

## UKRAINE ACTS TO PROTECT THE RIGHTS OF INVESTORS

4 May 2016

**On 1 May 2016 the law<sup>1</sup> aimed at protecting the rights of investors in Ukraine and to align the Ukrainian and European approaches to joint stock companies' regulation became effective (the "Law").**

Among other things, the Law introduces the concepts of a derivative suit and independent directors in joint stock companies (the "**JSCs**"), improves approval rules for interested party transactions and material transaction, streamlines a number of JSCs' functioning and governance related matters (e.g. resolves issue of quasi-public JSCs, expands regular and special information disclosure, streamlines dividend payment, details certain notifications, voting and election rules). The following novelties should be noted in particular.

### **1. Introduction of a derivative suit as a new way to protect investors**

A shareholder who owns 10% or more of the charter capital of a company may sue on behalf of the company such company's management for damages caused by the management to the company.

It is now expressly provided that a company's management can be held liable and sued for damages if:

- the management acted ultra vires or abused its powers;
- the management acted not in compliance with the decision making procedures prescribed by the company's constituent documents;
- the management acted within the required decision making procedures under the constituent documents but provided false information for making a decision;
- the management failed to act when it was under an obligation to act; and
- the management otherwise committed a culpable act.

### **KEY ISSUES**

- Introduction of a derivative suit and independent directorship concepts;
- Cancellation of a minimum number of shareholders' requirement for private JSCs;
- Improvement of rules for approval of material transactions and interested party transactions;
- Other corporate governance, disclosure and dividend distribution related amendments introduced.

---

<sup>1</sup> The Law of Ukraine "On Amendments to Certain Laws in Relation to Protection of Investors' Rights" No. 289-VIII dated 7 April 2015.

The Law further provides for certain procedural rules in relation to derivative suits. The derivative suit concept is new to Ukrainian law and it remains to be seen how it will be used by minority shareholders and applied by courts.

## **2. Improved rules for approval of material transactions and interested party transactions**

The Law details the rules on the review and approval of interested party transactions and material transactions. Among other things, it makes clear that only disinterested shareholders can approve an interested party transaction at the general shareholders meeting. If an interested party transaction or a material transaction is entered into without prior approval, such a transaction will be deemed not effective unless ratified by the general meeting. After the ratification, such transactions will be deemed effective from the moment when they were entered into.

## **3. Appointment of independent directors**

JSCs' corporate governance rules have been improved by introducing a possibility to elect independent members (directors) to a supervisory board of a JSC. To be an independent member an individual should meet certain criteria set out in the Law (generally, not to be related to, receive material additional benefits from or do business with the JSC). The possibility to elect legal entities as supervisory board's members has been abolished. Public JSCs and state controlled companies should have at least 2 independent members on the supervisory board.

## **4. Miscellaneous**

The Law solves the issue of "quasi-public" companies, i.e. JSCs which had to be public because their number of shareholders exceeded 100. The Law cancelled the maximum number of shareholders' requirement for private JSCs and now shareholders can decide themselves whether they want their JSCs to be private or public.

The Law re-instated the requirement that public JSCs' shares must be listed on a stock exchange (and not simply admitted to trading).

The Law somewhat expands the disclosure requirements for JSCs and now the regular (annual/quarterly) and special information to be published and filed by JSCs with the securities regulator should now include information on:

## **CONTACTS**

If you would like to know more about the subject covered in this alert, please contact:

[Yevheniy Deyneko](#)  
+380 44 337 7007

[Andriy Olenyuk](#)  
+380 44 337 7007

[Ulyana Khromyak](#)  
+380 44 337 7007

To email one of the above, please use `firstname.lastname@everlegal.ua`

- i. prior approval of material transactions and approval of interested party transactions;
- ii. issuance of securities for the amount exceeding 10% of the charter capital of a company (previously - 25%); and
- iii. commencement of proceedings for compensation of damages caused by the management to the company.

The Law now allows JSCs to pay dividends to their shareholders both via the depository system and directly. The Law further details the rules on composition of the list of shareholders entitled to payment of dividends by JSCs.

For more details in Ukrainian please visit:

<http://zakon3.rada.gov.ua/laws/show/289-19/page>