CORPORATE DISPUTES IN BELARUS

GRATA INTERNATIONAL

CORPORATE DISPUTES IN BELARUS

Alexander Korsak
Partner, Head of Dispute resolution

T: +375 29 373 55 00
E: akorsak@gratanet.com

Lizaveta Tsianiuta
Junior Associate

T: +375 29 373 55 00
E: ltsianiuta@gratanet.com

Anton Mazol
Paralegal

T: +375 29 373 55 00
E: amazol@gratanet.com

In recent years, the number of disputes related to shareholders relations (corporate disputes) has increased. It can be due various reasons: capital accumulation and funds-sharing conflicts between the shareholders, bringing business to insolvency, the desire to sell the business during financial crises or heirs entry into business. Sometimes the reason for corporate disputes is the lack of proper legal execution of agreements between the partners. Some disputes are resolved out of court with professional lawyers and mediators. Other disputes end up in the courts. Often "offended" shareholders appeal to the law enforcement authorities.

> According to the Bank of Court Decisions pravo.by, 107 cases related to the shareholding in legal entities were resolved in 2022, which is 1.3% of the total number of cases resolved in the Belarusian economic courts.

Corporate disputes are heard only in the economic courts of Belarus (Article 47 of the Economic Procedural Code of Belarus (EPC). Disputes related to the shareholding in the Belarusian legal entity must be resolved under the legislation of Belarus (the law of the place of incorporation – lex societatis). Corporate disputes are resolved according to the rules of claim proceedings. Generally, a case is resolved by a first-instance court within 2 months.

The most common measures to secure the corporate claims according to the existing practice and Belarusian legislation (Articles 113-120 of the EPC) are:

seizure of stocks (shares in the charter capital of a company) owned by a shareholder (stockholder) **(Order of Economic Court of Minsk of January 30, 2021, in case No. 155Из2185);**

prohibition for stockholders (shareholders) to operate with stocks (shares in the charter capital of a company) **(Order of Economic Court of Mogilev region of August 19, 2011, in case No. 255-10/2011);**

prohibition for a company to consider a certain matter at a General Meeting of Shareholders (GMS) (e.g. election of a CEO and pre-term termination of his powers **(Order of Economic Court of Minsk of January 29, 2007);**

invalidation of state registration of amendments to the Statutes **(Order of Economic Court of Minsk of September 17, 2021, in case No. 155ЭИП213667);**

other measures under Article 116 of the EPC.

However, those measures cannot limit the rights of the management bodies of a company to perform their powers (part 6, Article 115 of the EPC). It means that the court will refuse to prohibit the GMS and decide on matters within its competence if a party claims such measures.

In this article, we invite you to have a look at the highlights of Belarusian case law on certain categories of corporate disputes.

OBTAINING DOCUMENTS AND INFORMATION ON THE COMPANY

A company shareholders may obtain information on its activities, and a company must provide such information upon the shareholder's request (Article 64 of the Civil Code, Article 13 of the Law On business entities).

In the request, the shareholder shall specify the list and types of documents containing the requested information, taking into account their availability in the company. The request for information and documents is usually made at the stage of a corporate conflict and is a way to put pressure on other shareholders or to find out the real financial situation of the company.

For this category of cases the following practice has been developed:

The court refuses to satisfy the claim of a company shareholder to force the company to submit documents if the shareholder had already accessed them before the claim was filed

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of January 20, 2021, in case No. 19-20/2020/492A/12K);

The company's Statute must specify the order and scope of information to be provided to a shareholder. Articles 63 and 64 of the Law On business entities establishes a general list of documents that a shareholder can access, but the company may extend this list in the Statute. If additional regulation is introduced with a resolution of the GMS (without amending the Statute), such decision is invalid.

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of August 14, 2019, in case No. 9-2/2019/105A/946K, Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of October 8, 2019, in case No. 53-11/2019/298A/1146K);

A shareholder has the right to access documents containing employees' personal data, if they are related to the documents shareholder is entitled to request according to the company's Statute

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of June 28, 2022, in case No. 152ЭИП211041);

A shareholder's request to provide the documents on the company is not an abuse of rights. The court does not accept the company's justification of the use of such information by the shareholder against the company

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of February 1, 2023, in case No. 155ЭИП223874);

A shareholder has no obligation to specify the reasons for implementation of his (her) right to obtain information or justify his (her) interest in the requested documents of the company

(Paragraph 16 of the Resolution of the Plenum of the High Economic Court of the Republic of Belarus of October 31, 2011 No. 20, Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of December 28, 2022, in case № 155ЭИП223945).

Economic court decisions on obtaining information are extremely difficult to enforce. The practice is there are various "tricks" used by companies. The only leverage on the company in such enforcement proceedings is the threat of administrative liability under part 3 of Article 25.9 of the Code of Administrative Offences.

If it is not possible to enforce the provision of documents, the enforcement document is returned to the shareholder (claimant) (Article 53 of the Law on Enforcement Proceedings).

WITHDRAWAL OF A SHAREHOLDER FROM A COMPANY. SETTLEMENTS WITH FORMER SHAREHOLDERS

In the course of doing business together, shareholders in a company are sometimes faced with conflicts of interest or with the unwillingness of some shareholders to fulfil their obligations under the law or the Statute in good faith.

> As a general rule, shareholders could withdraw from the company at any time and receive the actual value of their shares.

The Law On business entities regulates the procedure for the shareholder's withdrawal from the company and the procedure and time limits for the payout of the real value of the share to the shareholder. At the same time, the Statute may establish the procedure (methodology) for calculating the real value of the share and reduce the time limit for its payout to the shareholder upon withdrawal.

Please note: under the Edict of the President of the Republic of Belarus of March 14, 2022 No. 93, since March 2022 the withdrawal of a shareholder who is a resident of a foreign state that performs unfriendly actions against Belarusian legal entities and (or) natural persons is prohibited. The list of legal entities for which this restriction is imposed is approved by Resolution No. 436 of the Government of the Republic of Belarus of July 1, 2022.

The analysis of the current court practice on the mentioned category of disputes allows us to make the following conclusions:

The shareholder's withdrawal from a company is valid from the moment of expiry of the term for receipt of postal correspondence, even if the application has not been actually handed over to the company

(Resolution of the Minsk Regional Economic Court of September 22, 2022, Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of May 15, 2022, in case No. 155ЭИП22208);

The settlement with the withdrawing shareholder must be carried out in accordance with the accounting data of the company as of the date of the shareholder's application for withdrawal. Further amendments to the accounting data are not relevant

Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of May 31, 2022, in case No. 155ЭИП 214256);

In case the company refuses to amend its incorporation documents due to a shareholder's withdrawal from the company, the court may force the company to take actions to amend its incorporation documents and apply for state registration of shareholder list changes

(Resolution of the Minsk Economic Court of September 12, 2022, in case No. 155ЭИП222846, Resolution of the Minsk Regional Economic Court of May 16, 2022);

Transfer of assets as payment of the real value of a share is not an obligation but a right of the company upon agreement between the withdrawn shareholder and the other shareholders

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of November 15, 2022, on case № 152ЭИП2222);

Applying for withdrawal is a unilateral deal aimed at termination of the obligatory relations with the company. Invalidation of such deal entails the refund of paid out value of the share

(Resolution of the Brest Regional Economic Court of January 15, 2019, in case No 141-8/2018);

If there were no claims against the withdrawn shareholder for violation of the procedure and time limits for contributing to the authorized capital of the company until the shareholder applied for withdrawal, the company couldn't refer to the failure of that shareholder to contribute to the statutory fund of the company

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of December 29, 2021, in case No. 154ЭИП21468).

CONTESTATION OF DECISIONS OF THE GENERAL MEETING OF SHAREHOLDERS

The company shareholders have the rights set out in Article 64 of the Civil Code, Article 13 of the Law On business entities and the company's Statute one of them being the right to participate in the company management, which can be exercised through participation in the GMS.

The GMS decision made with a breach of the law or the Statute and violating the rights and (or) lawful interests of a company shareholder (former shareholder) may be contested in court by a stockholder (former stockholder) of a joint stock company (OJSC or CJSC) within 3 months, and by a shareholder (former shareholder) of LLC or ALC within 2 months from the day when they found out or should have found out about such decision (part 7, Article 45 of the Law On business entities).

As a result of reviewing such cases the economic courts of Belarus reach the following conclusions:

Failure to notify a shareholder about GMS and its agenda is a material breach of the shareholders' rights to participate in the company management which leads to the invalidation of the GMS results.

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of January 13, 2021, in case No. 42-26/2020/750A/1288K);

A shareholder is entitled to contest the GMS decision even if it has been executed, on condition that the executed decision violates or may violate the rights or lawful interests of the company shareholder

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of March 24, 2016, in case No. 411-6/2015/10A/307K);

The initiation of extraordinary GMS without applying to the company's executive body (director) beforehand is a material violation of the procedure for the GMS convening

(Resolution of the Board on Economic Disputes of the Supreme Court of the Republic of Belarus of July 14, 2020, in case No. 43-20/2020/291A/532K);

The economic court does not take into account the arguments of violations of the legislation and the Statute in GMS convening and holding if the limitation period has been applied

(Resolution of the Gomel Regional Economic Court of February 4, 2016, in case No. 149-7/2015/5).

THE CASE ANALYSIS SHOWS THAT REFERRING A CORPORATE DISPUTE TO COURT DOES NOT BRING THE EFFECT EXPECTED BY THE CONFLICT PARTIES FROM A COURT DECISION AND IS NOT A CONFLICT SOLUTION.

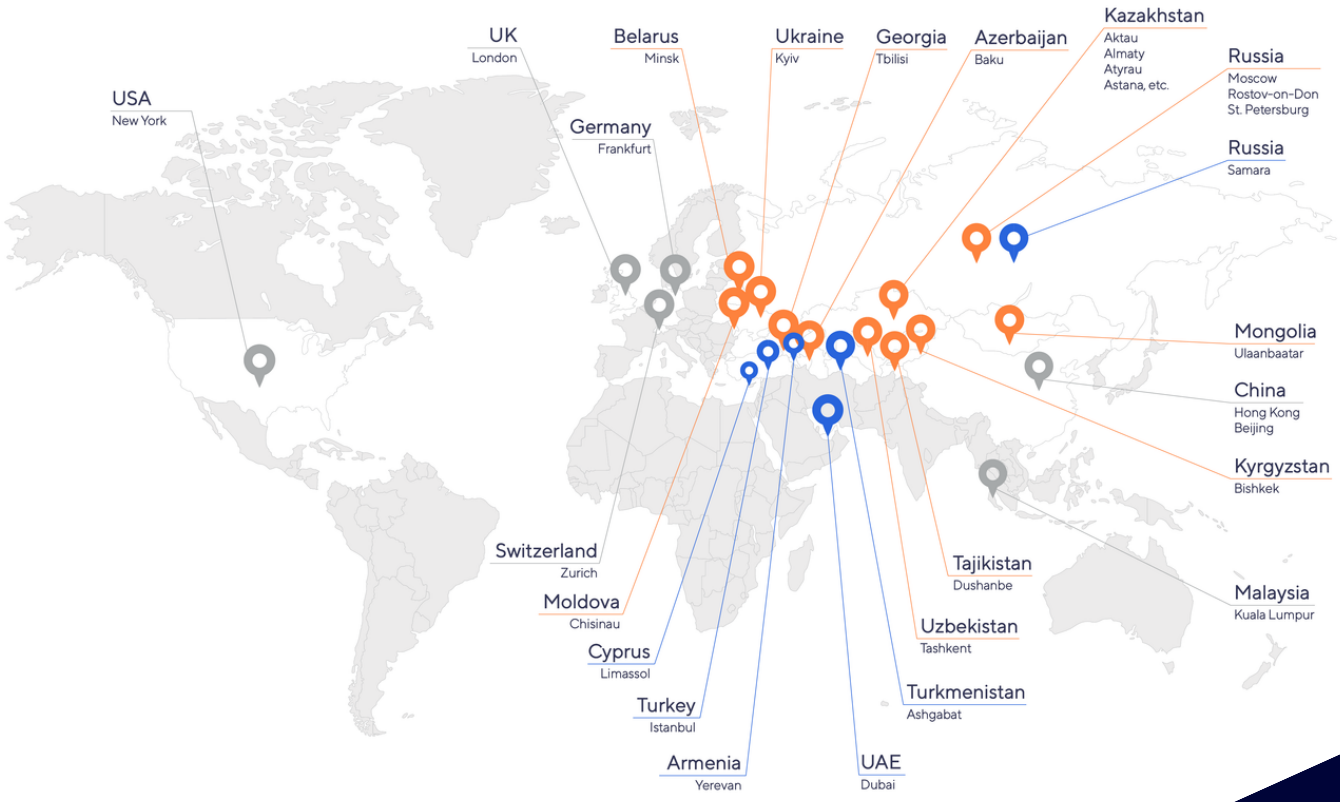
THEREFORE, WE RECOMMEND:

founding a company discuss all the details of its future activities with your partners, including "uncomfortable situations" and ways out of conflicts, and fix them in a corporate agreement (or in written through correspondence or a single document, if your partner is not ready to conclude a corporate agreement);

treat the drafting of the company's Statute and local regulations thoughtfully - these documents should fully reflect all of your key concerns, such as how to dispose of shares (stocks) and withdraw from the company, how to obtain company documents, and how to distribute profits;

make sure your business will still be able to operate in case of a corporate conflict (it can be affected, for example, by blocking decision-making by the GMS); in such situations, we recommend having alternatives (e.g., the possibility of transferring part of the powers to the Board of Directors);

use pre-trial forms of conflict resolution such as mediation or negotiation for corporate conflicts - they might be really effective.



GLOBAL PRESENCE

Integrated Offices

Azerbaijan
Baku

Belarus
Minsk

Georgia
Tbilisi

Kazakhstan
Astana
Almaty
Atyrau
Aktau, etc.

Kyrgyzstan
Bishkek

Moldova
Chisinau

Mongolia
Ulaanbaatar

Russia
Moscow
Rostov-on-Don
St. Petersburg

Tajikistan
Dushanbe

Ukraine
Kyiv

Uzbekistan
Tashkent

Associate Offices

Armenia
Yerevan

Cyprus
Limassol

Russia
Samara

Turkmenistan
Ashgabat

Turkey
Istanbul

UAE
Dubai

Representatives

China
Beijing

Germany
Frankfurt

Malaysia
Kuala Lumpur

Switzerland
Zurich

UK
London

USA
New York