

801.1(b)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, April 04, 2007 11:27 AM
To: Verne, B. Michael
Subject: control

Dear Mike,

I have an unusual corporate structure and I'd appreciate your opinion as to how the test of control should be applied.

Target company is Dutch. A Newco will be formed, also Dutch, to make the acquisition. Newco has various investors, none of which hold 50% or more of the voting securities of Newco, thus, I am left with the other half of the control test, the right to appoint directors.

Upon acquisition by Newco, Target will have a so-called "supervisory board." The duties of this board are as follows:

- a. entering into agreements whereby [target] or the subsidiaries are granted a bank credit if this concerns an amount of more than []
- b. entering into commercial agreements if this involves a financial interest of more than []
- c. entering into or terminating long-lasting co-operations between [target] or an affiliated (dependent) company with another company or as fully liable partner in a limited partnership or a "vennootschap onder firma", if this co-operation or termination is of fundamental importance for the [target] Group
- d. acceptance of a participation of at least 1/4 of the outstanding capital with reserves according to the balance sheet of [target] , by her or an affiliate (dependent company) in the capital of another company, and the fundamental increase or decrease of such participation
- e. investments that equal an amount similar to 1/4 of the outstanding capital with reserves according to the balance sheet of [target]
- f. a proposal to amend the articles of association of [target]
- g. a proposal to dissolve [target]
- h. report of bankruptcy and request for suspension of payment by [target]
- i. termination of employment of a substantial part of the [target]'s employees or of an affiliated (dependent company) at the same time or within a short time frame
- j. fundamental changes in the labour conditions for a substantial part of [target]'s employees or of an affiliated (dependent) company
- k. a proposal to decrease the outstanding capital of [target]
- l. fundamental change in the structure of the activities of [target]

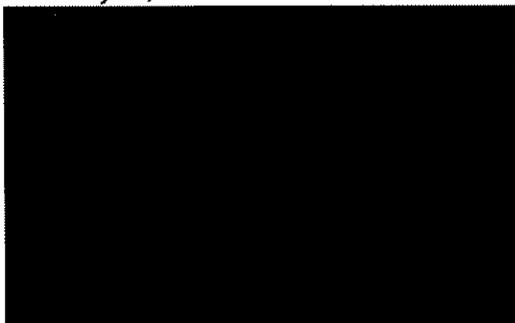
Newco has a "board of directors/management body." The duties of this board are as follows:

- a. determination or approval of the Business Plan and the Budget (including all adjustments or changes thereof)
- b. payment of dividends or payment of interest re. the shareholder's loan ("Aandeelhouderslening")
- c. entering into agreements or arrangements with the Seller or an affiliate of the Seller, other than under professional ("at arm's length") conditions
- d. issue, including the right to acquire shares in Newco or the subsidiaries, unless (i) it involves an issue within the [target] Group and/or (ii) the issue takes place under the circumstance that Newco and/or the subsidiaries no longer fulfill the "banking covenants" or there are for other reasons shortages of liquidity within Newco and/or the subsidiaries that require an issue

- e. co-operation with the issue of certificates of shares in Newco or the subsidiaries
- f. request for quotation or withdrawal of quotation of the documents as referred to in d. and e. in the price-list of a stock-market
- g. exclusion or limitation of the priority right, unless the issue to which the priority right relates occurs under the circumstance that Newco and/or its subsidiaries no longer fulfill the "banking covenants" or there are for other reasons shortages of liquidity within Newco and/or the subsidiaries that require an issue
- h. a proposal to amend the articles of association of Newco
- i. a proposal to dissolve Newco
- j. report of bankruptcy and request for suspension of payment by Newco
- k. a proposal to decrease the outstanding capital of Newco

The investors in Newco (the acquiring parties) will have the right to appoint members of both boards, although in different proportions, which leads to different outcomes on the issue of control. Would you please let me know your thoughts on which board should be referenced for purposes of control on the acquiring side?

Thank you,



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For further information about [redacted] please see our website at [redacted] or refer [redacted]

I think the board of directors/management body would be the appropriate group to look at.

B. Rich
4/4/07