Commerce Act amended 3/28/23

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This summer has brought many changes to the Commerce Act. Some of the amendments came into force on 1 June and others on 1 July. All these changes to a greater or lesser extent affect particular persons that are subject to the Commerce Act, and in this article we explore some of the effective amendments.

Reorganisations

The amendments that came into force on 1 June mostly relate to procedures for carrying out national and cross-border reorganisations. Key changes relating to national reorganisations affect creditor protections coming into play after a reorganisation takes effect. So far national reorganisations could not be completed until the deadline set for filing and securing or satisfying creditor claims had expired. Also, when application was made to the Enterprise Registry for entering a reorganisation, the boards of the companies involved in it had to confirm that all of the creditor claims received had been secured or satisfied. This means it was illegal to complete a reorganisation before creditor claims had been secured or satisfied. In contrast, creditors now cannot file their claims until the reorganisation has taken effect. This change significantly reduces the time it takes to complete a reorganisation. A national reorganisation can now be completed in about 2.5 months (it used to take a minimum of 4.5 months). Of course, in practice each particular reorganisation may take more time depending on the level of complexity. As regards changes to procedures for protecting creditors, it's important to note that under section 350(1) of the Commerce Act a reorganisation is considered to take effect from the date that entries have been made in the commercial register on all companies involved in the reorganisation, including any newly formed ones. Moreover, section 350(6) states that once a reorganisation takes effect, it cannot be challenged.

The amendments effective from 1 June also address dividends. Specifically, the new version of section 161(2) of the Commerce Act states that dividends will be paid to a shareholder in proportion to the sum of nominal values of his shares unless the articles of association provide for a different procedure for distributing dividends. The old Act did not expressly provide for derogating from the principle of proportionality in paying dividends, yet it was possible to set up various classes of shares that confer various rights, including dividend entitlements. One might therefore speculate that it was possible to declare and pay dividends to shareholders out of proportion to the sum of nominal values of their shares. This issue is now specifically dealt with in the Commerce Act to eliminate any doubt. The amendments make it clear that dividends may be paid without observing the principle of proportionality not only in the case of various share classes but also to shareholders holding the same class of shares (even if the company has only one class). Appropriate amendments must then be made to the company's articles. Section 218(1) of the Commerce Act states that the decision to amend the articles has been passed if at least two-thirds of the votes represented at the meeting were cast for it, unless the articles require a greater number of votes. So, if a company has several shareholders representing the required quorum and number of votes for amending the articles, they may approve an exception to the principle of proportionality by resolving that dividends will not be paid to the shareholders, including minority shareholders, in proportion to the sum of nominal values of their shares, thereby impairing dividend entitlements of other (minority) shareholders. So it would be necessary to address ways of protecting minority shareholders' rights.

When looking at the amendments that came into force on 1 July, we have to highlight the obligation of public limited companies (*akciju sabiedrības*) to file their share registers with the Enterprise Registry. Public limited companies must do this by 30 June 2024. So far public limited companies could have two types of shares – registered shares and bearer shares. In terms of form, those shares could be paper shares or dematerialised shares. The amendments have removed clauses relating to the form of shares, and a public limited company may now have registered shares or dematerialised shares. These changes mean that all public limited companies will have to amend their articles. Companies that have both registered shares and bearer shares will have to choose only one type and modify their articles and internal structures accordingly. Shareholders in these public limited companies are to make a choice and amend the articles by 30 June 2024, and clauses relating to the form of shares must be removed when other changes are made to the articles, but no later than 1 July 2026.

Also, the minimum size of share capital in public limited companies has been reduced from EUR 35,000 to 25,000.

We will keep our MindLink.lv subscribers informed about other relevant amendments that have come into force this summer.