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LIMITED LIABILITY AND ADDITIONAL LIABILITY COMPANIES

This abstract explores basic knowledge and legal framework of limited liability and additional liability companies, innovations of the new Law, its advantages and some problems you can encounter while dealing with LLC and ALC.

A limited liability company is a corporate structure whereby the members of the company are not personally liable for the company's debts or liabilities, whereas the members of an additional liability company have subsidiary responsibility which they bear jointly for company's obligations with their own property at the rate established in the memorandum of association. The rate is equally multiple to the cost of input of each of the member.

Limited liability company is the most numerous and the most popular form of entrepreneurial activity in Ukraine (second only to individual entrepreneurs) therefore its legal framework is of great importance. On 6th February 2018 the Ukrainian Parliament adopted the highly-anticipated Law of Ukraine "On Limited Liability and Additional Liability Companies". It became effective on 17 June 2018, replacing the outdated provisions of the 1991 Law of Ukraine "On Business Companies". The new Law introduces numerous changes to the regulation of activities of limited and additional liability companies and I would like to draw your attention to them.

To begin with, the new Law introduces the long-awaited option of concluding corporate agreements, something previously not common in LLCs and ALCs due to a lack of regulations. Corporate agreements between participants of LLC and ALCs may serve to regulate the sale and purchase of shares and issues of corporate governance.

Secondly, the Law abolishes the participants limit (previously, they may not exceed 100). This will allow joint stock companies with thousands of shareholders to consider the possibility of changing their business form.

Furthermore, the new Law altered the nature of reasons for expelling of the member from company. In the previous Law a member could be expelled for a breaching the duties which are directly related to the participation in the activity of company or arise from corporate legal relationship. The breach of duties can be a justification only in case when it is systematical. Expelling was also possible if member's actions obstructed reaching company's objectives (if his actions were unlawful and created obstacles in the activity of the company) [1]. And the last reason for expelling – if a participant didn't fully (partly) contribute.

In the new Law the legislator established two reasons for expelling of a member: 1) if a participant did not make contribution to share capital on time; 2) if heir of the participant, who holds less than 50% of shares, did not apply for entry into LLC or ALC within one year after the term of entry into heritage expired.

The above-mentioned legal provision is being criticized by lawyers and scholars because it restricts grounds for expelling from the company and in some cases it might be bad. For example, the new Law provides an opportunity for unscrupulous member, contrary to the will of the company, to remain within it even in case of having enough grounds and enough votes for making a decision about his expelling.

As we can see, paying contribution is very important and non-performance of it can be a sufficient reason for expelling. The next logical question is about time limitations in paying contribution. The time limit granted to shareholders to make their contributions when founding a company has been reduced twice (it is no longer more than one year as before, but six months). At the same time, the term for paying up the shares can be prolonged if all the founders decide so (if it is anticipated in the memorandum of association). Previously it was impossible. The Law also allows the company's shareholders to increase the authorized capital from retained earnings of the company without additional contributions.

There are also new rules for the shareholders' withdrawal from the company. "A company shareholder whose interest in the authorized capital of the company is less than 50% may withdraw from the company at any

time without the consent of other shareholders. A company shareholder whose interest in the authorized capital is 50% or more may withdraw from the company only with the consent of other shareholders.” [2].

To conclude, the new Law, regulating the activities of limited liability companies and additional liability companies, has a positive influence on the operating them, in particular, due to the fact that the Law gives the companies an opportunity to resolve the majority of issues related to the company activities on its own, through anticipation in the memorandum of association. The new Law does not establish unambiguous rules. In fact, it allows the company’s shareholders to establish their own procedures and to find possible ways of resolving potential corporate conflicts. Now the shareholders of limited and additional liability companies should think how to regulate all the issues of the company’s activities in the memorandum of association in detail, using all the benefits provided for by the new Law.

References:

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A REVIEW OF SOCIAL AND LEGAL PROTECTION POLICIES AIMED AT THE INTEGRATION AND ADAPTATION OF IDPS IN UKRAINE

Nowadays the situation with internally displaced persons (IDPs) and refugees in the world has reached a critical point. According to the Global Report on Internal Displacement it is estimated that there is a total of 40 million people living in internal displacement because of conflicts and violence as of the end of 2017, which is nearly twice the number of refugees