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Modernization of Estonian corporate and competition law

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Over recent years the Estonian parliament has been improving the country's business climate and we expect the trend to continue in coming years.

The foundation, governance and dissolution of companies and other fundamental aspects of Estonian corporate law are regulated by the Commercial Code, which was adopted in 1995 and has been amended on numerous occasions. The amendments have mainly been motivated by the need to eliminate discrepancies within the Commercial Code and with other legislation, to address the demand for more elaborated regulation, and to modernize the regulation and thereby make Estonia's economic environment more competitive. While the last round of amendments, which came into force in 2006, concentrated on corporate governance and specified the functions and relations of different corporate bodies, the amendments that came into effect on January 1 2007 were to modernize, simplify and streamline the procedures related to the Estonian Commercial Register.

Expedited procedure

To address the needs of the fast-moving business environment, the amendments introduced a new expedited procedure for founding companies. This entails processing foundation documents and making respective entries in the Commercial Register on the following business day. Applicants can use this procedure as long as the underlying circumstances of the application meet certain terms and conditions set forth by the Commercial Code. Since the expedited procedure is not suitable for all situations, the maximum time limit of the regular procedure was also shortened from 15 calendar days to five business days.

Foundation documents are submitted to the Commercial Register via the internet without notarizing the documents, which is inevitable in the regular procedure. To prevent the expedited procedure from undermining the legal certainty guaranteed by the notary in the regular procedure, digital signatures are required and persons whose personal data cannot be automatically checked with the Estonian Population Register cannot benefit from the internet-based expedited procedure. Furthermore, to process documents more quickly, only standard form Articles of Association can be used. Public and private companies whose shares are registered with the Estonian Central Register of Securities cannot be founded through the procedure under discussion. Therefore, the expedited procedure is a useful supplement to the current procedure and will speed up the registration process on many occasions, but in its present form it is incapable of replacing the regular procedure altogether.

Contributions in kind may not be used in the expedited procedure. This is because they are subject to valuation by generally accepted experts (if available). Under certain circumstances an

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auditor will audit the valuation and present an opinion on whether the contribution complies with the Commercial Code.

Monetary contributions should be first transferred to the deposit account of the registrar. The company may apply for the monetary contributions to be transferred to its own bank account within one year of the company's entry into the Commercial Register; otherwise the contributions will be transferred into public revenues. Besides foundation, the expedited procedure may be used for most amendments of Commercial Register entries, including those concerning public companies.

Areas of activity

On January 1 2007 the regulation of Estonian companies' areas of activity was also modernized. Before this date each company had to list its areas of activity in its Articles of Association and the list was reflected as a separate entry in the Commercial Register. The new regulation concentrates on the main area of activity and excludes the list from the Commercial Register. This is not meant to exclude the relevant information from the database of the Commercial Register, but to gather the information in a different manner. Starting from this year, companies will inform the registrar of their areas of activity through notices and annual reports with reference to the Estonian Classification of Economic Activities. The annual accounts must specify sales revenue by areas of activity and the management report must describe the main areas of activity and any planned changes to them.

The Estonian Classification of Economic Activities follows international standards and makes the data concerning the areas of activity of Estonian companies comparable with the data collected in other countries. Another benefit of the new regulation is that a company does not have to amend its Articles of Association to change its areas of activity. Furthermore, the new regulation is likely to cut down lengthy lists of areas of activity that had little to do with the actual everyday business of a company. This does not mean that companies are required to amend their Articles of Association to exclude lists of areas of activity. On the contrary, some companies may still find it useful to have the areas of activity listed in the Articles of Association, e.g. to determine the management board's authority to act in the ordinary course of business without applying for approval from a higher corporate body.

The registrar no longer checks whether a company has obtained all activity licences and authorizations to operate in its areas of activity as part of the registration procedure. Therefore, the areas of activity indicated in the Commercial Register are informative only, and each company will assess its own required activity licences and authorizations, without the Commercial Register having any supporting role.

Speeding up the registration procedure and modernizing the regulation of the areas of activity makes the administration of companies less burdensome and time-consuming, makes services more accessible, improves the quality of business statistics and reduces the workload of the registrar.



Control of concentrations

On July 1 2006 substantial amendments of the Competition Act entered into force. Most of the amendments bring Estonian competition regulation in line with EU rules.

Firstly, Estonia adopted new thresholds for control of concentrations. According to the Competition Act, a concentration shall be subject to control by the Competition Board if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded EKr100 million (approximately €6.39 million) and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded EKr30 million. Therefore, the respective worldwide turnover thresholds of EKr500 million and EKr100 million have been replaced with the turnover thresholds in Estonia, allowing better identification of which concentrations have the potential to influence the local market situation and adversely affect the Estonia's competition conditions.

The amendments also give a better overview of time limits for submitting concentration notices, required information, and documents to be appended and procedural arrangements.

Exemptions to agreements, concerted practices and decisions restricting competition

The procedure for granting exemptions to agreements, concerted practices and decisions restricting competition was invalidated in line with applicable EU competition rules. There is no longer a possibility to apply for an exemption regarding an agreement, practice or decision and in each case a selfassessment must be undertaken for securing compliance with the relevant provisions of the Competition Act. The burden of proof lies with the undertaking and each particular agreement, practice or decision that is potentially capable of restricting competition should be subject to legal analysis by competition lawyers in order to avoid invalidity of the relevant agreement, practice or decision and criminal sanctions that may follow when the agreement, practice or decision is proved to be prohibited. The amendments lead to less effort in filing documents with authorities but at the same time increase the responsibility of undertakings to evaluate the impact of their activities on particular goods markets.