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## The Parliament Removes the Gap in Ukrainian Corporate Law



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*On 17 September 2008 the Parliament of Ukraine enacted long-awaited law “On Joint Stock Companies” (the “Law”). The Law regulates establishment, activities and procedure of reorganization (liquidation) of the joint stock companies and is aimed at protection of shareholders’ rights from raider attacks. The Law pays quite special attention to the interests of minority shareholders.*

Below we briefly summarized some key innovations set forth by the Law:

- ▶ The Law divides all joint stock companies into two groups: public and private companies (the former division of the joint stock companies included open and closed joint stock companies subject to certain exceptions). In particular, the number of shareholders in the private joint stock company is limited to 100. Furthermore, all public joint stock companies should be listed on at least one stock exchange.
- ▶ The Law broadens the so-called “sole ownership” issue (i.e., currently a Ukrainian company cannot be fully owned by another company (local or foreign) which, in turn, has only one shareholder. In addition to the above restriction, based on Article 4 of the Law a joint stock company cannot be fully owned exceptionally by legal entities, which, in turn, have one and the same shareholder.
- ▶ All shares of the joint stock companies may be placed only in non-documentary. This will be allowed after 2 years period from the date of the official publication of the Law is lapsed.
- ▶ The Law sets forth a new form of voting – cumulative voting. The above voting is used by the general meeting of shareholders (the “GMS”) when appointing the Supervisory Board. In particular, the total amount of votes of the shareholder is multiplied on the number of members in the Supervisory Board to be elected. The shareholder is entitled to give all of his votes calculated in accordance with the above method to one contender or divide the votes between several of contenders. Primarily, cumulative voting is aimed at protection of interests of minority shareholders.
- ▶ Appointment and dismissal of the Management Board of the joint stock company is excluded from the exclusive competence of

the GMS. Based on the Law, Management Board may be appointed by the Supervisory Board of the company, unless the company’s charter refers the above right to the competence of the GMS.

- ▶ In addition to notification on the date, time and agenda of the prospective GMS each shareholder receives the right to familiarize with draft documents which are subject to approval by the GMS and may come up with his amendments regarding subject matter of the relevant documents prior to the GMS.
  - ▶ The law limits the place of conducting of the GMS to the city, in which the joint stock company is located, except for cases when the joint stock company is wholly owned by the foreign legal entities or individuals, apatrides or international organizations. We assume this provision is included in the Law purposely; in particular, to avoid any raider speculations on the place of conducting of the GMS in the future. (In the recent past, it was quite a widespread practice for the raiders to arrange the GMS somewhere outside Ukraine in order to disable minority shareholders of the company to attend the meeting).
  - ▶ Any shareholder, owner of the ordinary shares, is entitled to demand mandatory buyback of his shares by the company if he voted at the GMS against the following decisions: any type of the company’s reorganization; execution of significant agreement (i.e., agreement whose value exceeds 25% of the company’s assets); and change of the company’s share capital.
  - ▶ The Law introduces voting using bulletins (voting papers). Such type of voting on the GMS will be obligatory (i) when deciding certain issues (e.g., increase of the share capital, reorganization of the company etc.) and (ii) for joint stock companies which performed public placement of shares or having more than 100 shareholders.
  - ▶ Any investor willing to acquire significant shareholding (i.e., 10% and more of the company’s shares) in the joint stock company will be required to notify (i) the company on such intention in written 30 days prior to the date of acquisition, (ii) as well as the State Securities and Stock Market Commission of Ukraine and all stock exchanges on which the company’s shares are listed. In addition, investor will be required to publish the relevant notification in the official print mass media (i.e., one of the official print medias of the Verkhovna Rada (the Parliament), the Cabinet of Ministers of Ukraine or the State Securities and Stock Market Commission).
- On November 22<sup>nd</sup> the President Yushchenko signed the Ukrainian Joint Stock Company Law into force. Most of the Law’s provisions will come into force 6 months after its official publication.

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