

Rödl & Partner

NEWSLETTER BELARUS

BUILDING BRIDGES

Issue:
March
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Revised Companies law |
New opportunities for businesses

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BUILDING BRIDGES

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→ Corporate laws: ongoing status

The primary regulation creating the legal framework of corporate relations in Belarus is the Law No. 2020-XII dated December 9, 1992 “On business companies” (“Companies law”). Despite continuous amendments and facilitations, the Companies law still provides for multiple formal restrictions, which are uncommon for European jurisdictions. Such restrictions have constantly led to redundant impediments when it comes to the corporate structuring and corporate governance even among the affiliated companies within a joint group.

Finally, the Belarusian Parliament officially adopted the Law No. 95-Z published on January 27, 2021, which substantially modified the Companies law in a positive way. The respective amendments into the Companies law enter into force on April 28, 2021, although even now the businesses operating in Belarus may proceed with modification of their corporate documents. In our newsletter we have highlighted the primary amendments into the Companies law, bringing positive opportunities to business entities.

→ Revised Companies law

General provisions

2-tier corporate structure

As of now, the Companies law envisages the prohibition of a 2-tier structure as follows:

- a Belarusian company, having the only shareholder; whereas
- such shareholder has the only shareholder as well.

This rule covers foreign shareholders as well, which therefore constantly leads to the redundant complication of a corporate structure in Belarus. Due to such rule, some of the companies have been forced to include the 2nd nominee shareholder, holding a symbolic share.

Finally, in virtue of the revised Companies law this restriction will be revoked.

Shareholders' agreement

As of now, it is prohibited to conclude a shareholders' agreement between all the shareholders of a Belarusian business company, except for the residents of the Belarusian Hi-Tech Park. This rule turns out to be quite unclear for many international companies operating in Belarus. Finally, this restriction will be revoked.

Thus, in virtue of the revised Companies law all the shareholders of a Belarusian company may act as the parties to a joint shareholders' agreement.

→ Revised Companies law

Reorganization

Key changes

It shall be noted, that the ongoing regulations do not envisage comprehensive rules when it comes to a reorganization procedure. Thus, the revised Companies law will provide for a detailed overview of the requirements to be met by corporate documents, which are drafted in connection with a reorganization, i.e.:

- Shareholders' resolutions;
- Contracts on a reorganization (i.e. merger contract, succession contract).

The recent changes will eliminate gaps in the legal framework and may mitigate ongoing controversies connected with drafting such documents.

Notification

As a general rule, a business company facing a reorganization is under the legal obligation to notify all its creditors in writing, who thereupon may demand for early extinguishment of obligations. This rule has been drafted in a generalized way, which triggered multiple legal

disputes over the fact of due service of such notices.

Finally, the revised Companies law will stipulate the exact requirements for the content to be met by such “reorganization notice” in order to be considered as a due one. Such notice shall define, inter alia, the contact details of a reorganizing business company as well as the ways for serving the creditors’ claims.

→ Revised Companies law

Authorized capital

Debt-to-equity swap

Finally, the general prohibition for a debt-to-equity swap will be revoked. Based on the revised Companies law, a debt-to-equity swap will be still prohibited in case a shareholder owes an initial contribution into the company’s authorized capital. This means, that once the company is incorporated, its shareholders shall pay up the initial registered authorized capital in any case. In the meantime, in case of a subsequent increase of a share capital, a shareholder and a Belarusian company may perform a debt-to-equity swap instead of payment of an additional contribution.

It shall be noted, that a debt-to-equity swap is not allowed in the companies with the state shareholding without the consent of the President.

Direct contributions

As a general rule, a direct payment from a shareholder towards a business company (not connected with a contribution into an authorized

capital) is treated as a gratuity. By default, a gratuity in relations between business entities is prohibited. In the meantime, the Companies law has been supplemented with the article providing a possibility of so-called “direct contributions”. Thus, in virtue of the revised Companies law in order to provide a company with a financial support, a shareholder will be allowed to make a gratuitous contribution towards a Belarusian company. Such contribution shall not affect:

- the amount of the company’s authorized capital; and
- the shares of the shareholders.

In order to make a direct contribution a company and its shareholder shall enter into the respective contract

When it comes to relations with foreign shareholders, it shall be noted that such direct contributions stand under risk to be considered as a “foreign gratuitous aid”, which is subject to special treatment and entails multiple restrictions related to its usage. Thus, the issue shall be subject to additional clarifications.

→ Revised Companies law

Remote meetings

Issue

As of now, the Companies law defines 3 ways for holding the company’s general shareholders’ meeting (“GSM”):

- in-person (which contemplates physical presence of the shareholders);
- remote (which contemplates the voting via the formal absentee bulletins to be served and signed in hard copies);

- Mixed.

The usage of video connection during the GSM is not provided for by the ongoing edition of the Companies law. Therefore the companies holding the GSM via video conference (e.g. via Skype, Zoom etc.) are exposed under the risks of corporate disputes connected with the results of such GSM. Moreover, the Companies law provides for the list of issues which can be only resolved during the GSM held in person as follows:

- Approval of the annual financial statements;
- Election of the members of a supervisory board, internal auditor;
- Allocation of profits and losses;
- Other issues provided for by the Company's articles of association ("Special issues").

The rigid regulation of the GSM significantly complicates the corporate relations, especially during the Covid-19 pandemic, when a physical presence of foreign shareholders turns out to be impossible.

New regulation

Finally, the revised Companies laws will define more flexible approach to holding the GSM, which is in line with the global corporate trends. Thus, in virtue of the revised Companies law the following rules shall apply:

→ Revised Companies law

Related parties

The revised Companies law provides for a more complex regulation which covers related parties. The transactions with the related parties are subject to a special treatment, while the related parties are obliged to disclose the particular scope of information.

The list of the company's related parties has been supplemented with the deputy

→ Revised Companies law

Preemptive right



As it stands, the shareholders of certain types of Belarusian business entities may dispose its

GSM	Way of holding
In-person	Will be allowed through a video connection. Such opportunity shall be stipulated in the company's articles of association.
Remote	The voting bulletins can be submitted in an electronic way (e.g. via e-mail), although the actual sender shall be duly identified.

Moreover, the rule on the mandatory in-person GSM upon the Special issues will be revoked as well.

This therefore shall significantly simplify the way for holding GSM of multiple Belarusian companies, since the physical presence of shareholders can be eliminated at all.

directors. Moreover, it will be directly defined, that in certain cases the related parties of a Belarusian company shall be liable for losses incurred by such company due to default upon disclosure of information.

shares (stocks), in case the rest of the shareholders waive their preemptive right for such shares. Such rule is applied to the shares in the companies as follows:

- Closed joint-stock company (CJSC/ZAO);
- Limited liability company (LLC/OOO);
- Additional liability company (ALC/ODO).

In virtue of the revised Companies law such restriction will be modified as follows:

Company	Preemptive right
CJSC	No consent of other shareholders is required for disposal of shares (stocks) either towards other shareholders or the third parties

LLC, ALC	No consent of other shareholders is required for disposal of shares towards other shareholder(s). The shareholders however retain their preemptive right in case of the planned disposal of shares towards the third parties
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In the meantime, a mandatory preemptive right in certain cases can be stipulated in the company's articles of association. Moreover, the ongoing shareholders of CJSC will retain their preemptive right until the company's articles of association will be aligned in accordance with the revised Companies law.

→ Revised Companies law

Option agreements

The possibility for option agreements will be finally implemented at the general level both for stock and limited companies. Thus, a Belarusian business entity will be entitled to grant options:

- via issuance of extra stocks (for stock companies);
- via disposal of shares held by a company (for limited companies).

Such shares can be granted (either on a chargeable or a free-of-charge basis) towards the persons as follows: CEO, members of a supervisory board, employees.

In the meantime, the possibility of such option agreements shall be defined in the company's articles of association.

→ Revised Companies law

Summary

Key changes

- ✓ Possibility for holding general shareholders' meetings through video communication
- ✓ Revocation of the preemptive right at CJSC (in all cases), LLC and ALC (in case of intra-shareholders transactions) by default
- ✓ Permission for a 2-tier corporate structure: business company – sole shareholder – sole shareholder
- ✓ Shareholders' agreement may be concluded by all the shareholders of a company
- ✓ Option agreements for the company's CEO, employees and members of supervisory board

→ Actions to do



It shall be noted, that the vast majority of new legal tools can only be used, in case the company's articles of association provide so. This is applied, inter alia, to the issues as follows:

- holding of in-person GSM via video communication;
- granting of options.

Moreover, Belarusian companies shall align the content of their articles in any case. Therefore, it is of essence to review the articles of association from the perspective of:

- possible tools which can be used by your company and
- compliance with the revised Companies law.

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