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## Lithuania

### Minority Shareholder Rights

### IBA Corporate and M&A Law Committee 2022

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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 of Lithuania give protection to minority shareholders in several different ways. Many of the rights and protections are found in the Law on Companies, which is the primary source of law for companies in Lithuania, as well as in the Civil Code of Lithuania. In many cases, the protection of minority shareholders may be strengthened (but not weakened) in the companies' articles of association as well as the shareholders' agreement. Therefore, the Law on Companies must always be interpreted alongside the shareholders' agreement and articles of association of the company in question.

Public companies (ie, listed companies – in particular, companies offering their securities publicly) are subject to even stricter requirements. These range from compulsory shareholder protection mechanisms set out in the Law on Securities to ones where compliance is only recommended in the context of investor practice, such as with the Corporate Governance Code for the Companies Listed on NASDAQ OMX Vilnius.

Finally, minority shareholders may derive protection from a number of rules and precedents set in case law, which often operate where statutory provisions are silent on a particular issue or where the statutory norms are not comprehensive enough.

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 Law on Companies should be enforceable by the minority shareholder, whereas certain rules applying to public companies might provide protection to minority shareholders, but they are enforceable by the Bank of Lithuania as the broader legislative purpose is to regulate market conduct.

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## 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 awarded several different kinds of protection mechanisms to help ensure that the percentage and value of their shareholdings are maintained relative to other shareholders in the same company.

For example, according to Clause 10 of Part 1 of Article 28 of Law on Companies, the company may increase its share capital by issuing new shares only if the general meeting of shareholders decides so and adopts a respective decision. Such a decision should be adopted by a majority of votes – ie, at least two-thirds of shareholders participating in the general meeting of shareholders must vote in favour of mentioned decision for the company to proceed with the issuance of its new shares.

Holders of the shares also have a so-called right of ‘pre-emption’ when shares are issued, effectively granting them first refusal over the new shares in question. These pre-emption rights operate in proportion to the existing shareholdings and their percentage in the company, granting minority shareholders the chance to purchase a proportionate part of the new shares to maintain their relative shareholdings in the company.

Shareholders may vote in the general meeting to revoke the pre-emption right by a special resolution requiring at least three-quarters of the total votes of shareholders participating in the meeting. However, a shareholder is not entitled to vote regarding the revocation of the pre-emption right if it is established in the agenda of the shareholders meeting that the right to acquire the new shares after the revocation of the pre-emption right shall be granted to:

- that particular shareholder;
- a close relative of that shareholder, spouse or cohabitant (when the partnership is registered) of that particular shareholder;
- a close relative of the spouse of that particular shareholder (in the case that a particular shareholder is a natural person); or
- a mother company or subsidiary of that particular shareholder (in the case that a particular shareholder is a legal entity).

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

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## 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)?**

According to the Law on Companies, the general meeting has a right to appoint members of the supervisory council or the board if there is no supervisory council formed in the company (if the supervisory council is formed in the company, the board is elected by the supervisory council).

When nominating and selecting the members of the supervisory council or the board, each shareholder shall have the number of votes equal to the number of votes granted by the owned shares, multiplied by the number of candidates of the supervisory council or the board being elected. A shareholder has a right to distribute its votes at their discretion, giving them to one or several candidates. The candidates who receive the largest number of votes are elected. If the number of candidates who received the equal number of votes exceeds the number of vacancies on the supervisory council or the board, second voting shall be held, in which each shareholder may vote only for one of the candidates who received the equal number of votes. These rules are intended to ensure that the supervisory council or the board would not be formed only from the representatives of the major shareholder.

In a private company, if neither the board nor the supervisory council is formed, the general meeting of shareholders elects the CEO – which is a mandatory governing body in Lithuanian companies. The person who receives 50 per cent plus one votes in the general meeting of shareholders shall be appointed to the position of the CEO of the private company. In a public company, at least one collegial body – supervisory council or the board – must be formed in addition to the position of CEO.

The Law on Companies also establishes additional protection for minority shareholders related to the removal of individual members of the supervisory council or the board. If a member of the supervisory council or the board is removed from the office, resigns or ceases their duties due to other reasons, and the shareholders whose shares grant at least one-tenth of all votes object to the election of individual members of the supervisory council or the board, the entire supervisory council or the board shall cease its activity. The entire supervisory council or the board will then be newly appointed according to the rules described above.

Additional provisions regarding the appointment of the supervisory council, the board or the CEO may be established in a shareholders' agreement or the articles of association of a company.

Board members and the CEO are also subject to general fiduciary duties under Article 2.87 of the Civil Code, which helps to ensure that the persons appointed to the governing bodies by a majority shareholder do not act against the interests of the company in a way that favours their appointors at the expense of the company. For example, board members and the CEO must avoid situations at all times where a given course of action may result in a conflict of interest.

According to Article 2.125 of the Civil Code, shareholder(s) who own shares with a total nominal value amounting to at least one-tenth of the share capital of the company are entitled to go to court and request the appointment of the experts to investigate if the company or the members of the governing bodies (the board members or the CEO) have acted (performed their duties) properly and lawfully. If the experts and the court determine that the members of the governing bodies acted improperly, the court may *inter alia* remove members of the board and/or the CEO and appoint temporary members to these governing bodies.

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## 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?**

The offeror and target company will be subject to the Law on Securities (which is administered by the Bank of Lithuania) where a takeover offer is made in relation to:

- a Lithuanian company whose shares are traded on a regulated market operating or offered publicly in Lithuania;
- a company incorporated in the European Union or European Economic Area Member State whose shares are traded on a regulated market(s) operating in Lithuania;
- a company whose shares are traded on a regulated market(s) operating in more than one EU or EEA Member State, but the shares were traded firstly on a regulated market operating in Lithuania; or
- a company whose shares at the same time were allowed to be traded on a regulated market(s) operating in more than one EU or EEA Member State, and the company has decided to assign the takeover supervision to the Lithuanian authority (Bank of Lithuania).

One of the main general principles established in the Law on Securities stipulates that equal terms and conditions of the takeover offer must be applied to all shareholders of the offeree company during a takeover bid. If control is acquired by an offeror, the remaining shareholders 'must be protected'. This helps ensure that certain shareholders do not receive preferential treatment and encourages the equal sharing of information about the bid amongst all shareholders.

A central protection for minority shareholders in the Law on Securities is the concept of 'mandatory offers'. Where any party (either alone or acting in concert) acquires more than one-third of the total voting rights in a company, such party (either alone or acting in concert) must make an offer to purchase the remaining share capital of the company. This gives minority shareholders a chance to exit the company if they do not wish to remain involved post-takeover, with the Law on Securities also providing rules on the minimum price that must be offered for these shares.

Minority shareholders have another means of exit in the form of the 'sell-out' procedure under Article 32 of the Law on Securities. Where an offeror manages to acquire 95 per cent or more of the share capital granting majority votes in the meeting of shareholders in the company during a takeover bid, any holder of remaining minority shares may require the offeror to buy their shares. The minority shareholder is entitled to initiate the sell-out procedure no later than three months from the implementation of the mandatory or voluntary offer. The Law on Securities also provides the rules on the price that must be paid in case of the implementation of the sell-out procedure.

However, minority shareholders not wishing to exit the company in this situation may still be 'squeezed out' by the offeror. Article 32 of Law on Securities gives the offeror a right to buy out remaining minority shareholders once the 95 per cent threshold has been reached. The offeror is entitled to initiate the squeeze-out procedure no later than three months from the implementation of the mandatory or voluntary offer. The Law on Securities also provides the rules on the price that must be paid in case of the implementation of the squeeze-out procedure.

More generally, compliance with the Law on Securities by listed companies and companies offering their securities publicly should help to keep minority shareholders informed of significant changes in the other shareholdings in the company. The Law on Securities provides that shareholders must notify the company and the supervising authority (Bank of Lithuania) where their voting rights exceed or fall below 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent, 75 per cent or 95 per cent of votes in the general meeting of shareholders. The company must publicise this information within the period of three trade days.

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## 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?**

Minority shareholders may initiate legal proceedings for the benefit of the company. For example, under Clause 5 of Part 1 of Article 16 of the Law on Companies, each shareholder of the company (ie, a shareholder having at least one share) is entitled to submit a 'derivative claim' to the court requesting compensation for losses to the company that were incurred by the company due to unlawful actions of the CEO or the board of the company.

Accordingly, the so-called 'derivate claim' may be brought against the CEO or the board of the company. In order for the derivate claim to be satisfied and the losses of the company compensated, the court must establish that all of the following conditions are met:

- the CEO or the board of the company has performed illegal actions (ie, breached their fiduciary and statutory duties);
- the company has incurred particular losses;
- causality between the illegal actions of the CEO or the board of the company and the losses incurred by the company is determined; and
- fault (negligence or wilful misconduct) of the CEO or the board of the company is determined.

After establishing these four conditions, the court has a right to oblige the CEO or the board of the company to compensate the losses incurred back to the company (rather than the shareholder who submitted the derivate claim).

As discussed above, according to Article 2.125 of the Civil Code, shareholder(s) who own shares with a total nominal value amounting to at least one-tenth of the share capital of the company are entitled to apply to the court and request for the appointment of experts to investigate if the company or members of the governing bodies (the board members or the CEO) have acted (performed their duties) properly. If experts and the court establish that the company (members of the governing bodies) acted improperly, the court may *inter alia* remove members of the board and/or the CEO and appoint temporary members of mentioned governing bodies. It may also oblige the company (its governing bodies) to implement or not to implement particular actions, and so on.

According to Part 4 of Article 2.82 of the Civil Code and Part 10 of Article 19 of the Law on Companies, each shareholder is entitled to apply to the court with a request to declare the resolutions of the shareholders meeting, supervisory council, board or the CEO null and void. The court shall declare the resolutions of mentioned corporate bodies null and void if the court determines that said resolution contradicts mandatory laws, constitutional documents of the company (ie articles of association), or principles of reasonableness or good faith.



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## 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 minority shareholders' participation in the activities of the company is the ability to express its opinions and vote on matters at general meetings of shareholders. Under Part 1 of Article 23 of the Law on Companies, shareholders holding at least 10 per cent of the total votes in the general meeting of shareholders may require the board or the CEO (if the board is not formed or if the board does not convene the general meeting) to convene a general meeting of shareholders. If the board or the CEO fail to do so within the prescribed time limits:

- the shareholders owning the shares granting more than 50 per cent of votes in the general meeting are given the right to convene the meeting by themselves; or
- the shareholders representing at least 10 per cent of the votes in the general meeting may apply to the court requesting the court to convene the shareholders meeting.

The shareholders owning the shares granting at least 5 per cent of the votes in the general meeting of shareholders are entitled to propose items to the agenda of the shareholders meeting and the draft decisions.

All shareholders must be given a notice about the upcoming general meeting, which should include details of the time and location of the meeting, as well as a statement of the nature of the matters to be considered at the meeting. At least 10 days before the meeting, all information and documents related to the agenda of the meeting (including drafts of decisions) must be made available to all shareholders (in respect of a meeting of shareholders of a public company whose shares are traded on the regulated market, this information must be made available as of the notification date about the shareholders meeting). Each shareholder wishing to have more information about the proposed content of the meeting is entitled to provide questions and comments to the company, which must be answered by the company before the general meeting of shareholders if the questions were provided to the company three business days before the meeting of shareholders.

Notice of general meetings must be given 16 or 21 'clear days' (calendar days not including the day on which the period begins) before the meeting is due to be held, depending upon whether the company provides the possibility for the shareholders to participate and vote in the general meeting of shareholders by electronic means (in such cases, it may be decided by the shareholders that the notification period will be 16 clear days).

Minority shareholders are also given a say in some of the most important 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 voting shareholders participating in the meeting (under Article 28 of Law on Companies), potentially giving minority shareholders the ability to block decisions that would be harmful to their interests. Some of the decisions which must be approved by special resolution include:

- changing a company's articles of association;
- reducing or increasing the company's share capital;
- approving the financial statements;
- paying out dividends; and
- reorganising or restructuring the company.

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## 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?**

According to the Law on Insolvency of Legal Entities, the restructuring procedures may be applied to the company which:

- is facing financial difficulties;
- is still viable; and
- is not in liquidation because of bankruptcy.

The purpose and essence of the restructuring is to repay the debts and to avoid bankruptcy of the company by receiving aid from the creditors (eg, agreeing on longer debt repayment terms) and applying other measures approved by the court.

According to the Law on Insolvency of Legal Entities and the Law on Companies, the restructuring of the company may be initiated if at least two-thirds of shareholders participating in the meeting votes for the restructuring of the company. Therefore, minority shareholders are not entitled to initiate the restructuring of the company. The minority shareholders with more than one-third of the votes in the general meeting of shareholders might only block the decision to restructure the company (eg, hoping that the CEO of the company will initiate the bankruptcy of the company instead of the restructuring of the company).

Bankruptcy of the company is the situation when the insolvent company is liquidated by using its assets for satisfaction of claims of creditors and covering the expenses of the bankruptcy procedure (remaining assets (if any) are distributed to the shareholders). The Law on Insolvency of Legal Entities does not grant the right to the shareholders (including minority shareholders) to go to court with a request to start the bankruptcy proceedings of the company, and does not grant any other rights or remedies constructed to protect the financial interests of the minority shareholders if the company becomes insolvent.

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## 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?**

According to Article 2.116 of the Civil Code, the shareholder(s) of a private company owning shares that amount to a nominal value of at least one-third of the share capital of the private company are entitled to go to court and request to buy out the shares held by another shareholder of the private company, who is acting in the contravention of the objectives of the private company and where there are no reasonable grounds to expect any future changes in the said actions. In such cases, the price of the buy-out shares is established by the experts appointed together with the court.

According to Article 2.123 of the Civil Code, if the shareholder(s) of a private company owning shares that amount to a nominal value of at least one-third of the share capital of the private company are not able to properly implement the rights of shareholders due to the actions of another shareholder, and where there are no reasonable grounds to expect any changes in the said actions, such shareholders are entitled to go to court and request that the infringing shareholder buy their shares. The price of the shares is established by the experts appointed together with the court.

## SUMMARY OF RIGHTS

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

Shareholding (per cent)	Description	Reference
One-third plus one vote	<p>More than one-third of votes is required to block major resolutions at the general meeting of a company (articles of association or shareholder's agreement may provide for a smaller blocking stake / greater majority required):</p> <ul style="list-style-type: none"> <li>• to amend the articles of association of the company, except for the cases provided for in the laws;</li> <li>• to establish the class, number, par value, and minimal issue price of the shares of the company;</li> <li>• to adopt a resolution to convert the company's shares of one class into the company's shares of another class, and approve the description of the procedure for converting of shares;</li> <li>• to adopt a resolution to change the shares certificates to shares;</li> <li>• to adopt a resolution on the distribution of profit (loss);</li> <li>• to adopt a resolution on the formation, use, decrease, or cancellation of the reserves;</li> <li>• to adopt a resolution on distribution of dividends for the period shorter than a financial year;</li> <li>• to adopt a resolution to issue convertible bonds;</li> <li>• to adopt a resolution to increase the authorised capital of the company;</li> <li>• to adopt a resolution to reduce the authorised capital of the company, except for the cases provided for in the laws;</li> <li>• to adopt a resolution on rules for granting shares;</li> <li>• to adopt a resolution on approval of public limited companies whose shares are admitted to trading on a regulated market, remuneration policy;</li> <li>• to adopt a resolution to reorganise the company or spin it off and approve the terms of reorganisation or spin-off;</li> <li>• to adopt a resolution to change the legal form of the company;</li> <li>• to adopt a resolution to restructure the company;</li> <li>• to adopt a resolution to liquidate the company and to recall liquidation of the company, except for the cases provided for in the laws.</li> </ul>	Part 1, Article 28, Law on Companies

One-third	May apply to a court to squeeze out the shareholder(s) of a private company that is/are acting contrary to the objectives of the company.	Article 2.116, Civil Code
	May apply to a court to force the other shareholder(s) to purchase the private company's shares held if such other shareholder(s) impedes the exercise of the rights by the selling shareholder.	Article 2.123, Civil Code
	May initiate distribution of dividends for the period shorter than a financial year.	Part 2, Article 60 <sup>1</sup> , Law on Companies
25 per cent plus one vote	More than 25 per cent of total votes are required to block the revoking of the shareholder's pre-emptive right to acquire newly issued shares or convertible bonds. The articles of association or shareholders agreement may provide for a smaller blocking stake/greater majority.	Part 2, Article 28, Law on Companies
10 per cent	Right to initiate convocation of a general meeting of shareholders.	Part 1, Article 23, Law on Companies
	Right to nominate the expert to be appointed by the court to examine whether the governing bodies of the company have acted properly.	Article 2.124, Civil Code
	Right to request re-election of the whole supervisory council or board when only one member resigns, or is recalled and needs to be re-elected.	Part 12, Article 31; Part 3, Article 33, Law on Companies
5 per cent	Right to supplement agenda with new items of the general meeting of shareholders, new draft decisions on the items put on the agenda of the general meeting of shareholders.	Part 3, Article 25; Part 3, Article 33, Law on Companies
One share	Right to receive dividends.	Clause 1, Part 1, Article 15, Law on Companies
	Right to receive funds of the company, when the share capital of the company is reduced on purpose to pay out funds to the shareholders.	Clause 2, Part 1, Article 15, Law on Companies
	Right to receive shares without payment if the share capital is increased out retained earnings (except cases provided for in the laws).	Clause 3, Part 1, Article 15, Law on Companies
	Pre-emptive right to acquire (on <i>pro rata</i> basis) newly issued shares or convertible bonds of the company, except for the cases when the shareholders meeting resolves to revoke this pre-emptive right to all of the shareholders with a 75 per cent vote.	Clause 4, Part 1, Article 15, Law on Companies

	Right to lend money to the company with an interest rate not exceeding the average bank lending rates and without security with the company's assets.	Clause 5, Part 1, Article 15, Law on Companies
	Right to receive a <i>pro rata</i> portion of the company's assets in liquidation.	Clause 6, Part 1, Article 15, Law on Companies
	Right to attend and vote in the general meeting of the shareholders. Under the general rule, each paid-up share shall grant to its holder one vote at the general meeting of the shareholders.	Clause 1 and Clause 3, Part 1, Article 16, Law on Companies
	Right to submit in advance the questions to the company related to the agenda of the general meeting of the shareholders.	Clause 2, Part 1, Article 16, Law on Companies
	<p>Right to go to the court with a request to declare the resolutions of the shareholders meeting, supervisory council, board or the CEO null and void.</p> <p>The court shall declare the resolutions of mentioned corporate bodies null and void if the court finds out that the resolution contradicts mandatory laws, constitutional documents of the company, or principles of reasonableness or good faith.</p>	Part 5, Article 2.82, Civil Code; Part 10, Article 19, Law on Companies
	Right to challenge in court the transactions concluded by the company, which are contrary to the objectives of the company or exceed the scope of the competence of managing bodies (when the counterparties to the transactions have acted unfairly).	Part 1, Article 1.82; Part 1, Article 2.83, Civil Code
	<p>Right to receive a list of information about a public limited company whose shares are admitted to trading on a regulated market, including:</p> <ul style="list-style-type: none"> <li>• information on events related to shares and property or non-property rights of the owner;</li> <li>• information on online publishing;</li> <li>• the information on events related to shares and property or non-property rights of the owner;</li> <li>• information on how the owner of the shares can use its shares and property and non-property rights granted by them or how to submit voting instructions.</li> </ul>	Clause 6, Part 1, Article 16, Law on Companies; Part 6, Article 89, Law on Markets in Financial Instruments
	Right to file a claim with the court for compensation of damages to the company resulting from improper fulfilment of obligations by the CEO or the board members.	Clause 5, Part 1, Article 16, Law on Companies

	<p>Right to access the information of the company. Each shareholder is entitled to receive the following information on the company:</p> <ul style="list-style-type: none"> <li>• the articles of association of the company;</li> <li>• annual and interim financial statements;</li> <li>• annual and interim reports of the company;</li> <li>• statements and reports of the audit;</li> <li>• minutes of the general meeting of shareholders, meetings of the supervisory council or the board, or other documents containing resolutions of the general meeting, the supervisory council or the board;</li> <li>• lists of the shareholders;</li> <li>• lists of the members of the supervisory council or the board; and</li> <li>• other documents of the company.</li> </ul> <p>The company may refuse to provide to the shareholder the aforementioned documents and/or present their copies, containing commercial (industrial) secrets, confidential information, except in cases when the company's information is necessary for the shareholder to implement their mandatory duties provided by the laws and/or the articles of association of the company, and the shareholder ensures the confidentiality of such information.</p>	<p>Clause 4, Part 1, Article 16; Part 1, Article 18, Law on Companies</p>
	<p>May request court to order to convene an annual general meeting if it has not been convened within four months after the end of the financial year.</p>	<p>Clause 1, Part 3, Article 24, Law on Companies</p>
	<p>To exercise a pre-emption right to purchase all the shares sold by another shareholder (s) of a private company.</p>	<p>Part 2, Article 47, Law on Companies</p>