Estonia
Minority Shareholder Rights
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SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

The laws and regulations of Estonia protect minority shareholders of a private limited liability company (*osaühing*) and a public limited liability company (*aktsiaselts*) in a number of different ways. Many of the rights and protections are found in the Commercial Code (*äriseadustik*) (the CC), which is the primary source of law for companies in Estonia. Some general obligations of legal persons are also stipulated in the General Part of the Civil Code Act (*tsiviilseadustiku üldosa seadus*) (GPCCA). Some of the default protections available to minority shareholders under the law may be subject to modification; additional protections for minority shareholders may be established in the company's articles of association or in a shareholders' agreement.

Public limited liability companies that offer their securities publicly on the stock exchange are also subject to the Securities Market Act (*väärtpaberituru seadus*) (SMA), the Nasdaq Tallinn Requirements for Issuers and the Corporate Governance Code (*hea ühingujuhtimise tava*). The Corporate Governance Code is subject to the 'comply or explain' principle.

As might be expected with such a varied range of sources, the question of who enforces these rights will depend upon the nature and intended purpose of the right in question. For example, some of the protections under the CC are enforceable by the minority shareholder, whereas certain rules applying to public limited liability companies listed on the stock exchange are enforceable by the Estonian Financial Supervision and Resolution Authority or the Nasdaq Tallinn Listing and Surveillance Committee. In cases of disputes between minority and majority shareholders, the respective disputes can be resolved in court or in arbitration.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

Shareholders are afforded several different kinds of protection with the aim of ensuring that the value of their shareholdings is maintained relative to other shareholders in the same company.

One such protection is established in section 192 of the CC (for private limited liability companies) and in section 341 of the CC (for public limited liability companies). According to these provisions, the company may issue new shares only if the general meeting of shareholders adopts such a resolution. At least two-thirds of the shareholders participating in the general meeting of shareholders must vote in favour of the resolution to permit the company to issue new shares. The supervisory board (and the management board in the case of a private limited liability company) may decide on the increase of the share capital only if such right has been foreseen in the articles of association. In the case of a private limited liability company, the articles of association may grant the management board or the supervisory board the right to increase the share capital by contributions for up to five years (section 194.2(1) of the CC). In the case of a public limited liability company, the articles of association may grant the supervisory board the right to increase share capital by contributions for up to three years (section 349(1) of the CC).

Shareholders also have a pre-emptive right of subscription when shares are issued (section 193(1) of the CC for a private limited liability company; section 345(1) of the CC for a public limited liability company), effectively granting them the right of first refusal over the new shares in question. These pre-emption rights operate in proportion to the existing shareholdings in the company, allowing minority shareholders the chance to purchase enough of the new shares to maintain their relative shareholdings in the company. In cases where the company has several classes of shares, and the new shares of one or several classes are issued, the holders of the corresponding classes of shares have a pre-emptive right of subscription for such shares before other shareholders (section 193(1) of the CC for a private limited liability company; section 345(2) of the CC for a public limited liability company).

Both private and public limited liability companies' shareholders may exclude the aforementioned pre-emptive right of subscription by a resolution of the general meeting of the shareholders. Such resolution requires at least a three-quarters majority vote of the shareholders participating in the general meeting (section 193(3) of the CC for a private limited liability company; section 345(1) of the CC for a public limited liability company).

The shareholders of both private limited liability companies and public limited liability companies also have a right to transfer the pre-emptive right (section 193(7) of the CC for a private limited liability company; section 345 (1^1) of the CC for a public limited liability company).

In Decision No. 3-2-1-55-14 (sections 40–41), the Estonian Supreme Court held that, given the principle of equal treatment of shareholders, excluding or limiting the pre-emptive right of subscription only in respect of one or some shareholders is only allowed if such shareholders, whose pre-emptive right of subscription is excluded or limited, consent to this. If a good reason (*mõjuv põhjus*) exists – ie, if the interests of the company require that a certain shareholder would consent to the exclusion of the pre-emptive right of subscription – a declaration of intention (*tahteavaldus*) could be demanded from such shareholders. The Estonian Supreme Court has further held that, in public limited companies with many small shareholders and without a majority shareholder, the principle of equal treatment of shareholders should be applied differently. It would be unreasonable and too cumbersome to require a public limited company with a large number of shareholders to bring an action (should the company's interests require so) against the shareholders who were deprived of the pre-emptive right of subscription and who refused

to consent or did not vote. The Estonian Supreme Court has noted that, in public limited companies with more than 50 shareholders, a shareholder who deems that their rights have been violated by exclusion of pre-emptive right of subscription, and targeted issue of convertible bonds or shares to one or some shareholders, may bring an action against the company to have the respective resolution(s) declared invalid by the court.

If prescribed in the articles of association, a private limited company may issue, for a conditional increase of the share capital, bonds by a resolution of the shareholders – the holders of which have the right to convert their bonds to shares (convertible bonds). The shareholders shall have the pre-emptive right to subscribe for convertible bonds pursuant to the procedure provided for in section 193 of the Commercial Code (sections 167.2(1) and (4) of the CC). Similar provisions apply to public limited liability companies (sections 241(1) and 351(4) of the CC).

Although the above rights and protections have general applicability to shareholders, they nonetheless operate to protect minority shareholders by requiring their input where their shareholdings are at risk of being diluted.

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

Estonian public limited liability companies have a two-tier board structure composed of a management board (*juhatus*) and a supervisory board (*nõukogu*). By default, Estonian private limited liability companies have a one-tier board structure (management board only), but they can also opt to have a two-tier board structure (a management board and a supervisory board).

If a company has a two-tier board structure, the shareholders elect and remove the supervisory board members (sections 168(1(3)), 189(3), 298(1(4)) and 319(1) of the CC) and the supervisory board elects and removes the management board members (sections 184(1) and 309(1) of the CC). If a company has a one-tier board structure, the shareholders elect and remove the management board members (sections 168(1(4)) and 184(1) of the CC).

Unless so agreed in the shareholders' agreement or the articles of association of the company, minority shareholders have no specific rights to appoint or elect any members of any governing body.

In the election of a person at a general meeting, the candidate who receives more votes than the others shall be deemed to be elected (sections 174(3) and 299(2) of the CC).

Although the general rule is that the members of the supervisory board shall be elected and removed by the general meeting (section 319(1) of the CC), the law or the articles of association may prescribe that not more than half of the members of the supervisory board shall be elected, appointed or removed in a manner different than provided for in section 319(1) of the CC (section 319(2) of the CC).

With good reason, shareholders of both private and public limited liability companies have a right to request the court to appoint a new member to replace a removed member of the management board or the supervisory board (sections 184(6), 189(3) and 319(6) of the CC for a private limited liability company; sections 310 and 319(6) of the CC for a public limited liability company).

With good reason, shareholder(s) of both private and public limited liability companies who represent at least 10 per cent of the share capital have the right to request the removal of a member of the supervisory board by the court (sections 189(3) and 319(5) of the CC for a private limited liability company; section 319(5) of the CC for a public limited liability company). If the private limited liability company does not have a supervisory board, then shareholder(s) who represent at least 10 per cent of the share capital have a right (with good reason) to request the removal of a member of the management board by the court (section 184(5) of the CC).

Shareholder(s) of both private and public limited liability companies who represent more than one-third of the share capital of the company may block the adoption of a resolution on the premature removal of the member of the supervisory board (section 189(3) and section 319(4) of the CC).

In addition to specific duties arising from the law, the articles of association and their service agreements, the members of the management and supervisory board also have certain general duties. The members of a governing body of a legal person shall perform their obligations arising from law or the articles of association with the care normally expected from a member of a governing body, and shall be loyal to the legal person (section 35 of the GPCCA). A member of a management board or a supervisory board must perform their duties with the due care of a diligent entrepreneur (*korraliku ettevõtja hoolsusega*) (sections 187(1), 315(1) and 327(1) of the CC). A member of the management

board or the supervisory board must be loyal to the company. The duty of loyalty means, *inter alia*, an obligation to avoid conflicts of interest and not to prefer personal interests to the interests of the company.[1] A member of the management board or the supervisory board also has a duty of confidentiality (sections 186, 313 and 325 of the CC) – ie, they should not disclose the business secrets of the company, and should comply with the prohibition on competition (sections 185, 312 and 324 of the CC).

Members of the governing bodies of a legal person shall act in accordance with the principle of good faith and consider each other's legitimate interests in their mutual relations (sections 32 and 138 of the GPCCA; section 6 of the Law of Obligations Act (*võlaõigusseadus*) (the LOA)).

According to sections 191(2.1) and 330(2) of the CC, the shareholder(s) of both private and public limited liability companies whose shares represent at least 10 per cent of the share capital of the company may request from the court that a special audit be conducted, and that an auditor for the special audit be appointed by a court. The court shall approve a special audit only with good reason. The aim of the special audit is to audit the management of the company or its financial situation.

[1] The Estonian Supreme Court, judgment 3-2-1-113-16, s 15.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

Takeover bids made to acquire voting rights in public limited liability companies registered in Estonia where all shares, or a certain class of shares, are traded on an Estonian market are subject to the SMA. Section 170(1) of the SMA mandates that all shareholders of the offeree company must be treated equally during a takeover bid, and if control is acquired, by an offeror.

Minority shareholders have a means of exit in the form of the 'sell-out' procedure under section 182.2 of the SMA. Where an offeror manages to acquire 90 per cent of the share capital of the company during a takeover bid, the holder of any of the remaining shares may require the offeror to purchase the remaining shares on the same terms as the offer.

Minority shareholders not wishing to exit the company during a takeover bid may still be 'squeezed out' by the offeror. Once the offeror has acquired at least 90 per cent of the shares of the share capital of the company, Section 182.1 of the SMA gives them a right to request the general meeting of the target company to decide that the remaining shares shall be acquired by the offeror from the remaining shareholders at fair compensation. This shall not be lower than the purchase price of the takeover bid.

The SMA provides that shareholders must notify the company and the Estonian Financial Supervision and Resolution Authority of their voting rights exceed or fall below 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 50 per cent, one-third or two-thirds not later than on the fourth trading day (sections 185(1) and 185.2(1) of the SMA).

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

The institution of the shareholder derivative claim does not exist in Estonian law.

In general, management board members and supervisory board members are not directly liable to the shareholders. If a member of the management or supervisory board of the company causes damage to the company by breach of their duties, the respective member of the management or supervisory board is liable to the company and not directly to the shareholders (sections 187(2), 189(2) and 327(2) of the CC for a private limited liability company; sections 315(2) and 327(2) of the CC for a public limited liability company).

Deciding on the conduct of legal disputes with a member of the supervisory board, and appointment of the representative of the company in such disputes, is within the competence of the general meeting of shareholders (sections 168(1(10)) and 298(1(9)) of the CC). Deciding on the conduct of legal disputes with a member of the management board, and appointment of the representative of the company in such disputes, is within the competence of the supervisory board; if a supervisory board does not exist, it is within the competence of the general meeting of shareholders (sections 168(1(10)), 189(2) and 317(8) of the CC).

In certain very exceptional cases, management board members and supervisory board members could be directly liable to the shareholders. For instance, a shareholder has a right to claim damages if the members of the management or supervisory board breach the obligation to act in accordance with the principle of good faith and consider each other's legitimate interests in their mutual relations (section 32 of the GPCCA). A shareholder may also bring a damages claim against a management board member or a supervisory board member if they breach certain specific provisions of the CC – eg sections 403(6), 447(3) or 487(5).

According to sections 191(2.1) and 330(2) of the CC, the shareholder(s) of both private and public limited liability companies who represent more than 10 per cent of the share capital of the company may request from the court that a special audit be conducted, and that an auditor for the special audit be appointed by the court. The court shall approve a special audit only with good reason. The aim of the special audit is to audit the management of the company or its financial situation.

According to sections 177.1(1) and (2), 301.1(1) and (3), and 322(7) and (8) of the CC (and also section 38 of the GPCCA), a shareholder of a private limited liability company and a public limited liability company is entitled to submit a request to the court to establish the nullity of the resolutions of the general meeting of the shareholders or the supervisory board, if certain preconditions are met.

According to sections 178(1) and (3), 189(2), 302 (1) and (3), and 322(6) and (8) of the CC (and also section 38 of the GPCCA) each shareholder of both a private limited liability company or public limited liability company may file an action to the court to request the revocation of the general meeting of the shareholders or supervisory board, if certain preconditions are met.

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

A key element of participation in the decision-making of a company is the ability of the shareholder to express their opinions and vote on matters at general meetings of the shareholders.

Shareholder(s) in both private limited liability companies and public limited liability companies, representing at least 10 per cent of the share capital of the company, may request that the management board call a general meeting of the shareholders (section 171(2(3)) of the CC for a private limited liability company; section 292(1(2)) of the CC for a public limited liability company). If the management board fails to do so within the prescribed time limits, the respective shareholders are given the right to call the meeting themselves (section 171(3) of the CC for a private limited liability company; section 292(2) of the CC for a public limited liability company). This procedure ensures that the management board is not able to prevent minority shareholders from tabling a resolution by refusing to call a general meeting.

The shareholder(s) in both private limited liability companies and public limited liability companies representing at least 10 per cent of the share capital of the company are entitled to propose additional items to the agenda of the shareholders meeting, and to propose draft resolutions bearing in mind the deadlines stipulated in the CC (section 171.1(2) of the CC for a private limited liability company; section 293(2) of the CC for a public limited liability company).

All shareholders of both a private limited liability company and a public limited liability company must be given notice of a general meeting. The documents related to the general meeting should be made available to the shareholders prior to the general meeting. For a private limited liability company, the notice should include all details listed in section 172(2) of the CC. For a public limited liability company, the notice should include all details listed in section 294(4) of the CC. The notice of general meetings must be given one to three weeks before the meeting is due to be held, depending on whether:

- the company is a private or a public limited liability company (and, if public, whether it is a listed company);
- whether the meeting is to be held is an annual general meeting or an extraordinary general meeting (section 172(1) of the CC for a private limited liability company; section 294(3) of the CC for a public limited liability company); and
- the articles of association of the company stipulate any special rules regarding the matter.

Minority shareholders of both a private limited liability company and a public limited liability company are also given a say in some of the most important corporate decisions in the life of a company by virtue of the special resolution procedure. Certain decisions of the company may only be made with the approval of at least two-thirds or three-quarters of the shareholders participating in the general meeting, potentially giving minority shareholders the ability to block decisions which would be harmful to their interests. Some of the decisions which must be approved by special resolution include:

- amending the articles of association of the company;
- increasing or reducing the share capital of the company;
- removing a supervisory board member; and
- dissolution of the company.

For certain specific resolutions, even higher majority thresholds are required (eg, sections 233.1(1) and 421.1(3) of the CC).

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

Shareholders of a private limited liability company and a public limited liability company cannot submit an application for the reorganisation of the company under the Reorganisation Act (*saneerimisseadus*). This right is only granted to the company itself (section 7(1) of the Reorganisation Act).

Shareholders of a private limited liability company and a public limited liability company must decide whether to submit a bankruptcy petition if the net assets decrease below the threshold stipulated in section 176(3) of the CC (for a private limited liability company) or section 301(3) of the CC (for a public limited liability company).

In general, it is a duty of the company to file a petition for bankruptcy (section 9 of the Bankruptcy Act (*pankrotiseadus*)).

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

For both a private limited liability company and a public limited liability company, if the majority shareholders have adopted at the general meeting of the shareholders a resolution which contradicts the articles of association of the company, then the minority shareholders have a right to file an action to the court to revoke the respective resolution within the time limits, as stipulated in the CC. This right is granted to minority shareholders who did not participate at the general meeting or who participated, but had their objection to the resolution entered in the minutes of the general meeting (sections 178 and 302 of the CC).

An interested person may file an action in court for repeal of a resolution of a body of a legal person which is contrary to law or the articles of association. Repeal of a resolution of a body of a legal person may also be requested if, upon adoption of the resolution, a shareholder or member of the legal person uses their voting rights to acquire advantages for themselves (or a third person) to the disadvantage of the legal person or the other shareholders or members, and the resolution permits the achievement of such objective. An action for repeal of a resolution of a body of a legal person shall be filed against the legal person. A member of the body who participated in the adoption of the resolution may demand the repeal of the resolution only if their objection to the resolution has been recorded (section 38 of the GPCCA).

According to sections 177^1(1) and (2), 301^1(1) and (3), and 322(7) and (8) of the CC (and section 38 of the GPCCA), a shareholder of a private limited liability company and a public limited liability company is entitled to submit a request to the court to establish the nullity of the resolutions of the general meeting of the shareholders or the supervisory board if certain preconditions are met.

In certain cases, the shareholders could also invoke sections 32 and 138 of the GPCCA. The former provision foresees that the shareholders shall act in accordance with the principle of good faith and consider each other's legitimate interests in their mutual relations; the latter provision foresees that rights shall be exercised and obligations shall be performed in good faith, and a right shall not be exercised in an unlawful manner or with the objective to cause damage to another person.

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in Estonia, organised according to the percentage threshold at which the various protections become available.

Shareholding	Description	Reference
More than one-third	For a private limited liability company, the right to block the resolution on changing of the person (the Estonian Register of Securities or the management board) maintaining the list of shareholders.	Sections 182(3) and (5), CC
One-third	Right to block a resolution on the amendment of the articles of association.	Sections 175.1; 300(1), CC
	Right to block inclusion of an issue which initially was not on the agenda of a general meeting.	Section 171.1(3); 293(3), CC
	Right to block a resolution on removal of a member of the supervisory board before expiry of their term of authority.	Section 319(4), CC
	Right to block a resolution on increase or reduction of share capital.	Sections 192(1) and 197(1); 341(1) and 356(1), CC
	Right to block a dissolution resolution.	Sections 202(1); 365(1), CC
	Right to block a resolution on continuation of activities of the company.	Section 217(1); 380(1), CC
	Right to block a merger resolution.	Sections 421(1) and (2), CC
	Right to block a division resolution.	Sections 456(1) and (2); 465(1) and (2), CC
	For a public limited liability company, right to block a resolution on transformation of a public limited liability company into a private limited liability company.	Section 504(1) and (2), CC
	For a private limited liability company, right to block a resolution on transformation of a private limited liability company into a public limited liability company.	Section 500(1) and (2), CC
More than 25 per cent	Right to block the exclusion of the pre-emptive right of subscription.	Sections 193(3), 167.2(4), 345(1) and 351(3), CC

More than 10 per cent	For a public limited liability company, right to block the resolution on replacement of the person maintaining the share register.	Section 233.1(1), CC
	For a public limited company, right to block a resolution on the takeover of shares belonging to the rest of the target persons.	Section 182.1(2), SMA
10 per cent	Right to demand the management board to call for a general meeting of the shareholders.	Sections 171 (2(3)); 292(1(2)), CC
	If the management board does not call a general meeting within one month after receipt of a demand from the shareholders, or the management board does not call a general meeting with the demanded agenda, the shareholders have the right to call the general meeting themselves.	Sections 171(3); 292(2) of the CC
	For a private limited liability company, right to request (with good reason) the removal of a member of the management board by a court if the private limited company does not have a supervisory board.	Section 184(5), CC
	Right to demand the inclusion of additional issues on the agenda of the general meeting if the respective demand has been submitted duly.	Sections 171.1(2); 293(2), CC
	Right to request the minutes of the general meeting to be notarised	Sections 171(5); 304(6), CC
	For a public limited liability company, right to request (with good reason) the removal of a member of the supervisory board by a court.	Section 319(5), CC
	Right to demand a resolution on conduct of a special audit on matters regarding the management or financial situation of the public limited company, and the appointment of an auditor for the special audit.	Sections 191(1); 330(1), CC
	If the general meeting does not decide on conduct of a special audit, shareholders whose shares represent at least 10 per cent of the share capital may request that a special audit be conducted and that an auditor for the special audit be appointed by a court. The court shall decide on conduct of a special audit only with good reason.	Sections 191(2), 330(2), CC
	For a public limited liability company, right to request of the company that the auditor who prepared the sworn auditor's report participate in the adoption of the resolution to approve the annual report, and provide explanations concerning the sworn auditor's report if the shareholders have submitted the corresponding written request at least five days before the general meeting.	Section 334(1), CC

	Right to request from the court to appoint the liquidators in a compulsory dissolution.	Sections 206(3); 369(3), CC
	Right to request from the court to recall, for good reason, a liquidator who is a member of the management board, or who has been appointed in accordance with the articles of association or by a resolution of the general meeting, and to appoint a new liquidator.	Section 207(2); 370(2), CC
	If the provisions of law or of the articles of association, or the resolutions of the general meeting are not observed in the preparation of a balance sheet or asset distribution plan, a court may, based on an action by the shareholders whose shares represent at least 10 per cent of the share capital, order preparation of a new balance sheet or asset distribution plan, or supplementary liquidation.	Sections 215.4; 378(4), CC
5 per cent	Right to demand a merger resolution.	Sections 412(3); 421(4), CC
	For listed companies, right to demand the inclusion of additional issues on the agenda of the general meeting if the respective demand has been submitted no later than 15 days before the general meeting is held.	Section 293(2), CC
One share	Right to demand payment of a dividend prescribed by a resolution of the general meeting	Sections 157(4); 279(1), CC
	Right to request (with good reason) the court appoint a new member of the management or supervisory board, or new auditor to replace a withdrawn member of the management board or supervisory board or an auditor.	Sections 184(6); 189(2); 190(2); 310; 319(6); 328(4), CC
	Right to receive information on the activities of the public limited company from the management board at the general meeting. If the management board refuses to give information or refuses to allow documents to be examined, the shareholder may demand that: • the legality of the shareholder's demand be decided by the general meeting; or • to submit, within time limits, a petition to a court to oblige the management board to give information or to allow documents to be examined.	Sections 166; 287, CC
	For a public limited liability company, right to obtain a copy of the minutes of the general meeting or a copy of a part thereof if the minutes are not available on the homepage of the company.	Section 304(4), CC
	Right to file an action to the court to request the revocation of the general meeting of the shareholders or supervisory board if	Sections 178(1); 189(2); 302(1);

	certain preconditions are met.	322(4)–(6) and (8), CC
	Right to submit a request to the court to establish the nullity of the resolutions of the general meeting of the shareholders or the supervisory board if certain preconditions are met.	Sections 177.1(1) and (2); 189(2); 301.1; 322(7)–(8), CC
	Right to receive a pro rata portion of company's assets in liquidation.	Sections 216(1); 379(1), CC
	Pre-emptive right to acquire (on pro rata basis) newly issued shares or convertible bonds of the company.	Sections 167.2(4); 193(1) 345(1); 351(3), CC
	Right to attend and vote in the general meeting of the shareholders.	Sections 148(5); 226, CC
	For a listed company, the shareholders have the right to demand that the matter of whether the actual remuneration of managers complies with the principles of remuneration be voted on at the general meeting.	Section 135.3(5), SMA