

LAW OF UKRAINE “ON LIMITED LIABILITY AND ADDITIONAL LIABILITY COMPANIES” CAME INTO FORCE

On 17 June 2018 the Law of Ukraine “On Limited Liability and Additional Liability Companies” No.2275-VIII dated 6 February 2018 (“**Law on LLC**”) came into force. The Law aims to improve regulatory framework and corporate governance of limited liability companies (**LLC**), which is the most popular form of business organization, and additional liability companies, which is rarely used form. For now on, LLC is governed by the special law, unlike the period before the Law on LLC came into force, when the legal framework included numerous articles / clauses in several laws and was unclear in certain cases.

The Law on LLC provides for comprehensive regulation of the activities of limited liability companies and additional liability companies introducing numerous changes to the regulation which allow the shareholders (participants) to coordinate relations between them in specific manner. Along with imperative norms, the Law on LLC ensures flexibility common for private companies like the LLCs are. One-year transitional period is established to make the articles of association of the existing LLCs compliant with the Law on LLC. Below is summary of the most important changes.

1. Articles of association of LLC / general aspects

The Law on LLC significantly reduces the mandatory list of information which must be specified in the articles of association of LLC and limits it to the following: (1) name of the company, (2) management bodies, their competence, applicable decision-making process, (3) procedure of participants’ (shareholders’) accession to and withdrawal from the company. Other matters may be included upon resolution of the participants / shareholders.

The share capital of the LLC must be paid up within six months, unless the articles of association provides for other term (*previously, the term constitutes one year*). The Law on LLC removed the limit of LLC’s participants / shareholders, which according to the Law of Ukraine “On Business Companies” was 100 persons, as well as the requirement to reorganize the limited liability company into a joint stock company, if such it is exceeded.

2. Corporate governance of LLC

Under the Law on LLC, the general meeting of the participants / shareholders (“**General Meeting**”), being the highest management body, may delegate part of its competence to other bodies. The General Meeting cannot, however, delegate powers designated to its exclusive competence.

Finally, the Law on LLC provides for the possibility of establishing a supervisory board as an authority regulating and controlling the executive body of the LLC. The supervisory board may be vested with certain powers assigned to the competence of the General Meeting, except for the issues, being the exclusive competence of the later. For instance, the General Meeting may delegate a power to appoint and withdraw the director(s) to the supervisory board.

In addition, the Law on LLC eliminated such body as the audit commission.

3. Convocation and Holding of General Meeting

The Law on LLC introduced changes to the procedure of the convocation and holding of General Meeting, whereby the possibility to hold the General Meeting via videoconference and voting by the absentee ballots has been added. Moreover, the Law on LLC also allows the General Meeting to adopt resolutions by polling through electronic communication as well as to conduct the Meeting outside the territory of Ukraine (*subject to the unanimous written approval of all participants / shareholders*).

Further, the Law on LLC eliminates the quorum of the General Meeting and distinguishes the thresholds needed the General Meeting to adopt the resolution, in particular: (1) resolutions to be adopted unanimously: (1.1) approval of the monetary valuation of the non-monetary contribution, (1.2) re-distribution of the shares between the participants / shareholders, (1.3) establishment of other management bodies of the LLC, (1.4) acquisition by the LLC of a participant’s / shareholder’s share; and (2) to be adopted by $\frac{3}{4}$ of all votes: (2.1) introduction of changes to the articles of association of LLC, changing the size of its share capital, (2.2) corporate reorganizations (spin off, merger, split off) and acquisition of LLC.

4. Share capital of LLC and other related matters

The Law on LLC provides that the LLC’s share capital may be increased through: (1) contribution made by the participants / shareholders, (2) increase by the third parties after the participants’ / shareholders’ withdraw of their preemptive rights, and (3) debt-to-equity swap.

The Law on LLC introduces the new procedure on payment of dividends, which states that dividends may be payable for any quarter or any multiple quarters unless the articles of association establishes a different period. In addition, the Law on LLC lists circumstances when the LLC may not distribute dividends, including (1) if the LLC has debts towards former participant(s) or their successor(s), (2) if the LLC does not have sufficient assets to settle all creditor claims, or (3) if such insufficiency will occur after payment of dividends. Additionally, the LLC may not pay dividends to any participant who failed to make their contribution to the share capital, partially or in full.

The Law sets for the simplified procedure of withdrawal the participant from LLC under such conditions (1) adoption of the resolution by the General Meeting, in case the participant failed to make contribution for the repayment of the indebtedness during the additional established deadline, (2) non-submission of the application on acceptance to the composition of LLC of the legal successors within the term established by the Law or by the LLC's articles of association. A participant, which share in the share capital is less than 50 percent, may withdraw from the LLC without the consent of other participants.

The Laws on LLC prescribes the detailed procedure of the foreclosure of share, which includes the state enforcement officer notifies about foreclosure the LLC, which in its turn shall provide information necessary to determine share's market value. Other participants shall be offered to acquire the share, otherwise – it shall be sold via auction. The Law also envisages the right of LLC to purchase the share subject to foreclosure provided the reserve fund has been established, and in case of: (1) adoption of the resolution on purchase of the share by the General Meeting, (2) undertaking to sell the share not later than in one year from the date of the acquisition of the share.

5. Corporate agreement and irrevocable power of attorney

The Law on LLC introduced such new notions as “*corporate agreement*” and “*irrevocable power of attorneys*”.

A corporate agreement is an agreement between the shareholders whereby the shareholders undertake to carry out their rights in certain manner or refrain from carrying out them. The corporate agreement must be in writing and it is confidential, except when one of its parties is public person.

An irrevocable power of attorney is issued by the shareholders which entered into the corporate agreement to ensure fulfilment their obligations under the corporate agreement. The irrevocable power of attorney must be notarized and can be cancelled in such cases: (1) without the proxy's consent in cases stipulated by the power of attorney, (2) in cases where the rights and interests of the principal have been violated by the proxy, (3) under the resolution of the court in cases provided for by the law.

6. Liability of the LLC's executives

The Law on LLC establishes the liability of the members of the supervisory board and members of the executive body before the LLC for the losses caused to the LLC. Such obligation is new and did not exist before.

7. Material and interested party transactions

The Law on LLC introduced concepts of material and interested party transactions in LLC. The participants / shareholders may provide in the articles in association a definition of the material transaction and approval procedure. Still, under the Law on LLC, a resolution of the General Meeting is required for approval of transaction exceeding 50% of the net assets of the LLC. The articles of association may establish that interested party transaction, including (1) entered by the LLC's official, (2) participant owning at least 20% of the LLC's shares, (3) legal entity, where a person specified in item (1), (2), is a member of the corporate body, (4) other person specified by the articles of association, may require corporate approval in a manner specified by the articles of association.

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