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AMENDMENTS TO THE LAW ON BUSINESS ENTITIES

On 28 April 2021, a new version of the Law on Business Entities will enter into force (hereinafter – “Law”) in Belarus. The amendments will affect almost all activities of companies incorporated in Belarus: the competence and work of corporate bodies, definition of affiliates, related party and major transactions, reorganization, and liquidation, among other issues.

We would like to present below the key changes stipulated by the Law:

1. LLC Establishment and General Rules

The restriction on “chaining” has been cancelled: the new version of the law excludes the special restriction for a legal entity with a sole shareholder to establish another legal entity. This means that since 28 April 2021 it will be allowed for a company to have as its sole shareholder another company, consisting of one shareholder.

2. General Shareholders Meeting (GSM)

The changes, inter alia, include the extension of the competence of the GSM, procedures related to convocation of the meetings and disclosure of documents.

One of the most interesting amendments for our clients will be the possibility of using online service systems for organizing and holding a GSM in any form (in-person, absentee voting and mixed). There is one important condition: the types and procedure of an online GSM shall be specified in the Articles of Association, and decisions on making the appropriate amendments to the Articles of Association shall be taken by all shareholders of the company unanimously.

3. Board of Directors

The changes affect the formation of the Board and certain procedural aspects of its activities. There is now a possibility to elect a "temporary chairperson" of the board of directors in case of absence of the duly elected chairperson. Remote presence at the meeting is allowed on the same principles as a GSM – if such procedure is stipulated in the Articles of Association.

The Law specifies that the Articles of Association and/or local acts of the Company shall contain the obligatory provisions in respect of the requirements for the qualifications, professional and other qualities of candidates for members of the board of directors, the procedure for its convocation and its decision-making procedure.

4. Affiliates

The definition of affiliates has been extended to include deputies (first deputies) of the director (general director) of the company, as well as the spouse (wife) and a certain circle of relatives (in-laws) of these individuals.

A deadline has been introduced – 5 days - for the submission by the affiliates of the information on their interest in a company’s transactions (related-party transactions) and the liability of affiliates for the damages caused by failure to provide such information in due time.

5. Related-party and major transactions

The rule that an amendment to the transaction shall be approved by the same persons who approved the initial transaction has been kept for approval of a major transaction and is newly established for the approval of related-party transactions.

The changes also provide for the possibility to delegate the approval of a major transaction to the executive body (delegation to the Board of Directors is still possible as well).

The deadline has been specified – 3 (three) days – for disclosing information on certain related-party transactions from the date of the relevant decision on the transaction.

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6. Subsidiary liability in case of bankruptcy

The applicability of the subsidiary liability of the shareholders of the company (other persons) for its debts in the event of a company's bankruptcy is clarified: such liability may occur only upon proof of the guilty (intentional) actions of the defendant which caused the bankruptcy of the company.

In this legal alert, we have tried to announce the key amendments to the Law. However, the Law contains many other amendments in respect of the abovementioned topics and other matters such as all forms of reorganizations of entities, liquidation, etc.

We want to draw your attention to the fact that Belarusian companies are obliged to bring their Articles of Association into compliance with the new version of the Law in case of the first introduction of changes and (or) additions to it.

If you are interested in applying remote participation in the meetings of shareholders and/or the Board of Directors, please note that you need to amend the Articles of Association first.

Please do not hesitate to contact our law firm should you need any legal advice concerning the new legislation in respect of business entities in Belarus and legal support in bringing the company's articles in compliance with the new law.