What should you know about June amendments made to Joint Stock Companies Law

As we have informed you in Legal Flash No 11 of June 30, 2015, the Joint Stock Companies Law ("Law") has been amended effective as of 19 June 2015.

This brief note provides for more details about the scope of such amendments. The changes in the Law were designed to improve the regulatory framework governing the activities of joint stock companies. The Amendment Act provides for both conceptually new regulations and modification of the old rules.

Shareholders' duties

One of the new provisions of the Amendment Act deals with the 'obligations of the shareholders'.

Prior to amendments, the priority focus of the shareholders' obligations referred to the duty to inform the company of the transactions with its shares. Any failure to perform such obligation, if causing damages to the company, would result in shareholders' liability for the amount of damages caused. One could argue that a value of such sanction was in fact a more declarative than an effective one. That would be a true statement. In practice, there have often been cases when shareholder/shareholders have disputed in court the actions of the company. Challenging the convening of the General Assembly of the Shareholders, accompanied by applying of multiple interdictions to the activity of the company, such as seizure of the bank accounts, encumbering company's assets and amending the company's Articles of Association is just one example of an action aimed at interfering with the ongoing business of the company and its effective management.

As legislative changes come always to clarify a practical background, we can assume that changes made by the Amendment Act of May 28, 2015 (effective as of June 19, 2015) to the Law on Joint Stock Companies served, *inter alia*, to the purpose to circumvent the abuse of shareholders leverages used to obstruct to the business of the company.

Thus, the Amendment Act introduced to the Law on Joint Stock Companies new provision in the Article 39, para. (4) as follows:

„(4) By decision of the court the shareholder is obliged to repair the damages caused to the company and/or other shareholders of the company if such shareholder, abusively, in bad faith and unfounded, is initiating a lawsuit against the company and/or other shareholders, motions for action the National Commission of the Financial Market, law enforcement bodies and/or other public authorities. If the shareholder's action is regulated by the Contraventions or Criminal Code, additional to repairing of the material damage, its actions shall result also in liability under the contravention or criminal law, according to legislation".

Thus, upon considering whether the actions of the shareholder listed in the above-referred para (4) of the Article 39 could result in obligation to repay the damages thus caused, the court shall consider cumulatively the following three criteria:

- the actions should be abusive;

- performed in bad faith, and

- are legally unfounded.

Once stated, the court would impose to the shareholder the obligation to indemnify the company for obstruction of its activity.

How the judicial practice will evolve based on these amendments has yet to be seen. However, it is a certain fact that this new rule must raise awareness and objective rationality of the shareholder, as well as a proper legal advice, when considering challenging the actions either of the company of its shareholders in court or in front of other authorities mentioned in the para (4).

Transactions with Joint Stock Company's shares

Moving forward with the amendments, following enactment of the Law on the Capital Market No 171 dated July 11, 2012, the Law on Joint Stock Companies has been supplemented with provisions on transactions with the company's shares. Thereby, the law defines cases as well quotas when shares are sold on and out of the regulated market.

Voting rights of preferred shares

Another provision which requires our attention is the one complementing the Law with regards to the voting right conferred by the preferred share with fixed dividends (Article 15 of Law on Joint Stock Companies). It is known that the preferred share with fixed dividends does not confer to its holder voting right at the general assembly of the shareholders, except for two specific cases.

Recent amendments enlarge considerably the list of cases when the holder of preferred share with fixed dividends can obtain the voting right. Thus, the existing cases were complemented with the following:

- non-inclusion in the agenda of the last annual ordinary general meeting of shareholders of the issue on payment of dividends on preferred shares,
- failure to pass a resolution on payment of dividends at the last annual ordinary general meeting of shareholders or taking the decision on payment of dividends in the incomplete amount, or
- failure to pass a resolution on payment of dividends accrued according to the charter of the company at the last annual ordinary general meeting of shareholders.

In the same time, following the amendments to the Law, the executive body of a joint stock company is obliged, immediately after the meeting on convening the general meeting of shareholders and where any of the items above have not been included on the agenda, to submit to the person responsible for keeping the Registry of securities holders the information on obtaining of voting right by the holders of preferred shares.

Thus a conclusion could be drawn, that as long as one of the mentioned situations continues the voting right of the shareholder – holder of the preferred share with fixed dividends is maintained and is terminated only upon full payment of dividends.

Keeping of the General Assembly of Shareholders

The law has been supplemented also with provisions regarding keeping of the general assembly of the shareholders. Thus, the general assembly of the shareholders may take place abroad the Republic of Moldova with approval of shareholders representing the entire share capital of the company. Additionally, by amending the Law, impossibility of holding the annual ordinary general meeting of the shareholders by correspondence was removed.

Transactions with conflict of interest

Law amendments come with improved rules on both the subject-matter and structure in relation to transactions with conflict of interest of the company (Article 85 of the Law on Joint Stock Companies). The amendments also refer to joint stock companies obligations to disclose information concerning concluding by the company of transactions with conflict of interest. The following should be disclosed: description and value of the transaction, the interested person and the share of voting shares owned by such person in the company's capital (when the interested person is a shareholder).

Based on the conditions that define a transaction as one with a conflict of interest, the Law sets out clearly the types of transactions that, within the presence of those conditions, are categorized as being with conflict of interest. Given the amendments the following example may be provided: any sales/purchase transaction, transmission and receipt in any way by the company of goods, services, rights, money, financial instruments and other assets, that are executed directly or indirectly between the company and the interested person and the transaction value is greater than 1 % of the assets according to the latest financial report, it shall be treated as being a transaction with conflict of interest. Examples could be continued with those listed in the new wording of the Article 85 of the Law on Joint Stock Companies which provide to companies clear answers whenever the company intends to enter into a transaction with conflict of interest.

Finally, the success and quality of the amendments to the Law on joint stock companies follows to be tested within time by activities and transactions of Joint Stock Companies. However, it is rather clear that the new rules will help to avoid unjustified and libellous appeals and complaints by the company's shareholder which may result in damages, sometimes rather significant, incurred by company and its shareholders. The Law also leaves lesser room for ambiguities and interpretations whenever the company will enter into a transaction with conflict of interest and will bring more transparency regarding these transactions.

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