

# focus

## on legalities

### Obligations and liabilities of a board member in Estonia – Part 1

Dear reader,

Since many SCCE member company board members are non-Estonians, I thought it would be a good idea to write a bit about the obligations and liabilities that follows once you have become a board member in an Estonian company. (If you want to learn more about the difference between a Swedish board and the Estonian supervisory and management boards, please refer to issue nr 1/2007 of **focus**.)

First of all, there are two boards in an Estonian limited company, according to the main rule. In an Aktsiaselts there is always both a supervisory board and a management board. In an Osühing, there may be only a management board.

In this issue I will write about the rights, obligations and liabilities of a supervisory board member. In the next issue of **focus**, I will focus on management board members.

I will try to not make this text too boring, as it often is to read about law. However, the topic is important and the rules are quite strict so no matter how hard I try, it is not possible to make this into pure pleasure, but I will give it a try...

#### The tasks and the election of the supervisory board members

The supervisory board (Est: nõukogu) is the body that plans the activities of the company and organizes and supervises the management. You may say that this organ is the shareholders' representative. A supervisory board has at least three members that are elected by the shareholders.

No member can be elected for life, so you must check the company's articles of association for how long they are elected for or – if there is nothing said about this there – the term can never be more than five years so the members must be actively re-elected by the shareholders at the general meeting before their term comes to an end. Or maybe it is by then time to elect some new ones?

As the supervisors of the company, the supervisory board shall give orders to the management board how to organise the management of the company and in case of transactions beyond the scope of everyday economic activities, consent is required from the supervisory board. Please note, however, that only the management board may represent the company towards third persons.

#### Remuneration of a supervisory board member

The shareholders are the ones to make a decision regarding whether a supervisory board member shall get remuneration for his or her work and the size of such remuneration.

#### Supervisory board meetings – at least four every year!

A supervisory board **MUST** hold board meetings at least every three months. A meeting can be held over telephone and the minutes can be circulated for signatures. Do not forget to make formal minutes of these meetings (they do not need to be in Estonian) as this may be of use in case you need to prove that a decision was or was not made, who attended the meeting and who voted for or against a certain issue. In case the decision needs to be submitted to the Commercial Register (Est: Äriregister) you must make an Estonian translation or why not make parallel document in English and Estonian at the same time so everybody can understand it?

A supervisory board must have a chairman. The company must inform the Commercial Register about who is the chairman within five days from his/her election.

#### How to conclude agreements between the company and a member of the management board – this is a bit tricky!

When it comes to concluding agreements with a management board member (for example a service agreement) only the supervisory board can decide upon the terms and conditions ▶

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Karolina holds a Master of Laws from Stockholm University from 1998. She did her Swedish court practise 1999-2001 in Bollnäs District Court.

In 2001 she joined MAQS Law Firm's Stockholm office as an associate, assisting MAQS Law Firm's clients with an interest in Estonia.

Since 2002 she has worked part time in Estonia and as from 2004 full time. In October 2005, MAQS Law Firm opened its full service law firm in Estonia where Karolina is one of five partners.

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of such an agreement. The supervisory board must also appoint a representative to sign such agreement on behalf of the company. Unless these requirements are fulfilled the company cannot enter into any valid agreement with its management board member/s. I would strongly

advise all management board members to check if such a decision was made prior to concluding your service agreement (if you have any).

### The supervisory board and the annual report

The annual report is prepared by the management board but reviewed by the supervisory board. The supervisory board may amend the profit distribution proposal before the presentation to the shareholders at the general meeting.

### Competition and secrecy restrictions

All board members are restricted under law to compete with the company. In case of breach of the competition restrictions, the company may demand from such board member to stop the prohibited activity, transfer any income received through the prohibited activity as well as be obliged to compensate the company for any damages suffered. All supervisory board members are obliged to preserve the business secrets of the company under law.

### Liability of a supervisory board member

In general, a board member shall perform his or her obligations with care and diligence. From court practice, one may conclude that this means that you do not only need to be careful, but also sufficiently informed about the company to make decisions and that you are not allowed to assume unnecessary risks for the company. If you do not meet these qualifications, the company can demand compensation from you.

The general limitation period for submitting claims against a supervisory board member is five years.

### Some advise for a supervisory board member

In addition to the above, the articles of association may grant the supervisory board more or less rights and obligations. If you are a supervisory board member of an Estonian company, I strongly advise you to study the articles of association of that company with care. If you do not understand

Estonian, you should make sure that a professional translator translates them and if you have questions, you should turn to a professional advisor.

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**In the next issue of focus –  
Part 2: Obligations and  
liabilities of a management  
board member**

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