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ON SOME ASPECTS AS TO REORGANIZATION OF PUBLIC JOINT-STOCK COMPANIES



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Шевченко О. В. Про деякі питання щодо реорганізації публічних акціонерних товариств. У статті автор аналізує норми чинного законодавства України про цінні папери та акціонерні товариства щодо вимог до публічних акціонерних товариств, як учасників ринку цінних паперів, зокрема: обов'язку проходження ними процедури лістингу, проблеми їх дотримання, а також можливості припинення акціонерних товариств шляхом перетворення в інші організаційно-правові форми ведення бізнесу.

Акціонерні товариства є одними з основних учасників ринку цінних паперів в Україні. Порядок створення, діяльності, припинення акціонерних товариств, їх правовий статус, права та обов'язки акціонерів, регулюються нормами Закону України «Про акціонерні товариства» від 17.09.2008 року № 514-VI (з наступними змінами та доповненнями).

Метою статті є освітлення можливості зміни організаційно-правових форм акціонерних товариств у разі неможливості забезпечення виконання ними відповідних вимог законодавства, а також мінімізації витрат, пов'язаних з їх обслуговуванням.

Відповідно до мети статті, основним її завданням постає визначення шляхів подальшої діяльності публічних акціонерних товариств в інших найбільш оптимальних організаційно-правових формах господарювання.

Ключові слова : акціонерне товариство, ринок цінних паперів, лістинг, фондова біржа, перетворення, емітент цінних паперів, зупинення обігу акцій, скасування реєстрації випуску акцій, товариство з обмеженою відповідальністю, товариство з додатковою відповідальністю, Національна комісія з цінних паперів та фондового ринку.

In the article author analyzes statutes in place on issues and joint-stock companies as to waivers to public joint-stock companies as the member of equity market, including: the duty of passing of listing, the problem of its compliance, and also the possibility to stop joint-stock companies on the basis of transformation into other legal form of organization of business dealing.

Joint stock companies are one of the main participants of the equity market in Ukraine. The procedure for the creation, activity, termination of joint stock companies, their legal status, rights and obligations of shareholders are regulated by the Law of Ukraine "On Joint Stock Companies" dated 17.09.2008, # 514-VI (with subsequent amendments).

The goal of the article is lighting of possible changes of legal forms of joint stock companies in failing to ensure the fulfillment of the relevant legal requirements and minimize the costs associated with their service.

For the purpose of the article its main task appears identify ways of further public companies in other most appropriate types of business entity.

Keywords : joint-stock company, equity market, listing, stock market, transformation, securities issuer, tie-up of stock turnover, cancellation of stock issue registration, limited liability company, superadded liability company, National Securities and Stock Market Commission.

Joint stock companies are one of the main participants of the equity market in Ukraine. The procedure for the creation, activity, termination of joint stock companies, their legal status, rights and obligations of shareholders are regulated by the Law of Ukraine "On Joint Stock Companies" dated 17.09.2008, № 514-VI (with subsequent amendments). In accordance with the Law of Ukraine "On Concerning the Introduction of Amendments to Certain Legislative Acts of Ukraine as to defense of investors rights" dated 07.04.2015, №289-VIII from 01.05.2016 and to the Law of Ukraine "On Joint Stock Companies", it was made a large number of innovations among which the requirement of compulsory passing by public joint stock companies the procedure of including shares to the stock register any of the stock exchanges in Ukraine occupies a special place.

Basic principles and requirements to functioning of stock markets in Ukraine are regulated by "Rules on Functioning of Stock Markets" which were ratified by the Decision of National Securities and Stock Market Commission dated 22.11.2012, №1688, which was registered in the Ministry of Justice of Ukraine.

Conformably with the p. 2 of the ch. 1 of the said Rules, stock register is the strand of stock bead-roll which contains information as to listing securities. Listing securities are securities which on the stock market, and were entered to stock register as those which are conformed to requirements of adequate level of listing according to the Rules and rules of tock market. Points 1, 2 of the Chapter IV of the Rules it was envisaged that securities which have passed the listing procedure, should be entered in the stock register of adequate level of listing.

Listing securities have first or second level of listing. With that point 3 of the Chapter IV of the Rules identifies that entering and staying of securities at the first level of listing makes while meeting by public joint stock companies minimal requirements:

- emitent exists no less than 5 years;

- shareholder's investment of emitent is not less than 1000000000 hryvnyas;

- yearly net revenue income from realization of goods, works, service implementation for the last accounting period is not less than 1000000000 hryvnyas (except banks);

- the average value of the market capitalization of the emitent is not less than 1000000000 hryvnyas;

- the minimum proportion of shares in float is not less than 25%, at that two investors summary can be no more than 50% of this share;

- numerical composition of shareholders of the emitent – is not less than 500 equity holders;

- the number of independent members of Supervisory Board of the emitent is at least 25% of the quantitive composition of the Board;

- at the emitent position is introduced the personnel position of the Corporate Secretary;

- Supervisory Board of the emitent introduced the personnel position of income auditor (created internal audit function);

- emitent oversees the annual audit according to the international standards of audit with the participation of independent external auditor (no less than 3 years);

- emitent discloses financial accounts in Ukrainian and English;

- emitent adheres to principles of corporate management and international standards of preparation of financial statements;

- emitent made contract with market maker to support liquidity of the shares.

Point 4 of the Chapter IV of Rules defined that entering and staying of securities at the second level of listing of stock market is made while meeting by public joint stock companies minimal requirements:

- emitent exists no less than 3 years;

- shareholder's investment is not less than 400000000 hryvnyas;

- yearly net revenue income from realization of goods, works, service implementation for the last

accounting period is not less than 400000000 hryvnias (except banks);

- the average value of the market capitalization of the emitent is not less than 1000000000 hryvnias;

- the minimum proportion of shares in float is not less than 10%, at that two investors summary can be no more than 50% of this share (apart from: restricted shares; state owned shares);

- numerical composition of shareholders of the emitent – is not less than 500 equity holders;

- numerical composition of shareholders of the emitent – is not less than 200 equity holders;

- at the emitent position is introduced the personnel position of the Corporate Secretary;

- emitent oversees the annual audit according to the international standards of audit with the participation of independent external auditor (no less than 2 years);

- emitent is recommended to adheres to principles of corporate management and international standards of preparation of financial statements;

However, implementation of the above mentioned requirements of the current legislation of Ukraine in the part of passing by public joint stock companies of procedure of including shares to stock register is almost impossible to the biggest part of public joint stock companies of Ukraine which were registered on 01.01.2016 as 5707 units.

Analyzing the information of the Association “Stock and electronic platforms” which are posted on its official web-site (<http://aeaep.com.ua/pao-y-ly-chao-kem-t-e-tentu-stockworld/>) as to the number of public joint stock companies which are met to the listing requirements, as according to 01.05.2016 from the total number of public joint stock companies only 7 of them are met to the listing requirements, namely shares: PJSC “Donbasenergo”, Foreign emitent MNP S.A. (PJSC “Myronivskyi khlibprodukt”), JSB “Pivdennyi”, PJSC “Motor Sich” and PJSC “Ukrnafta”.

The abovementioned legislative requirements can be made by those public joint stock companies which really attract funds on the capital market and will have ample own readings which are necessary to compliance of the abovementioned requirements of law.

In such a manner, the biggest part of public joint stock companies of Ukraine won't be included to the stock register of stock markets of Ukraine as a result will bring about violation of the requirements of the paragraph 2 part 1 article 24 of the Law of Ukraine “On Joint Stock Companies”. As a result National Securities and Stock Market Commission will take remedial actions, including passing orders to eliminate violations of legislation on securities and joint stock companies and applying of punitive

sanctions according to the Law of Ukraine “On state regulation of equity market in Ukraine” dated 30.10.1996 №448/96-BP. Consequently it is actual issue as to activity of public joint stock companies in new conditions and one of the solution could be the termination of public joint stock company (with the number of shares 100 persons) by means of its reorganization into limited liability company or reorganization into superadded liability company (with the number of shares 100 persons), legal form of organization of which is more facilitated to the conduction of business and allowed to organize its activity actively.

Analyzing requirements of laws in force of Ukraine which regulates the issue of termination of joint stock companies through their transformation, in particular, Civil Code of Ukraine, Law of Ukraine “On joint stock companies”, “Procedure for Cancelling of of Registration of Shares” it could be defined main stages of such transformation:

1. Definition of market price of shares of public joint companies and its adoption.

2. Calling of a shareholders general meeting and adoption by them decision as to termination of public joint stock company through transformation, election of commission on termination and approval of the plan of transformation.

3. Appealing to the authority which conducts official registration for inclusion to the USR the record of the decision of termination of joint stock company through the transformation and publishing relevant information under the current statutory procedure of Ukraine.

4. Announcement of creditors of joint stock companies for assertion of a claim in accordance with laws in force.

5. Submission of documentation package to the National Securities and Stock Market Commission for stopping the stock turnover of joint stock company.

6. Implementation of the mandatory reacquisition of shares of joint stock company sharers which is required in accordance with laws in force and in timely manner.

7. Stocktaking of assets and liabilities of joint stock company.

8. Discharge or rejection of claims of joint stock company creditors.

9. Preparing draft transfer act of joint stock company.

11. Calling and holding, not until the end of the period for assertion of a claim of joint stock company creditors, shareholders general meeting which will approve the commission report on termination and plan of transformation of joint stock company.

12. Holding of the constituent conference of members (founders) of company-successor and making decision, videlicet: on creation of company, formayion of its nominal capital, aaproving f its constituent documents, appointment (election) of its control authorities, approving of act of transfer act and others.

13. Realization of conversion of shares of joint stock company on parts in shareholders' equity of company-successor.

14. Submission of documentation package to the National Securities and Stock Market Commission for stopping the stock turnover of joint stock company and abolition of the certificate of registration of the shares of joint stock company.

15. An appeal to the authority which conducts official registration for official registration of termination of joint stock company and for official registration of company-successor.

Transformation is considered completed from the date of entry to USR the register on termination of joint stock company and on registration of company-successor. At that it is necessary to note the necessity of performance of obligatory conditions of transformation:

- all sharers (their successors) of joint stock company, shares of which were not redeemed becomes founders (members) of created company-successory;

- founding documents of created company-successor should contain information as to founders (members) with indicating the part of each founder (member) at the date of approval of these documents;

- distribution of particles of the created company-successor takes place with preservation of correlation of the number of shares which were among shareholders in the equity capital of joint stock company which is transformed;

- equity capital stock of company which is created through transformation of joint stock company, as of the date of its creation should be equal to the equity

capital stock of joint stock company which is transformed to reduced on general stocks at par which are not subject to exchange.

As a result of the termination of joint stock company through its transformation company-successor contracts out of additory duties and responsibility which is on that, such company:

- is not under the control of the National Securities and Stock Market Commission and its activity is not the subject to the Law of Ukraine "On Joint Stock Companies" and other legislative acts which regulate the activity of joint stock companies on the equity market;

- does not disclose regular annual, quarterly and special information on the equity market (through its publication, placing on the own web-site and in public information database of the National Securities and Stock Market Commission and also its submission to it);

- does not publish reports of holding of regular and special meeting of shareholders;

- does not carry out the statutory audit of financial and economic activity;

- does not bear the costs associated with payment service of depositary and custodian;

- does not pay services of information and technical support of general public database of the National Securities and Stock Market Commission;

- does not bear the risks associated with the using by the National Securities and Stock Market Commission of appropriate penalties and other sanctions for violations on the equity market.

For public joint stock companies which from 01.01.2018 won't be able to meet the requirements of laws in force in the part of including shares to the stock register, transformation them into limited liability companies or superadded liability companies would be necessary and would have positive consequences.

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