

## Company Limited by Shares

### 1. Definition 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, in Liechtenstein, 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/EUR/USD 50'000.00 must be made available by being deposited in a blocked account with a bank. The formation can be on a gradual or simultaneous basis, although the latter is more commonly used. 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 (natural or legal persons) are necessary. However, immediately after the formation all shares may be held by only one person. Moreover, at least one director is mandatorily required.

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, a specialist (valuation) report may be required.

### 3. The Purpose of the Company Limited by Shares

The main business purpose of the company must be stated in the statutes. Those organs appointed to manage and represent the company 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 in the statutes with regard to the exercise of rights to represent the company.

### 4. The Statutes of the Company Limited by Shares

Regarding the content of the statutes of the company limited by shares, a distinction must be drawn between;

#### the content required by law:

- name and domicile of the company;
- purpose of the company;
- details of the (fiduciary) founders,
- the amount of nominal share capital and the amount paid in;
- the amount of any authorized and/or conditional share capital;
- number, par value or fraction and type(s) of the shares, as well as the rights attached to such shares;
- the calling of a general meeting;
- the voting rights of the shareholders and the passing of resolutions;
- number of members and the appointment of the board of directors, the management and the auditors and their relevant responsibilities;
- the manner in which representation is exercised;
- the manner in which company announcements are made to the shareholders and third parties; and

- the approximate total amount of the costs of formation;

and,

#### the optional content:

This is a succession of provisions which according to law are only valid if they are provided for in the statutes.

This entails, in particular, provisions in relation to the conversion of bearer shares into registered shares (and vice versa), restrictions on the transferability of registered shares, restrictions on the shareholders' voting rights and the 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 contains all the aforementioned information. The identity of the shareholders does not need to be disclosed to the commercial register, even where the shares are registered shares. Anonymity is therefore 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/EUR/USD 50'000.00. 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 50'000.00, the excess amount can also be paid in gradually as required as "authorised capital".

However, at least 25% of each share must be paid-in or covered by contribution of assets in kind.

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 in favor of the company, upon presentation of the commercial register extract.

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 an attractive peculiarity of Liechtenstein company law which can suit the particular wishes of an investor. Only the most important and commonly used are mentioned here:

### 6.1. Bearer Shares

Bearer shares refer to the holder. Bearer shares are immobilized by law. Thus, a company that issued bearer shares must appoint a custodian who must hold the bearer shares in custody for the shareholders. The custodian must also record the shareholders in a specific internal (non-public) register. The transfer of bearer shares requires, inter alia, the prior notification to the custodian and the registration of the new shareholder in the register kept by the custodian.

### 6.2. Registered Shares

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 of directors, is so prohibited or restricted pursuant to the statutes.

Where a company limited by shares issues registered shares, it is required to keep an internal (non-public) share register which records the details of the owners of the shares and any transfers. 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 conversion of bearer shares into registered shares (and vice versa) is only possible if provided for in the statutes. However, a combination of both bearer shares and registered shares may be issued at any given time.

### 6.3. Voting Shares

Basically, each share has only as many votes as are in proportion to the nominal value. The voting power of a shareholder is measured according to the nominal value of all his shares.

Voting rights are where the statutes determine the number of votes attributable to certain classes of shares (regardless of the nominal value of the shares) and whether they are limited, provide entitlement to several votes, or provide alternative voting rights.

Compared to other shares, voting shares carry a higher voting right. Therefore, they are normally favored over other shares because of this stronger-voting position, which is not proportional to their nominal value.

#### 6.4. Participation Certificates

In a company limited by shares, participation certificates confer no membership rights upon the bearer, but rather only asset rights, for example, the right to a share of the profit and/or of the remaining assets after liquidation and the right to subscribe for new shares. The precise asset rights will be provided for in the statutes. Participation certificates are therefore actually "shares without voting rights".

Bearer of participation certificates are therefore basically 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.

#### 6.5. 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 represents the nominal value of a share (e.g. CHF 100.00, 500.00 or 1'000.00).

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 mandatorily required by law:

- the general Meeting

- the management
- the auditors

Additional organs (e.g. a supervisory board or a committee) can additionally be provided for in the statutes.

#### 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 statutes do not provide for such, the general meeting is usually (but not mandatory) held in the place where the company is domiciled.
- The manner in which the general meeting is to be called is also provided for in the statutes. The law only requires that the details of the issues of the general meeting must be given and that shareholders who represent at least 10% of all votes must have a right to propose items for inclusion on the agenda of the general meeting.
- The minutes of the general meeting can be drawn up in any preferred language. Meeting minutes which need to be presented to the Department of Justice, Commercial Register Division, for the purposes of registration must however be in (or translated into) the German language.

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

- the election of the board of directors and the appointment of the auditors;
- the approval of the accounts and the assessment of the results and dividends;
- the discharge of the board of directors;

- the passing of resolutions regarding the passing and amending of statutes and the formation of a branch;
- 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, or
- the disposal of special requirements for general meeting resolutions which are contained within the statutes,

require, if not provided for differently in the statutes, a qualified majority, which means the consent of 3/4 of the votes represented at the general meeting and at least 2/3 of all shares.

If the minimum number required, either 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 of the represented votes, without regard for the necessary minimum number.

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

## 7.2. The Management (board of directors)

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 directorate". This delegation can be regulated by the board of directors through "organizational regulations".

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, and do not have to be shareholders of the company limited by shares. The law does not prescribe any obligatory qualifying share for the members of the board of directors.

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/who is a legal entity or a citizen of the European Economic Area (EEA) and is admitted 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:

- preparing the business for the general meeting and carry out the resolutions,
- setting up the regulations necessary for an ordered business and conferring instructions upon management required for these purposes,
- supervising the persons entrusted with the management and representation, and supervising the implementation of the legal requirements, statutes and regulations,
- advising regularly on the running and management of the business, , and
- taking the necessary measures and (if necessary) informing the court in the event of threatened insolvency of the company limited by shares.

### 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. The auditors must basically be legally and economically independent of the company limited by shares. 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 are:

- to examine the accounts, inventories, profit and loss accounts and other company accounts for their orderliness, accuracy, and reliability and assess whether they present an accurate picture of the financial position and the business results.
- to prepare a written report for the general meeting concerning the accounts and profit and loss accounts presented to them by the management (for the purpose to attain an approval of the general meeting).
- Insofar 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 a duty of confidentiality apart from in respect towards members of the management and their fellow 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 provisions concerning the management. Its task is to supervise the management and the administration of the company. The members of the supervisory board must be registered in the commercial register.
- **Committee(s):**  
The board of directors can, if they wish, set up one or more committees from its membership, e.g. with the tasks to supervise, in particular, the running of the business, to prepare the matters to be submitted to the board of directors (particularly regarding important questions), and also to prepare accounts and reports and supervise the implementation of the resolutions made by the board of directors.

## 9. The Representative

A Liechtenstein company limited by shares must generally have an additional Liechtenstein representative to represent the company towards authorities and courts. The obligation to appoint such a representative may be dropped in the event that the company's remaining representation provides adequate warranty as a substitute for the legal

representative (e.g. in case of a managing director pursuant to the Trade Licensing Act with residence in Liechtenstein or a domestic member of the board of directors) or if the specification of a domestic mailing address is sufficient.

The representative must be a person permanently resident in Liechtenstein who is either a Liechtenstein citizen or a national of an 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 commercial register. By virtue of the law the representative is empowered:

- to receive all declarations and information, of all types, including service of legal documents and suchlike; and
- as far as it concerns domestic business, to keep appropriate 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 commercial register.

Liechtenstein branches of foreign companies limited by shares with their seat in another EEA-member state must also be entered into the Liechtenstein commercial 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. 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 overindebted, 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 overindebtedness 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 by a general meeting where at least 2/3 of the entire votes are represented.

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, three times, to make their claims within a six month time period. After expiry of this time limit the assets can be distributed and the company limited by shares can subsequently be terminated and removed from the commercial register.

## 12. Inspection of the Commercial Register File

Every interested person may inspect the file which the commercial register (Department of Justice, Commercial Register Division) maintains for a company limited by shares. To obtain access, it is not necessary that such person establishes a legi-

timate 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 commercial register itself (neither holders of registered shares).

### 13. Accounting

Due to the fact that Liechtenstein is an EEA member state, the Directive 2013/34/EU has been implemented into Liechtenstein company law.

Since then, a Liechtenstein company limited by shares is obligated to submit, within 12 months after its balance sheet date, the approved annual accounts and the auditor's report to the Department of Justice, Commercial Register Division. This results in the disclosure of the information contained in these documents.

companies and "small" companies limited by shares (i.e. companies which fulfil at least two of the following three criteria: a balance sheet sum below CHF 450'000.00 respectively 7.4 mio., a turnover below CHF 900'000 .00 respectively 14.8 mio. and/or less than 10 respectively 50 employees) benefit from certain exemptions. Such companies are obligated to file merely a significantly shortened balance sheet with the Department of Justice, Commercial Register Division. However, they do not need to file an annual report. Furthermore, the

smallest companies ("*Kleinstgesellschaften*") do not need to file an annex to the balance sheet.

Medium-sized companies limited by shares (i.e. companies which fulfil at least two of the following three criteria: balance sheet sum between CHF 7.4 mio. and CHF 25.9 mio., turnover between CHF 14.8 mio. and CHF 51.8 mio. and between 50 and 250 employees) must merely file a shortened annual account (consisting of balance sheet, profit and loss statement and annex) and the auditor's report with the Department of Justice, Commercial Register Division. It is sufficient if the annual report can be inspected at the seat of the company.

According to these accounting provisions, the annual accounts (consisting of balance sheet, P&L statement and annex) must comply with the principle of fair presentation.

The provisions also introduced a statutory obligation for Liechtenstein holding companies to set up a consolidated annual report. However, holding companies can 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 only grant loans to subsidiaries.

### 14. Sources of law

Persons and Companies Act dated 20 January 1926, LGBl. 1926/4 in its current version.

Disclaimer: This brochure is a summary aimed at giving an initial and basic understanding. It does not constitute specific legal advice. It does not deal with specific detailed situations nor exceptions to general principles. The legal position may change. No liability is accepted in respect of the contents nor consequences arising from reliance thereon.

Our Data Policy Notice is available on our website.