

HOW TO CONTEST A DECISION OF THE SHAREHOLDERS OF A CAPITAL COMPANY IN THE BALTIC STATES?

As the tense economic and political situation unavoidably influences the business environment, the number of disputes surrounding decisions of shareholders' meetings of limited liability companies and joint stock companies (hereinafter - capital companies, companies) is continually increasing. In response to the changes, the best solutions are sought, which frequently result in a fertile climate for disagreements when the opinions collide.

Disputes frequently arise in connection with important decisions such as company management, profit sharing, reorganization, and so on. In light of this, and to help understand the regulation, in this edition experts of the LEADELL law offices delve into and compare the methods for contesting the decisions, incl. the basis for contesting, who can bring a claim and the procedure among all three Baltic States. As the regulation of this legal resort has not been unified within the European Union, the procedure for contesting differs among the member states. We invite to get acquainted with the comparative report prepared by the LEADELL law offices on the most significant aspects of contesting the decisions of a capital company's shareholders.

BASIS FOR CONTESTING SHAREHOLDERS' DECISION

The regulation providing for the right¹²³ to contest a decision of the shareholders is similar in nature in all three countries. The decision can be contested in cases where it is contrary to a) the law, b) good morals, c) the articles of association, d) public interests, e) purposes of the company, f) significant violations were committed in convening the meeting of shareholders or in the decision-making procedure, or g) violates the rights of third parties such as creditors.

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| <i>Contrary to the law</i> | ✓ | ✓ | ✓ |
| <i>Contrary to good morals</i> | ✓ | ✓ | ✓ |
| <i>Contrary to the articles of association</i> | ✓ | ✓ | ✓ |
| <i>Contrary to the public interests</i> | ✓ | ✓ | ✓ ⁴ |
| <i>Contrary to the creditors' interests</i> | ✓ ⁵ | ✓ | ✓ ⁴ |
| <i>Significant violations committed in convening the meeting</i> | ✓ | ✓ | ✓ ⁴ |
| <i>Significant violations committed in the decision-making</i> | ✓ | ✓ | ✓ ⁴ |
| <i>Violates rights of third parties, such as the creditors</i> | ✓ | ✓ ⁴ | ✓ ⁴ |

A noteworthy difference is that in Latvia and Estonia the field is mostly governed by Commercial Law, however, in Lithuania, the right to bring action stems from the provisions of the Civil Code. Not to mention that, in some cases, the basis for contesting may not be explicitly defined in the law that governs contesting the shareholders' decision, nevertheless, those whose rights or interests have been violated may have grounds to file a claim on the basis of general civil law norms.

In Estonia, it has to be kept in mind that decision can be either null (where contrary to provisions of law established for the protection of the creditors or for other public interest or contrary to good morals or if the procedure for convening the meeting or the decision-making was materially violated), or contestable (where in conflict with the law or articles of association).

¹ In Latvia, in accordance with Articles 217 and 286 of the Commercial Law, at the same time it is important to note that the Commercial Law allocates and provides separate regulation for limited liability companies and joint stock companies.

² In Estonia, in accordance with Article 178, 302, Paragraph 1 of Article 177¹ and Paragraph 1 of Article 301¹ of the Commercial Code.

³ In Lithuania, in accordance with Article 2.82 of the Civil Code.

⁴ The basis has not been not directly established in the law that regulates the contestation of the decision of the shareholders, nonetheless, those whose rights or interests have been violated may have the basis to file a claim pursuant to general civil law norms.

⁵ Only when the decision is contrary to the purpose of the company as defined in the articles of association.

WHO CAN BRING A CLAIM FOR CONTESTING THE DECISION?

In all three countries, a decision can be contested by a) the board or any member of the board, b) the council or any member of the council, or c) a shareholder.

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|---|---|---|---|
| <i>The board or any member of the board</i> | ✓ | ✓ | ✓ |
| <i>The council or any member of the council</i> | ✓ | ✓ | ✓ |
| <i>Shareholder</i> | ✓ | ✓ | ✓ |
| <i>Creditor</i> | ✗ ⁶ | ✗ ⁶ | ✓ |
| <i>Insolvency administrator</i> | ✗ ⁶ | ✗ ⁶ | ✓ |

In addition, in Lithuania, these rights have also been granted by law to the creditors, as well as extensive court practice with respect to insolvency administrators has been created. As the insolvency administrator defends the interests of creditors, it is recognized in the Lithuanian court practice that the insolvency administrator also has the right to contest the decisions of the shareholders, despite the fact that the right of the insolvency administrator to contest the decision is not expressly provided for in the Civil Code of Lithuania.

In Estonia, if a decision is null, there is no need to bring a specific claim to ascertain this, nonetheless, the nullity of a decision may be relied on in court proceedings by filing an action or an objection. However, in order to contest a decision, a respective claim must be filed in court.

⁶ Persons have not been not directly established in the law that regulates the contestation of the decision of the shareholders, nonetheless, those whose rights or interests have been violated may have the basis to file a claim pursuant to general civil law norms.

AGAINST WHOM A CLAIM FOR CONTESTING THE DECISION CAN BE BROUGHT?

The claim is brought against the company throughout the Baltic States since the contested decision primarily has legal ramifications for the company itself. Shareholders of the company who have adopted the disputed decision may be invited as participants in the case as well.

TERM FOR BRINGING THE CLAIM

In Latvia, the claims must be filed in court within three months from the date on which the person became aware or should have become aware of the decision of the meeting, but no later than one year from the date of the meeting. In Estonia, a decision can be contested within 3 months from the date of its adoption. In Lithuania, the term is shorter, that is, the claim against a company must be brought within 30 days from the day when the person became aware or should have become aware of the contested decision.



Specifically to Estonia – a decision cannot be contested if the shareholders have confirmed it with a new decision that has not been contested in court within three months from its adoption. At the same time, the three-month-term does not apply with regard to the nullity of a decision, whereas the nullity of the decision cannot be invoked if an entry has been made in the commercial register on the basis of this decision and two years have passed since the entry was made.

THE COSTS AND PLACE OF BRINGING A CLAIM

Different approaches have been chosen regarding determining which court has jurisdiction over disputes over the decisions of the shareholders' meeting in the Baltic States. In Estonia and Lithuania, the claim must be filed in accordance with the general rule of jurisdiction - in the court of the first instance at the company's legal address registered in the Register of Legal Entities. On the other hand, in Latvia, claims regarding the decisions of the shareholders' meeting of a capital company are under the jurisdiction of a specialized court for examining commercial disputes, economic and financial crimes, and corruption cases - the Economic Court. This specialized court undertook its work on March 31, 2021, with the aim of ensuring higher quality and faster examination of relevant disputes. Therefore, it might be expected that the shareholders of capital companies in Latvia have opportunities to protect their rights even more effectively.

Parties to the dispute also have to bear different costs in each Baltic state. The highest state fee of EUR 420.00 is payable in Estonia. In Lithuania, the amount of the state fee is indexed quarterly and currently is EUR 134.00. The amount of the

state fee payable in Latvia depends on the significance of the contested decision of the shareholders of the capital company. The most important decisions of the meetings of shareholders of capital companies, which have the greatest impact on the company, are the following: 1) on changes in the composition of the officials of the capital company or in the right of representation of members of the board; 2) on changes in the amount of the equity capital; 3) to make amendments to the articles of association; 4) to terminate the operation of the capital company, to reorganize or to enter into, amend or terminate a group of companies contract (hereinafter - the significant decisions of the capital company's shareholders). In the event that a claim is submitted to the court for the declaration of invalidity of the significant decision of the capital company's shareholders, the state fee makes up EUR 140.00, but in case of contesting a different sort of decision, a fee of EUR 70.00 must be paid.

PROCEDURE FOR FILING THE CLAIM

In all countries, the claim must be submitted in writing. In Latvia, the statement of claim must be prepared in accordance with Article 128 of the Civil Procedure Law, while the provisions of Chapter 30.⁴ of the Civil Procedure Law are additionally applicable in relation to contesting the significant decisions of the capital company's shareholders. In Estonia, it must be submitted in accordance with Article 363, Paragraph 1 of the Civil Procedure Code. In Lithuania, furthermore, it should be submitted in accordance with Article 135 of the Civil Procedure Code.

The Baltic states are united by the fact that the statement of claim must disclose the factual grounds on which the invalidity of the shareholders' decision is requested. Moreover, all evidence must be attached to the claim (for example, minutes of the meeting of shareholders, articles of association, etc.). The claimant may ask for the case to be tried at a court hearing or in a written procedure. In addition, the claimant can apply for an interim measure of protection in the statement of claim.

In addition, it should be noted that the courts of all countries, upon establishing the basis for contesting the decision established by law, for example, violations in the procedure for convening the meeting, are not obliged to declare the decision invalid in all cases. The courts must consider the circumstances of the specific case as a whole and argue why the decision of the meeting of shareholders should be recognized or not recognized as invalid. The violation must be such as to suggest that if the proper procedure had been followed, the reached decision would have been different.

DURATION OF THE COURT PROCEEDINGS

In Latvia, disputes regarding the significant decisions of the capital company's shareholders are usually examined in a written procedure within a month from the receipt of the explanation or reference or the expiration of the term for their submission. If the said case is examined in oral proceedings, the court hearing is set within 15 days from the receipt of the explanation or reference or the expiration of the term for their submission. Regarding contesting other sorts of decisions, the law in Latvia does not set time limits in

which the court must examine a civil case, apart from that the case must be considered as quickly as possible to ensure the protection of the violated rights.

In Estonia and Lithuania, there are no special legal norms that would regulate the terms of court proceedings. However, according to Article 72 of the Civil Procedure Code, a Lithuanian court must ensure that the civil case is heard in court as soon as possible and that the hearing is not unreasonably delayed. Moreover, Lithuanian courts should preferably consider the civil case in one court session.

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| WRITTEN PROCEEDINGS | | |
| <i>Not regulated, general norms of the civil procedure are applicable</i> | <i>Significant decisions of the company's shareholders: 1 month Other decisions: as soon as possible</i> | <i>Not regulated, general norms of the civil procedure are applicable</i> |
| ORAL PROCEEDINGS | | |
| <i>Not regulated, general norms of the civil procedure are applicable</i> | <i>Significant decisions of the company's shareholders: 15 days Other decisions: as soon as possible</i> | <i>As soon as possible, preferable to consider the case in one court session</i> |

IS LEGAL ASSISTANCE A MANDATORY REQUIREMENT TO SOLVE A DISPUTE?

The impetus and purpose of contesting decisions of shareholders' meetings are to protect legal interests in a reasonable and equitable manner. Standing up for justice can be emotionally draining and time-consuming, but there are a number of situations where going to court is the best, if not the only, course of action. Legal assistance from an experienced specialist will make the dispute resolution process more constructive. This will significantly decrease the time invested and the emotional burden of the individuals involved. It is often the nuances that are decisive and become revealed only in the interpretation of law or knowledge of court practice by a legal professional, hence the presence of an expert in the dispute process is crucial in most cases.

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