

TO: Clients and Friends of the Firm

FR: Frishberg & Partners

RE: Shareholder Rights

I. Introduction

An important issue for most foreign investors interested in purchasing shares in Ukrainian open joint stock companies is the extent of rights one acquires along with the purchase of shares. Although minority shareholder rights are still quite underdeveloped in Ukraine, the Law of Ukraine “On Economic Associations” provides certain minimum protection for shareholders depending on the size of the share interest which they hold.

An analysis of shareholders’ rights in a specific Ukrainian publicly-traded company requires a dissection of the Law “On Economic Associations” and the company’s charter. These vital documents set forth the general rights of the company’s shareholders (who own at least one share) and the additional specific rights provided for shareholders who are owners of blocks of shares of certain sizes (i.e., more than 10% of the company’s shares, more than 25%, etc.). Below we describe the rights tied to the acquisition of shares in a Ukrainian company.

II. General Rights of a Company’s Shareholders

Generally, the rights of all shareholders in a Ukrainian company may be realized from the moment changes to the register of owners of registered securities are officially introduced. In accordance with the Law “On Economic Associations” and the relevant company charter, which must set forth certain legal provisions etched in stone, a company’s shareholders have the following general rights:

- 1) to participate in the management of the company’s affairs in the manner set forth in the company charter;
- 2) to participate in the distribution of the company’s profits and receive a share thereof (dividends) proportionate to the amount of shares belonging to each shareholder;
- 3) to receive information on the activities of the company. Upon the demand of a shareholder, the company must present such shareholder with the annual balance sheets, the reports of the company concerning its activities, the minutes of any meetings and other information for purposes of familiarization with the contents thereof;

- 4) to receive a portion of the property of the company in proportion to the amount of shares held by each shareholder in case of the company's liquidation;
- 5) to withdraw from the company as a shareholder by way of willful alienation of shares;
- 6) to exercise the right of first refusal for the acquisition of additionally issued shares of the company;
- 7) to submit proposals concerning the agenda of the general assembly of shareholders no later than 30 days before its convening. The management of the company is responsible for the decision to include such proposals into the agenda. Proposals of shareholders, which own more than 10% of the votes at the general assembly, are mandatory for inclusion into the agenda of the general assembly of the company. All shareholders must be notified regarding decisions on changes to the agenda no later than 10 days before convening the general assembly pursuant to the procedure contained in the company charter; and
- 8) to familiarize themselves with the documents concerning the agenda of the general assembly before convocation of the general assembly of the company.

Importantly, the general assembly of shareholders does not have the right to render decisions on issues that are not included into the agenda of the general assembly. Therefore, shareholders are protected from having to spontaneously decide issues without having the possibility to familiarize themselves with such issues thereby avoiding any misinformed decisions.

III. General Obligations of a Company's Shareholders

Notably, along with the general rights of shareholders according to Ukrainian legislation, the following general obligations arise as shareholders of a company:

- 1) to observe the company charter and fulfill all decisions of the general assembly of shareholders and other authorized bodies of the company;
- 2) to fulfill all obligations as a shareholder before the company, including those obligations connected with shareholder contributions, as well as to make contributions (pay for shares) in the amount, procedure and according to the method provided by the foundation documents (in cases when a shareholder acquires additionally issued shares of a company);

.....
: If you wish to receive the entire article, please
: contact us at: office@frishberg.com.ua.
:
: Thank you.
:.....