INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Rights of Minority Shareholders

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INTRODUCTION

A shareholder without voting strength or power to influence decision making on his own it's considered a minority shareholder. To be a minority shareholder could be tricky when it comes to protect your investment and its fruits. To avoid abuses from the majority, rules to protect minorities have been put in place in many jurisdictions. As for example, shareholder's agreements, the right of minorities to appoint a Director or other officers, rights to sell or buy shares at a fair value, the right to convene general assembly's, the right to get information from the management, etc.

Somehow, these rights may get in conflict with a fast decision making capability, impairing the management or the majority shareholders, which in turn may be a form of abuse from the minorities.

Therefore we would like to find out how these minority rights are handled in different jurisdictions.

1. Current scenario at your jurisdiction:

1.1. How and to what extent are *minority shareholders* protected in publicly and privately held corporations in your country, either as to legal or firm level protection?

In Lithuania protection of rights of minority shareholders are regulated by the following laws. The Civil Code provides right to conclude shareholders agreement; to lodge the claim against unlawful shareholders decisions etc. The Law on Companies provides right to information; to initiate audit; to initiate general meeting of shareholders, submit proposals for the agenda etc. The Law on Markets in Financial Instruments and the Law on Securities are also relevant for some aspects of protection of rights of minority shareholders. In addition the European Union directive 88/627/EEC (also called the Large Holdings Directive) was implemented in Lithuania. This directive is devoted to the creation of disclosure standards for block holders owning more than 5% of voting rights in a company.

Aforementioned laws provide only minimal protection. By the documents of establishment of the company as well as by agreements of shareholders the minority shareholders can be granted with broader protection of their rights. For example, the shareholders can broaden the scope of the right to get information, agree on procedure of conclusion of contracts. In the documents of establishment the quantitative representation rule can be included etc. Thus, the scope of minorities' protection depends on consensus of all shareholders.

As regards public companies, the state and the municipalities maintain approximately half of companies' capital. However, the number is constantly decreasing as a result of privatisation and increasing investments. Minority shareholders of public companies are offered protection through a tender offer which is mandatory at the level of acquisition of 40 per cent of all shares.

1.2. Do they have in essence real choices, or are the ones that are in the hands of the dominant group, either managers or major shareholders, or are they restricted to those that do not challenge the majority power, representing the status quo?

In most of the cases the majority passes the decisions solely in their own interests and the interests of minority shareholders are being set aside, therefore, the real choices of minority shareholders are usually limited. Despite of this, the minority shareholders have a right to conclude shareholders agreements in order to give the impact on decisions that are made in the company. Moreover, if minority shareholders have evidence that the decision made by the majority disregards the good governance of the company, was made in bad faith and maliciously, minority shareholder (owner of at least one share) can file a civil claim in court for the invalidation of said decision.

1.3. Has the law and precedents of your country evolved in ways that increase *minority shareholders* ability to defend against expropriation by those in control (misuse of assets, reallocation of profits, transfer pricing, etc.) ?

Corporate governance misbehaviour such as the sale of assets or products below market value was more common in the past. These days, minority shareholders became more active in defending their rights. After amendments made to local laws, the minority shareholder has broader right to apply to court claiming that specific decision made by the major shareholders breaches his rights, therefore, the shareholders can contest the validity of decisions of the general meeting of shareholders as well as request to pay damages for the shareholders if this was done as a result of such decision. The shareholders can also file preventative claim in court requesting to ban future decisions which will cause damage to the company. If it is obvious that the executive organs of the company unfairly, maliciously and consciously do not defend the interest of the company, the shareholders can file a civil claim in court in the name of the company.

1.4. Is the legal dimension the prevalent one in the Corporate Governance (CG) atmosphere, or is the firm level CG the common manner to protect minorities?

The corporate governance system and ownership structure in Lithuania was shaped by the method of privatization used to privatize property of the Lithuanian state. Privatization was performed in two stages. The first stage was performed using a voucher system to sell state property to the public and the second stage was done by selling large stakes of big corporations to strategic investors, who were mostly foreign. In Lithuania privatized companies were mandatorily listed on the national stock exchange, which resulted in an initially large number of listed companies. In Lithuania there is no voluntary Good Corporate code proposed or accepted by the corporate

community. Thus, corporate governance according to the practice and atmosphere in Lithuanian companies can be explained by ownership control meaning that the majority shareholders control and makes the most important decisions for the company. The principal approach of corporate governance is that the shareholders choose the board of directors. The board of directors, at their turn, must select the top management for the company.

1.5. What is the role of ownership concentration in the protection of the minority?

Ownership concentration is a leading shareholding structure in Lithuania. In more than a half companies there are three - five shareholders maintaining control over the company and its management. Voting contracts concluded among the minority shareholders are being used in general meetings of shareholders in terms of concluding decisions. Voting contracts are being made either regarding particular shareholders meeting or all meetings for specific term.

1.6. Is benchmarking used as a mechanism for minorities to select the country or firm better suited to risk profile and protection from rights deprival?

In Lithuania the formation of group dynamics among dispersed shareholders is being used for controlling and making decisions. The companies are mostly of concentrated ownership.

1.7. Is the formation of group dynamics among dispersed shareholders working in your country?

Protection of minority shareholders rights sometimes result in abuse of appropriated rights (is being treated as such by the courts).

1.8. What is the role of market liquidity in the *minority shareholders* exit option?

Lithuanian law does not provide automatic appraisal rights (in the form of buyout of dissenting shareholders) as does exist in other jurisdictions. Lithuanian court may order a buyout, but only few cases of this kind were heard so far in practice.

1.9. Have legal reforms in your country given tools to majority to use compliance as an instrument to somehow "legalize" minority expropriation?

Despite of the reforms, so far the protection of minority shareholders rights are more evident at theoretical level, but not effective enough in practice.

2. Looking forward at your jurisdiction:

2.1. What is the way to avoid *minority shareholders* from suffering mayor shocks, -if applicable in your country- due to restrictive visions as to minority rights, without falling into abuses of minority rights? Is it possible to harmonize both?

Minority shareholders can be best protected by the means directly associated with minority shareholder rights such as board representation, protection against blocking minorities, the ability to issue minority claims and participate in extraordinary general meetings etc.. Laws concerning ownership transparency and relative power of minority shareholders in the event of a takeover threat are also crucial.

2.2. Is *minority shareholders* activism taking place in your country, and to what extent?

The activism of minority shareholders is not that common in Lithuania. The companies are mostly governed by majority shareholders; however, in case of abuse of minority shareholders rights the law provides aforementioned instruments of defence.

2.3. What is the trend in your country for the protection of *minority shareholders*?

One can say that the trend in Lithuania regarding protection of minority shareholders rights is increasing number of cases regarding violations from the side of majority shareholders, but still in most cases the minority shareholders are rather passive.

2.4. What is the impact of the Sarbanes-Oxley Act (SOX) in your country, as a canon to regulate domestic capital markets and CG?

SOX-type regulation was not enacted in Lithuania, but similar ideas are being discussed.

2.5. Do you think it advisable to rescue the concept of "Popular Capitalism", as defined in the fifties by the great jurist Joaquin Garrigues, in view of the present circumstances regarding status of minorities?

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2.6. What should be the role of minorities as to the flaws of executive pay packages that reflect structural problems in underlying governance agreements, as pointed out by Lucian Bebchuk, Harvard Law Professor ?

Shareholders in large, publicly traded companies lack the power to intervene and change existing arrangements. In the absence of shareholder power to intervene, management might have an excessive tendency to reject attractive opportunities to merge, sell, or dissolve because termination will end its control over the independent company.

3. Precedent cases at your jurisdiction:

3.1. Please report some recent judicial cases regarding *minority shareholders* issues.

One of the most interesting recent cases at Lithuania's jurisdiction regarding minority shareholders issues is case No 3K-3-66/2015 of the Supreme Court (so called "Alita" case). Minority shareholders filed a civil claim stating that the authorised capital was reduced and then again increased by the majority shareholder (93 per cent of shares) illegally. The lower instance courts concluded that the decisions of the general shareholders meeting should not be declared null and void due to formal breaches, which caused no tangible negative consequence to the company, shareholders and public interest. The Supreme Court of Lithuania stated that the majority shareholders, as the main decision makers in the company has a right to protect the investment and make active steps for the improvement of financial situation of company. As, when reducing the authorised capital the major shareholder lost part of the shares himself, according to the Supreme Court of Lithuania, it would be unfounded to say that the major shareholder was acting in the name of personal interest, that the decisions were directed to damage the company, violate the rights of minority shareholders etc. The Supreme Court also stated there were no evidences proving that the board decisions were influenced illegally etc.

The above case generally illustrates the difficulties of protection of minority shareholders rights in courts.

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