

# Newsletter

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## IMPORTANT CHANGES IN SHAREHOLDER RIGHTS IN LITHUANIA. A COMPARATIVE OVERVIEW OF LEGAL REGULATION IN LITHUANIA, LATVIA AND ESTONIA

The company's shareholder rights are regulated by the Civil Code of the Republic of Lithuania and the Law on Companies of the Republic of Lithuania.

**The Law on Companies of the Republic of Lithuania has been recently amended.** These amendments are mainly related to the legal provisions of the company's shareholder rights and were made according to the indicators of World Bank and Organisation for Economic Co-operation and Development (OECD).

Some of the proposed changes, such as the limited majority shareholder right to receive the company's commercial/industrial secret and/or confidential information, came into force on 29 November 2017. Other proposed changes (i.e. the power of the supervisory board to consider and approve the business strategy of the company) took effect on 1 January 2018.

Taking into account the new rules in Lithuania, LEADELL law offices – **LEADELL Balčiūnas & Grajauskas** in Lithuania, **LEADELL Pilv** in Estonia and **LEADELL Fogels & Vitols** in Latvia prepared a comparative legal overview of national legal regulations in all three Baltic countries.

### **The shareholder's right to receive the company's commercial/industrial secret and/or confidential information**

One of the major amendments in the Law on Companies **in Lithuania** is related to the exercise of certain shareholder rights, i.e. the shareholders' right to receive information, and the company's duty to provide information about a company. The main changes are following:

- the absolute duty of a company to provide the company's commercial/industrial secret and/or confidential information to a shareholder or a group of shareholders holding or controlling

more than ½ of shares (a majority shareholder) has been eliminated. Before these amendments came into force, the majority shareholder always had a right to receive information mentioned above, unless the shareholders had obliged the board not to disclose it;

- after the amendments came into force, now a company has the right to refuse to provide the company's commercial/industrial secret and/or confidential information to the company's shareholder, except in cases where the getting this information is necessary for a shareholder to comply with the law and if the shareholder undertakes not to disclose it;
- the duty of the company to provide protocols of the supervisory board or the board to all shareholders is eliminated;
- the company's answer to the shareholder's question related to the issues on the agenda of the general meeting of shareholders shall be revealed and made available to all company's shareholders but not exceptionally to the shareholder who asked a question(s).

### **The absolute duty of a company to provide the company's commercial/industrial secret and/or confidential information to a shareholder or a group of shareholders holding or controlling more than ½ of shares (a majority shareholder) has been eliminated in Lithuania.**

For comparison, **in Estonia** the management board may refuse to give information or to present documents if there is a basis to presume that this may cause significant damage to the interests of the private limited company. If the management board refuses to give information or refuses to allow documents to be examined, the shareholder may demand that the legality of the shareholder's demand be decided by the meeting of shareholders or to submit, within 2 weeks after receiving the refusal of the management board or, within 4 weeks after submission of the request if the management board has not responded to the request, a petition to a court in a proceeding on petition (in Estonian *hagita menetlus*) in order to obligate the management board to give information or to allow documents to be examined.

Shareholders whose shares represent at least 1/10 of the share capital may demand a resolution on conduct of a special audit (in Estonian *erikontroll*)

on matters regarding the management or financial situation of the private limited company, and the appointment of an auditor for the special audit by a resolution of the shareholders (may be also demanded through court, if necessary and only with good reason). The members of the management board and supervisory board shall enable the auditors for the special audit to examine all documents necessary for conduct of the special audit and shall provide necessary information. The auditors for the special audit shall preserve the business secrets of the private limited company. The auditors for the special audit shall prepare a report concerning the results of the special audit, which they shall present to a meeting of shareholders.

**In Latvia** shareholders are entitled to receive from the board of director's information on the company's activities, commercial/industrial secrets, and have general right to access all the company's documents (commercial/industrial secrets are not exempted). These shareholders rights may be restricted in each particular case by shareholders meeting's decision under suspicion that respective shareholder could misuse the acquired information against the company's interests, thus causing significant damage or loss.

#### **Power to consider and approve the company's business strategy**

Another new amendment in the Law on Companies **in Lithuania** is related to a company's body which has a power to consider and approve the company's business strategy. Before the amendments came into force, this power had been delegated to the board but currently it is a power of the supervisory board in case the company has the supervisory board.

#### **The supervisory board now has a power to consider and approve the company's business strategy in Lithuania.**

For comparison, **in Estonia**, the approval of the business strategy is in the competence of the management board (i.e. if the private limited company does not have a supervisory board (in Estonian *nõukogu*), which not mandatory). If the company has a supervisory board, then the latter shall plan the activities of the company, organise the management of the company and supervise the activities of the management board. The supervisory board shall also approve the annual budget of the company unless the articles of association place this

within the competence of the general meeting. The management board shall, in managing, adhere to the lawful orders of the supervisory board. Transactions which are beyond the scope of everyday economic activities may only be concluded by the management board with the consent of the supervisory board.

**In Latvia** the supervisory board is purely a supervising authority and shall enjoy competence to approve business strategy developed by board of directors, only if specifically set by the Articles of Association. Otherwise, approval of business strategy fully remains within the competence of board of directors.

#### **Duty of the company manager to give information about events which may influence the company's activities**

Also, according to the amendments **in Lithuania**, in some cases, the board decision should be approved by the general meeting of shareholders or the supervisory board (i.e. "*decisions on the acquisition of the fixed assets where the price exceeds 1/20 of the company's capital, unless the articles of association indicate another price*"). Before these amendments came into force, in some cases, only the general meeting of shareholders had a right to approve the decision made by the board

Amendments of the Law on Companies **in Lithuania** provide also for **other changes of legal provisions**. For instance, the company manager has a duty to provide information about events which may influence the company's activities to the board and the supervisory board. This differs from the regulation in Latvia and Estonia. **In Latvia** there does not exist a concept of "company manager" under the Commercial Law.

**In Estonia** the rights and obligations of the company manager (in Estonian *tegevjuht*), if any, are not regulated by the Commercial Code but by employment law, and mainly, employment contract. At the same time at the management board level (and differently from Lithuania) the duty to provide information about events which may influence the company's activities is very detailed in Estonia. If the private limited company has a supervisory board, then the management board shall present an overview of the economic activities and economic situation of the company to the supervisory board at least once every 4 months and shall immediately give notice of any material deterioration of the economic condition of the company or any other material circumstances related to the economic

activities of the company in Estonia. The management board shall also notify of any circumstances concerning related companies that may significantly affect the operation of the private limited company.

#### **COMPARATIVE TABLE**

*A table of comparison between the Lithuanian, Latvian and Estonian regulations of the company's shareholder rights related to the changes discussed above:*

	<b>LT<sup>1</sup></b>	<b>LV<sup>2</sup></b>	<b>EE<sup>3</sup></b>
<b>The shareholder's right to receive the company's commercial/industrial secret and/or confidential information</b>	The shareholders have the right to receive company's commercial/industrial secret and/or confidential information only if it is necessary for shareholder to comply with the law and if the shareholder undertakes not to disclose it.	The shareholders have the right to receive information on the company's activities, commercial/industrial secrets and have right to access all the company's documents. These shareholders rights may be restricted in each particular case under suspicion that respective shareholder could misuse the acquired information against the company's interests, thus causing significant damage or loss.	The shareholders have the right to receive information from the management board on the activities of the private limited company and to examine the documents of the private limited company. The management board may refuse to give information or to present documents if there is a basis to presume that this may cause significant damage to the interests of the private limited company.
<b>Duty to provide protocols of the supervisory board or the board to all shareholders</b>	There is no duty to provide protocols of the supervisory board or the board to all shareholders.	There is no statutory duty to provide protocols to shareholders, however, the shareholders may have access based on general shareholders' rights, as set out before.	The law does not regulate it directly. The general rules for receiving information/documents apply (see above).
<b>Power to consider and approve the company's business strategy</b>	If the company has supervisory board, it is a power of the supervisory board. If the company does not have a supervisory board the company's strategy shall be considered and approved by the board. If the company does not have the supervisory board and the board, the power to consider and approve the company's business strategy is in the competence of the company manager.	The supervisory board shall enjoy authority to approve business strategy developed by board of directors, only if specifically set by the Articles of Association. Otherwise, approval of business strategy fully remains within the competence of board of directors.	In general, the approval of the business strategy is in the competence of the management board (i.e. if the private limited company does not have a supervisory board). If the company has the supervisory board, then shall plan the activities of the company, organise the management of the company and supervise the activities of the management board.
<b>Duty of the company manager to give information about events which may influence the company's activities</b>	The company manager has a duty to give it to the board and the supervisory board.	Board of directors is the only management body under statutory regulation responsible for day-to-day company's management. There does not exist a concept of "company manager" under the Commercial Law.	If the private limited company has a supervisory board, then the management board shall present an overview of the economic activities and economic situation of the company to the supervisory board. The management board shall also notify of any circumstances concerning related companies that may significantly affect the operation of the private limited company.

<sup>1</sup> Concerns public limited liability companies and private limited liability companies.

<sup>2</sup> Concerns Latvian limited liability companies.

<sup>3</sup> In this table only the regulation of the Estonian private limited liability company (in Estonian *osaühing*) is brought out. The rights of the shareholders of a public limited company (in Estonian *aktsiaselts*) are somewhat different.