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COMPANY LIMITED BY SHARES

1. The Concept of the Company Limited by Shares

The company limited by shares is a company with its own name, whose capital, which is fixed in advance, (nominal capital, paid-in capital) has been divided into parts (shares) and whose liability is limited to the company's assets.

2. The Formation of the Company Limited by Shares

The formation of a company limited by shares often comes about as a result of instructions given to a trustee to set up a company. Prior to the formation, the minimum capital of CHF 50'000.-- must be made available by being deposited in a blocked account with a bank. The formation is not usually on a gradual basis, but simultaneously. In the case of gradual formation third parties are invited to apply for an allotment of shares. In the case of simultaneous formation, the founder(s) is/are identical to the future shareholder(s). The formation process and the Articles of Association (hereinafter "Statutes") must be certified in a public deed. Independently of whether a company is formed simultaneously or on a gradual basis, it must be registered in the commercial register. Only then does the company attain legal personality. The registration itself consequently has legal effect. After the subsequent formation the shares are issued and allotted.

For the formation of a company limited by shares at least two founders are necessary who may at the same time be shareholders, In addition at least one director is necessary.

In addition to the deposit of its capital by way of cash, the formation may also be effected with the deposit of assets in kind. In that case however in certain circumstances a specialist (valuation) report may be necessary.

3. The Purpose of the Company Limited by Shares

The main business purpose must be stated in the statutes. Those organs appointed as regards the management of the company and to represent it are authorized to transact all nature of business with bona fide third parties, on behalf of the company, so long as nothing to the contrary is provided for by law or by the statutes as regards the exercise of rights to represent the company. The purpose of the company covers all legal acts, which seen objectively to contribute to the purposes of the company, even if only indirectly. By this is meant all legal acts which are not clearly excluded by the purpose. It is not necessary that these are ordinary activities of the company.

4. The Statutes of the Company Limited by Shares

In the case of the content of the statutes of the company limited by shares, a distinction must be made between

the content required by law:

1. Firm and domicile of the company,
2. Purpose of the company,
3. Details of the (fiduciary) founders,
4. The amount of nominal share capital and the amount paid in,
5. The amount of any authorized and/or conditional share capital,
6. Number, par value and type(s) of the shares as well as the rights to which such shares entitle,
7. The calling of a General Meeting, the voting rights of the shareholders and the passing of resolutions,
8. The organs of management and where applicable, of control, as well as the manner in which representation is exercised,
9. the manner in which the announcements made by the company are made to the shareholders and third parties as well as the approximate total amount of the costs of formation,

and

the optional content:

By this is meant a succession of provisions which according to legal provisions are only valid if they are provided for in the Statutes.

This entails, in particular, provisions in relations to the conversion of bearer into registered shares (and vice versa), restrictions of the transferability of registered shares, restrictions of the shareholders' voting rights and qualified quora required for the passing of specific shareholder resolutions. Furthermore, contributions in kind and certain categories of acquisitions in kind have to be disclosed in the Statutes.

Upon registration of the company in the commercial register the statutes must be attached. Consequently the register attains all the above stated particulars. The identity of the shareholders does not need to be disclosed to the commercial register, even where the shares

are registered shares. Anonymity is thereby fully protected.

5. The Capital of the Company Limited by Shares

The minimum capital of the company limited by shares which must be fully paid in is CHF 50'000. It is normally deposited with a bank, in a blocked account, which issues confirmation, the so-called proof of capital.

Where the capital exceeds the minimum amount of CHF 50'000.--, the excess amount can also be paid in gradually as required as "authorised capital".

Upon the registration of the company limited by shares in the commercial register the Board of Directors can demand the release of the blocked capital, upon presentation of the commercial register extract.

The capital can be in any recognised legal tender. The denomination of the capital is unlimited. A minimum nominal value is not prescribed by law.

6. Types of Shares

The large variety of types of shares is a peculiarity of Liechtenstein company law which can suit the particular wishes of an investor. Only the most important are mentioned here:

6.1. Bearer Shares, Registered Shares

Bearer shares refer to the holder and can be transferred by being handed over. The current holder(s) is/are therefore the entitled person(s).

With regard to registered shares, there is a distinction between registered shares in the actual sense and registered shares which are not transferable without the consent of the board. In both cases they are issued in a particular name and where they are transferred an endorsement is required, in addition to them being handed over.

The transfer of registered shares which cannot be transferred without the consent of the board is prohibited or restricted pursuant to the statutes.

Where a company limited by shares issues registered shares, it is required to keep a personal share register which records the details of the owners of the shares. The prerequisite of registration is proof of ownership. A person will only be regarded as a shareholder of the company limited by shares where he is registered in the share register. The share register does not have to be filed with the Commercial Register.

The shares of a company limited by shares can either be issued as registered shares or as bearer shares and can consist of both types at the same time.

6.2. Voting Shares

Basically, each share has only as many votes as are in proportion to the nominal value.

Voting rights are where the statutes provide that the number of votes of the owner of several shares (regardless of the nominal value of the shares) will be limited, that shares provide entitlement to several votes, or provide different voting rights.

6.3. Participation Certificate

Participation certificates confer no membership rights in relation to the company limited by shares, upon the bearer, but rather only asset rights, such as, for example, the right to a share of the profit and/or of the remaining assets after liquidation and the right to the subscription of new shares. The precise asset rights will be provided for in the statutes.

Bearers of Participation Certificates are therefore not entitled to participate in a general meeting and have neither a right to vote nor to challenge, but rather are creditors of the company limited by shares.

6.4. Nominal Value Shares, No Par Value Shares

The nominal value shares contain a partial amount of the capital of the company limited by shares. Each of these partial amounts (which corresponds to membership) represents the nominal value of a share. A share can for instance be issued for CHF 500.--.

As the name already suggests, no par value shares do not have a nominal value. The

nominal capital of the company limited by shares is in this case divided into fractions rather than in partial amounts. The share no longer refers to the nominal value but rather the shares correspond to a fraction of the share capital, for example 1/10 of the nominal capital.

7. The Organs of the Company Limited by Shares

The following three organs (bodies) are mandatory requirements of the law:

- The General Meeting
- The Management
- The Auditors

Further organs can additionally be provided for.

7.1. The General Meeting

The general meeting of shareholders is the superior organ of the company limited by shares. The law allows a very liberal form of the general meeting; the following are a few examples:

- The statutes can determine the place where the general meeting should be held. If the regulations do not provide for such, the general meeting is usually held in the place where the company is domiciled. This, however, is not mandatory.
- The manner in which the general meeting is to be called. This is provided for in the statutes. The law only provides that the details of the issues of the general meeting must be given.
- The minutes of the general meeting can be drawn up in any preferred language. Meeting minutes which need to be presented to the public register office for the purposes of registration must be in the German language (translation).

The general meeting has the following functions, where the statutes do not provide that these are not assigned either wholly or partly to another organ:

1. the election of the management and the appointment of the auditors;

2. the approval of the accounts and the assessment of the results and the dividends;
3. the discharge of the management;
4. the passing of resolutions regarding the passing and amending of statutes and where the statutes do not provide to the contrary, the formation of a branch;
5. the passing of resolutions regarding matters which are reserved for the general meeting by law or the statutes or which are presented to it by other organs.

The law differentiates between the **ordinary general meeting**, which is called annually within six months after the business year and the **extraordinary general meeting** which is called as required. This is subject to legislative and statutory exceptions.

As a matter of principle, only resolutions concerning issues which have been given notice of, in accordance with the law or the statutes, will be passed.

In the event that it is not stated in the statutes, a general meeting resolution is valid where there is a simple majority of the countable votes present, as long as 1/10 of all the votes are represented. Certain resolutions, e.g.:

- the changing of the purpose of the company,
- the conversion of the company limited by shares into a different legal entity,
- disposal of special requirements for general meeting resolutions which are contained within the statutes,

require a qualified majority, which means the consent of 3/4 of the votes represented at the general meeting, where at least 2/3 of the entire votes are represented.

If the minimum number required by law or the statutes for a resolution to be passed is not achieved, then subject to other statutory stipulations, a second general meeting can be called and the resolution passed with a simple majority, without regard for the necessary minimum number.

Where there is a parity of votes, the vote of the chairman will be decisive.

7.2. *The Management*

The members of the management are elected by the general meeting. The board of directors can consist of one or more persons and form the management organ. Where it is not contrary to the statutes the management also covers the power of representation.

The management and the power of representation can be wholly or partially conferred upon individual members of the board of directors or upon third parties who need not be members of the company. If the entire management is conferred upon persons then they are referred to as "the management".

Normally the board of directors only gives special powers of attorney to third parties.

Members of the board of directors can either be natural or legal persons, who do not have to be shareholders of the company limited by shares.

The board of directors can consist of a majority of foreign members. However, companies limited by shares which are not commercially active within Liechtenstein and do not have a Liechtenstein trade license must at least have one of the members of management and representation which is a citizen of the European Economic Area (EEA) with residence in a EEA member state and with admission as trustee in accordance with the Liechtenstein Trustee Act.

The board of directors can initially be appointed only for a maximum of three years, thereafter for a maximum of six years. Re-election is possible.

The board of directors has the following duties:

1. preparing the business for the general meeting and carry out the resolutions,
2. setting up the regulations necessary for an ordered business and conferring instructions upon management required for these purposes,
3. supervising the persons entrusted with the management and representation, and supervising the implementation of the legal requirements, statutes and regulations, and

4. advising regularly on the running of the business and the management, for the above stated reason.

7.3. The Auditors

The auditors are appointed by the general meeting. No members or persons who belong to the board of directors or who are employees of the company limited by shares can be elected. Initially the auditors can be appointed for a maximum of one year, and thereafter for not longer than three years.

The tasks of the auditors:

1. They must examine the accounts, inventories, profit and loss accounts and other company accounts, for their orderliness, accuracy, reliability and assess whether they present an accurate picture of the financial position and the business results.
2. The auditors must prepare a written report for the general meeting concerning the accounts and profit and loss accounts presented to the management (for the purposes of agreement by the general meeting).
3. In as far as the auditors become aware of irregularities or of infringements of the legal and statutory requirements, they are under a duty to inform the superior organ immediately, and in important cases also the general meeting. In this regard the auditors are subject to the duty of confidentiality apart from in respect of the members of the management and the other auditors.

The statutes can provide for further tasks and duties.

8. Further Organs

The following organs are optional:

- Supervisory Board:

The supervisory board is made up according to the directions of the management. Its task is constant supervision of the management and the participation by the administration. The

members of the supervisory board can, but must not be registered in the public register.

- Committee(s):

The board of directors can set up one or more committees from its membership, e.g. with the task to supervise, in particular, the running of the business, the preparation of the matters to be submitted to the board of directors, (particularly regarding important questions), and also the preparation of the accounts, the preparation of reports, and the supervision of the implementation of the resolutions made by the board of directors.

9. The Representative

A company limited by shares must have an additional Liechtenstein representative if it is not commercially active in Liechtenstein and does not have a Liechtenstein trade license.

The representative must be a person permanently resident in Liechtenstein who is either a Liechtenstein citizen or a national of a EEA member state. In certain cases, the representative may also be an entity with its domicile in Liechtenstein. In any event, the representative must be registered in the public register.

By virtue of the law the representative is empowered:

- to represent the company limited by shares in its dealings with all domestic courts and administrative authorities in all circumstances;
- to receive all declarations and information, of all types, including service of legal documents, and suchlike; and
- as far as it develops domestic business, keeping files and books.

Apart from the statutory power of representation given to the representative, the company limited by shares can only be bound by the representative in so far as he has been granted a special power of attorney to do so.

10. Branches

Foreign branches of a Liechtenstein company limited by shares must be entered as such in the Liechtenstein Public Register.

Liechtenstein branches of foreign companies limited by shares with their seat in another EEA-member state must also be entered into the Liechtenstein Public Register. The same registration duty exists for Liechtenstein branches of companies limited by shares with their seat outside of the EEA. However, in contrast to the latter type of branch, the former type of branch benefits from a certain administrative relief in the registration process.

11. The Liquidation of the Company Limited by Shares

11.1. Liquidation through Bankruptcy

The company limited by shares will be liquidated by bankruptcy proceedings where it is unable to pay its debts, or is insolvent, in so far as sufficient assets to cover the bankruptcy proceedings are still available. The board of directors and, on a subordinate level, the auditors are obligated by law to initiate reorganization measures. In the event of the company's over-indebtedness or lack of ability to pay its debts, they must inform the courts without further delay.

11.2. Liquidation by Way of Resolution by a General Meeting

The resolution for liquidation of the company limited by shares must, unless otherwise provided for in the statutes, be agreed upon by a 2/3 majority.

In the framework of such dissolution by resolution of the general meeting, liquidation must take place. The general meeting appoints one or more liquidators for this purpose.

The liquidators must publicise the resolution to liquidate three times in a national newspaper, and ask all creditors, to make their claims within a six months time period. After expiry of this time limit the assets can be distributed, and the company limited by shares can subsequently be terminated.

12. Inspection of the Public Registry File

Since 1 January 2001, every interested person may inspect the file which the Public Registry maintains for a company limited by shares. To obtain access, it is not necessary that such person establishes a legitimate interest for the inspection. Moreover, certified copies of individual documents in the registry file may be requested. This enables everyone to inspect the deed of formation and to identify the (fiduciary) initial shareholders. However, none of the shareholders are specifically registered within the Public Register itself (neither holders of registered shares).

13. Accounting

Meanwhile, the 4th, 7th and 8th EU Company Law Directive have been implemented into Liechtenstein company law. Today, a Liechtenstein company limited by shares is obligated to submit, within 15 months after its balance sheet date, the auditor's report and the shareholders' resolution regarding the use of profits to the Liechtenstein Public Registry. This results in the disclosure of the information contained in these documents.

"Small" companies limited by shares (i.e. companies which fulfil at least two of the following criteria: a balance sheet sum below CHF 5.55 mio., a turnover below CHF 11.1 mio. and/or less than 50 employees) benefit from certain exemptions. Such companies are obligated to file merely a summary balance sheet and a shortened annex (but no profit and loss statement, no annual report and no auditor's report).

Medium-sized companies limited by shares (i.e. companies which fulfil at least two of the following criteria: balance sheet sum between CHF 5.55 mio. and CHF 22.2 mio., turnover between CHF 11.1 mio. and CHF 44.4 mio. and between 50 and 250 employees) must merely file a shortened annual report (consisting of balance sheet, profit and loss statement and annex as well as the auditor's report). It is sufficient if the annual report can be inspected at the seat of the company.

According to these new accounting provisions, the annual accounts (consisting of balance sheet, profit and loss statement and annex)

must comply with the principle of fair presentation.

Hidden reserves may no longer be recorded with an arbitrarily low valuation.

The new provisions have introduced a statutory obligation for Liechtenstein mother companies to set up a consolidated annual report. However, holding companies remain exempted

from this obligation provided that they do not interfere in the administration of their subsidiaries, do not exercise their voting rights during the election of their subsidiaries' organs and if they grant loans only to subsidiaries.

14. Sources of law

Persons and Companies Act dated 20 January 1926, LGBl. 1926/4.

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