisition, increase or decrease of stockholding to the Register of Enterprises upon receiving it. The above referred legal requirement will not apply to listed companies for which special regulation is provided by the Law on Financial Instruments Market.

In order to adjust to the new regulation and to submit an application to the Register of Enterprises regarding making an entry about the central depository of securities where a company stock is registered, a transition period (1 year) is provided for joint stock companies. If a company has not complied with the above legal requirement, the Register of Enterprises will resolve on terminating the operation of the company and the so referred simplified liquidation will be applied to the company. A transition period (1 year) is also provided for submission of notices of the biggest stockholders of a company.

Information about stockholders will be included in the public part of the file and access to it will also be provided in the form of open data. Information about stockholders will be taken into account within the scope of pre-registration check, in assessing the company risks and providers of the services of establishment of legal entities and management services.

Stockholder's right to receive information

The Amendments provide for granting the right to holders of bearer stock to receive information about other stockholders of the company in order to exercise their collective stockholders' rights. In compliance with the regulation provided by the Amendments, a stockholder should request information about the other stockholders from a company, for which the Commercial Law already now provides the right to request information about holders of bearer stock from the depository where the relevant stock is registered. A company provides the information received from the depository to a stockholder.

→ Meetings of stockholders and related documents

Notice of summoning a meeting of stockholders

The general term for sending a notice of summoning a meeting of stockholders is minimum 30 days prior to the meeting of stockholders. However, the Amendments provide that this term may be reduced to 21 days if the articles of association of a company stipulate that a notice of summoning a meeting of stockholders is sent to stockholders by using electronic means of communication (for example, by e-mail). The above modification was introduced in order to encourage a company and stockholders to use faster means of communication in their mutual communication, which, first, enable stockholders to receive information about a meeting as soon as possible, and, second, allow a company to summon a meeting faster.

The Amendments maintain the requirement that a personal notice of summoning a meeting should be sent to all holders of registered stock. At the same time the Amendments provide that a notice should be sent to a stockholders contact address entered in the register of stockholders in future. Such a contact address can be both a stockholder's residence or registered address (in this case a separate contact address does not need to be stated in the register of stockholders), or another address of a stockholder, as well as a stockholder's e-mail address. The Amendments allow to define a different procedure of notification by the articles of association.

The Amendments provide modifications regarding announcement of notices to holders of bearer stock. It is no longer required to announce a notice in the official journal "Latvijas Vēstnesis". It is replaced with sending of a notice via the central depository of securities and to holders of accounts of financial instruments. The above modifications are related to amendments regarding mandatory registering of all bearer stock on accounts of financial instruments. At the same time, the Amendments allow to define a different procedure of notification by the articles of association (for example, if a company has a small and comparatively stable range of stockholders, moreover, the contact addresses of stockholders are known, it can be easier for both the company and stockholders to communicate via e-mail). It should be taken into account that a special procedure for communication with stockholders is provided for listed companies and it prevails over the provisions of the Commercial Law (Section 59^8 of the Law on Financial Instruments Market).

The Amendments supplement the scope of information to be stated in the notice. For example, a notice will have to contain additional information regarding exercising of stocholders' rights (how stockholders can include additional items on the agenda, submit draft resolutions and ask questions about items included in the meeting agenda).

Accessibility of the documents of a meeting of stockholders

The Amendments modify the procedure of provision of documents of a meeting of stockholders by shifting the focus to accessibility of the documents of a meeting in electronic environment. In particular, a company is obliged to provide electronic and free of charge accessibility of documents of a meeting. This can be sending of documents to stockholders' e-mail addresses, posting them on the company's website (moreover, documents may also be placed in a closed section of the website accessible only to stockholders) or placing them in a cloud storage. This procedure is applicable to all the meeting documents, including draft resolutions, explanatory materials related to draft resolution (for example, CV of candidates to the positions of members of the Supervisory Board); explanations on matters where no adoption of resolu-

tions is envisaged; documents which had to be attached to a notice of summoning a meeting until now (for example, amendments to articles of association, the annual report) and any other document to be reviewed at a meeting of stockholders.

If a company cannot provide electronic access to meeting documents to stockholders due to substantiated reasons or if a stockholder cannot access electronically available documents due to substantiated reasons, a stockholder may request the company to send documents to him or to provide a different access to meeting documents. The above receipt of documents should take place free of charge.

The requirements regarding posting of information about a meeting of stockholders on a website currently provided by the Law on Financial Instruments Market are maintained for listed companies. Both a notice of summoning a meeting, as well as draft resolutions and other meeting documents and voting forms should be accessible on the website. This procedure will also be applied to companies included on the alternative market in future.

Other notices to stockholders and accessibility of other documents

The Commercial Law provides that also other notices are sent to stockholders (for example, a notice of stockholders' preemptive right to stock of a new issue, a notice of the intention of the management board to enter into a restructuring agreement). If a company has bearer stock, the above notices should be published in the official journal "Latvijas Vēstnesis", and notices are sent to holders of registered stock to the stockholder's address entered in the register of stockholders. A notice should specify the venue and time where and when stockholders can get acquainted with documents.

The Amendments provide that such notices to stockholders will have to be sent according to the same procedure as notices of summoning a meeting of stockholders. In particular, notices will be sent to holders of registered stock to the contact address entered in the register of stockholders, and holders of bearer stock will receive a notice via the central depository of securities and holders of accounts of financial instruments. Also documents provided by the law will have to be provided for stockholders according to the same procedure as documents related to a meeting of stockholders, i.e. electronically.

Agenda of a meeting of stockholders

The Amendments define in more detail the rights of stockholders to supplement a meeting agenda and to submit draft resolutions. First, it is clarified that when a stockholder submits supplements to an announced meeting agenda, he should also submit a relevant draft resolution or an explanation about the matters where adoption of a resolution is not envisaged. Second, the rights of a stockholder to not only submit supplements to a meeting agenda, but also to submit alternative draft resolutions on matters already included in the agenda.

The Commercial Law provides that a meeting of stockholders may only adopt resolutions on the matters included in the meeting agenda. However, the Commercial Law also provides for exceptions when a meeting of stockholders may adopt a resolution on a matter which has not been included in the meeting agenda. Recalling of a supervisory board is one of such matters by complying with the condition that a new supervisory board is elected at the recall of the supervisory board.

The Amendments provide that in future a meeting of stockholders will be able to recall a supervisory board also if this matter is not included in the meeting agenda, however, election of a new supervisory board will have to take place according to the general procedure - by summoning a new meeting of stockholders, by including election of a supervisory board in its agenda and by providing information on candidates to the supervisory board to stockholders in due time (in the identical way as in the case when a supervisory board resigns).

Meeting proceedings and minutes

The Commercial Law provides several technical votes needed for the proceedings of a meeting of stockholders. Stockholders have to elect a chairperson of the meeting, a teller of votes and a meeting secretary (rapporteur).

In order to facilitate proceedings of remote meetings of stockholders, the Amendments

provide for refusing technical votes of a meeting and replacing them by the obligation of the management board to provide actions related to the meeting proceedings (leading the meeting, counting of votes and taking of minutes). At the same time, the Amendments allow stockholders to elect another chair of the meeting, teller of votes and a meeting secretary (rapporteur).

The Commercial Law provides that minutes of a meeting of stockholders should be prepared and defines the information to be stated in the minutes. The Law on Financial Instruments Market provides that listed companies are obliged to post information about resolutions adopted by a meeting on their websites within 14 days following a meeting of stockholders.

The above referred requirement of the Law on Financial Instruments Market is incorporated in the Commercial Law by the Amendments by providing that listed companies are obliged to publish minutes or an extract thereof on the website within 14 days after a meeting of stockholders, providing as minimum information about the amount of the equity capital represented at the meeting and resolutions adopted by the meeting. This requirement will also be applied to companies included on the alternative market.

Meeting quorum and repeated meetings

In compliance with the provisions of the Commercial Law, a meeting of stockholders is authorised to adopt resolutions irrespective of the equity capital represented there if articles of association do not define the representation threshold. However, if articles of association define the requirement of quorum, a meeting is only authorised to adopt resolutions if at least the minimum amount of the equity capital is represented there. If there is no quorum at a meeting, a repeated meeting with identical agenda should be summoned.

The Amendments harmonise the regulation of limited liability companies and joint stock companies by providing that also at repeated meetings of joint stock companies with the identical agenda the requirement of quorum does not need to be complied with and the meeting is authorised to adopt resolutions irrespective of the votes represented there.

If a repeated meeting is summoned because there was no quorum at the first meeting, the Amendments provide for a shorter term of announcement of the meeting. In particular, such a meeting may be announced 14 days prior to the envisaged date of the meeting (contrary to 30 days provided for a meeting of stockholders announced according to the general procedure). To enable stockholders to gain comprehensive impression of the type of a meeting and to identify compliance with the legal requirements (for example, in case of a repeated meeting, its agenda may not differ from the agenda of the primary summoned meeting), a notice of summoning a meeting and minutes of the meeting will have to specify if the meeting is to be deemed as a repeated meeting.

→ Stock capital and alienation of stock

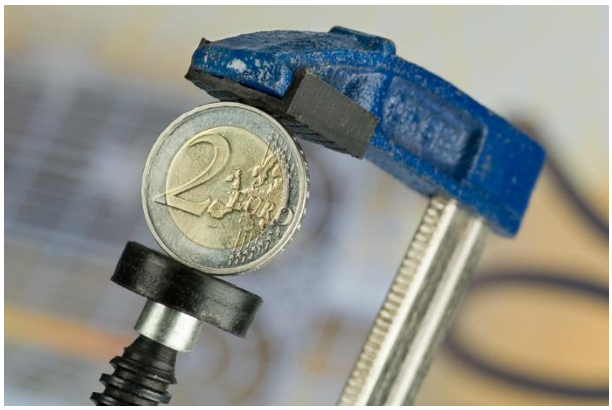
Foundation of a joint stock company and increase of the stock capital

Currently the Commercial Law does not provide that registers of stockholders or information about the central depository of securities should be submitted to the Register of Enterprises. The Amendments modify this procedure and provide that a joint stock company should submit either a register of stockholders (if a company has registered stock) or an application on making an entry of the central depository of securities where the company stock is registered (if a company has bearer stock) in the Commercial Register both at foundation of a company and also at increase of the stock capital.

Accordingly, if a joint stock company has bearer stock, when the joint stock company is founded or the stock capital of the joint stock company is increased, not only registration with the Register of Enterprises should be carried out, but stock needs to be registered with the central depository of securities. When an application is submitted to the Register of Enterprises regarding founding of a joint stock company or increase of the stock capital of a joint stock company, an attestation of registering of bearer stock issued by the central depository of securities should be attached thereto.

If an application for founding a joint stock company is submitted prior to entry into force of the Amendments (1 July 2023) and the

State Notary of the Register of Enterprises considers it following entry into force of the Amendments, the application will be assessed according to the new regulations.



Alienation of stock and acquisition of registered stock in good faith

The Commercial Law provides that a stockholder can freely alienate its stock. At the same time, articles of association can provide pre-emptive right to registered stock or the necessity of the consent of a meeting of stockholders for selling registered stock. The Commercial Law provides that dematerialised stock should be alienated by transferring it to the financial instruments account of the acquirer, and registered stock should be alienated by making a transfer record upon it (endorsement). The company should be notified regarding acquisition of registered stock and an entry in the register of stockholders should be made.

The Amendments maintain the principle of free alienation of stock and it is also provided that restrictions for alienation of stock can be provided by articles of association. Taking into account that such restrictions of alienation of stock should in substance be viewed as similar to contractual (contrary to legal) restrictions, the law does not provide a detailed procedure for fulfilment of restrictions of alienation of stock. The obligation to ensure fulfilment of imposed restrictions of alienation of stock lays with the company stockholders and the company itself. Moreover, fulfilment of such restrictions will not be controlled by involved institutions, for example, the Register of Enterprises or the central depository of securities.

The Amendments maintain the procedure of alienation of bearer stock: bearer stock will have to be transferred to the financial instruments account of the acquirer also in future. The regulations applicable to registered stock is made equal to the regulation applicable to shares of equity of limited liability companies by providing both the written form of transactions of alienation of registered stock, as well as the principle of acquisition of registered stock in good faith.

Foundation of a capital company

The Amendments make the procedure of payment of equity the same for all capital companies by providing that the equity capital of all capital companies should be fully paid until submission of the registration application to the Register of Enterprises. In the same way as until now, founders will agree on the equity capital of the company to be founder and will specify it in the foundation agreement. However, in future the terms of payment of the equity capital should be stated in the foundation agreement in such a way as to ensure that the full amount of the equity capital is subscribed and paid until the moment when the application on foundation of the company is submitted to the Register of Enterprises.

In compliance with the transition terms included in the Amendments, if, at the entry into force of the new regulation regarding payment of the equity capital, a newly founded company is entered in the Commercial Register with partially paid equity capital, its equity capital will have to be paid according to the term defined by the foundation agreement. After this term the company will have to submit a notice to the Register of Enterprises regarding payment of the equity capital and an updated register of stockholders.

If the equity capital of the company is not paid according to the term set by the agreement, the management board is obliged to perform the acts stipulated by Section 156 of the Commercial Law, in particular, to notify the relevant entity regarding a repeated term for full payment of the share. The restrictions defined by the Commercial Law until now are also maintained in this case (the company may not perform a new capital increase, until the preceding capital increase has not been paid; dividends are calculated and paid for fully paid stock; only fully paid stock provides voting rights). The above referred restrictions for a company and its stockholder are maintained until the moment of full payment of the stock.

Payment of the equity capital to an account

The Amendments expand the range of entities to whose account the equity capital may be paid. In particular, the Amendments provide that the equity capital may be paid to an account opened with payment service providers referred to in the Law on Payment Services and Electronic Money and not only an account opened with a credit institution.

→ Disclosure of a beneficial owner

A stockholder's obligation to notify a company regarding its beneficial owner

The Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing (hereinafter referred to as the AML Law) provides for an obligation of a capital company to provide information on beneficial owners of the company to the Register of Enterprises. If a company fails to provide this information, the so-called simplified liquidation is applied to it.

There are not so rare cases when a company cannot comply with the requirements defined by the AML Law because a stockholder of the company does not provide information about its beneficial owners to the company. In order to avoid such situations, the Amendments define a procedure according to which a company can obtain information from a stockholder. In particular, a stockholder is obliged to provide information about its beneficial owners to the company latest within two weeks as from the date of the company inquiry. If a stockholder refuses to provide this information, the stockholder's voting rights and rights to dividends are restricted. The above restriction of a stockholder's rights is in force until the moment when the stockholder submits all the necessary information about the beneficial owners of the company to the management board.

In order to prevent fraudulent action by the management board of a company (for example, the management board of the company does not submit the information about the beneficial owners of the company provided by the stockholder to the Register of Enterprises), the Amendments allow a stockholder to approach the Register of Enterprises and to submit information about the beneficial owners of the company by itself. In this case the restrictions of the stockholder's rights lose the validity.

If a stockholder fails to provide information on its beneficial owners to a company for a long time and does not submit a relevant application to the Register of Enterprises, the company may apply to the court and request exclusion of the stockholder from the company.

A private individual's address

The Commercial Law provides that a private individual's residence address should be stated in particular documents (for example, the foundation agreement, the register of stockholders, the register of debenture holders. Statement of the address is mainly necessary to enable contacting a particular person.

In order to provide personal data protection, the Amendments revise the provisions of the Commercial Law requiring statement of a private individual's place of residence, in particular, they are either deleted or replaced with the requirement to specify the address where a person can be reached. Statement of an address where a person can be reached is required in the cases when communication with a person needs to be provided (for example, a contact address of a private individual should be stated in a register of stockholders because the address is needed for a company to contact a stockholder to provide information about a meeting of stockholders or use of stockholders' rights (for example, pre-emptive rights), as well as the third parties). In this case a person does not need to state the residence address, also any other address may be used as a contact address when a person can receive correspondence addressed to him/her (for example, an office address, the office address of a legal representative).

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