

SECURITIES AND STOCK MARKET STATE COMMITTEE

CLARIFICATION

No. 8 of 14 July 2009

On the procedure of applying certain provisions of Section XVII "Final and Transitional Provisions" of the law of Ukraine "On Joint Stock Companies" due to its coming into effect

This clarification has been approved by SSMSC Resolution 797 of 7/14/ 2009

As amended in line with SSMSC Resolution 712 dated 7/21/2009

Securities and Stock Market State Commission, in conformity with clause 23 of article 7 of the law of Ukraine "On State regulation of the securities market in Ukraine", clarifies hereby the matter of the application procedure of certain provisions of Section XVII "Final and transitional provisions" of the Joint Stock company law of Ukraine in connection with its coming into effect.

The Joint Stock Company law of Ukraine published in the official printed organ, Uriadovy Courier (Government Courier), No. 202 on 10/22/2008, came in to effect on 30 April 2009.

Clause 2 of Section XVII "Final and transitional provisions" of the Joint Stock Company law provides that within two years of this law coming into effect (i.e. starting on 4/30/2011), articles 1 - 49 of the Business Association law become ineffective as regards joint stock companies.

Paragraph 1 of clause 5 of Section XVII "Final and transitional provisions" of the Joint Stock Company law envisions that the articles of incorporation and other bylaws of joint stock companies created prior to this Law coming into effect shall be brought in line with the provisions of this Law no later than within two years of this Law coming into force (i.e. by 4/30/2011).

Under clause 7 of Section XVII "Final and transitional provisions" of the Joint Stock Company law, joint stock companies (JSC) are exempt from paying the registration duty during the registration of amendments to their charter or of the new language of the charter as a result of bringing it in line with this Law.

Therefore, bringing the operations of an open JSC and a closed JSC in line with the Joint Stock Company law requires the following actions:

- amending the company charter so that it provides, among other things, for a change of the name of the company from an open and closed JSC to a public JSC or from an open and closed JSC to a private JSC, provided the number of their shareholders on the date of introducing said amendments does not exceed 100, as well as complying with all the other requirements of the Joint Stock Company law with regard to the company charter;

(paragraph 7 in the text of SSMSC resolution 812 of 7/21/2009)

- bringing company bylaws in line with the requirements of the Joint Stock Company law and the company charter.

Therefore, meeting the requirements of paragraph 1 of clause 5 of Section XVII "Final and transitional provisions" of the Joint Stock Company law, i.e. bringing the operations of an open and closed JSC in line with the requirements of the Law, shall be performing all of the above actions.

A partial meeting of the requirements of paragraph 1 of clause 5 of Section XVII "Final and transitional provisions" of the Joint Stock Company law shall not be equivalent to compliance with the requirements of the Law.

The date of bringing the operations of an open and closed JSC in line with the requirements of the Law shall be the date of State registration of the amendments to the charter, which, among other things, envision changing the name of the joint stock company from an open JSC to a public/private JSC or from a closed JSC to a public/private JSC.

Bringing the operations of an open and closed JSC in line with the requirements of the Joint Stock Company Law shall not require the use of the JSC termination procedure.

For the purpose of compliance with the legislative requirements of as to the deadline of bringing the JSC charter and other bylaws in line with the requirements of the JSC Law, companies are recommended to approve at their 2010 annual general assemblies a decision to amend their charter (change the language of the charter) in view of bringing the company operations in line with the requirements of the Joint Stock Company law, including a change of the company name from an open JSC to public/private JSC or from a closed JSC to public/private JSC.

Clause 6 of Section XVII "Final and transitional provisions" of the Joint Stock Company law provides that in the event the general shareholders assembly of the company established prior to this law, approves a decision, following this law coming into effect, to change the amount of its charter capital, its stocks denomination, and its securities issue, this company shall bring its operations in line with this law and amend the charter and other bylaws accordingly. Failure to introduce said amendments to the charter and other bylaws by a JSC shall be deemed valid grounds for a refusal to perform State registration of securities of such a JSC.

In the event the general assembly of an open or a closed JSC, starting from 30.04.2009, approves a decision to change (increase or decrease) its charter capital, its stocks denomination, and its securities issue, this company shall bring its operations in line with this law prior to the registration of the relevant issue of its securities by SSMSC.

A JSC that has approved a decision to issue shares and has registered this issue of shares before the JSC law came into effect, it may, for the purpose of bringing its operations in line with the law, approve a decision during the deliberations of amendments to the charter at its general shareholders assembly following the subscription results of an issue performed prior to this law coming into effect, decide to amend the charter, including a change of the company name from an open JSC to public/private JSC or from a closed JSC to public/private JSC.

Prior to bringing their charter and other bylaws in line with the JSC law, joint stock companies shall be guided in their operations, between 30.04.2009 and 30.04.2011, with the Business Associations law and corresponding regulations. Said regulatory acts shall regulate the company relationships with shareholders, investors, governmental agencies, and other entities.

Those JSCs that have brought their operations in line with the JSC law shall be guided in their operations, since 30.04.2009, with the Joint Stock Company law and the corresponding regulations. Said regulatory acts shall regulate the company relationships with shareholders, investors, governmental agencies, and other entities.

Starting from 30.04.2009 poky, all the JSCs, including those that have not yet brought their operations in line with the JSC law, shall be guided in their operations with the provisions of the Civil Code of Ukraine, the Commercial Code of Ukraine, the Securities and Stock Market law, the National Depository System law, and the law "On Managing the State Property Objects law, including those introduced to the above legislative acts under Section XVII "Final and transitional provisions" of the Joint Stock Company law.

Moreover, starting from 01.05.2011, all JSCs shall comply with all the requirements of the JSC law in full, including the provisions of clause 2 of article 20 with regard to exclusively non-documentary form of their shares.

Starting on 30.04.2009, a founders' meeting of a JSC shall approve a decision to establish a public JSC or a private JSC in line with the law of Ukraine "On Joint Stock Companies".

Serhiy Petrashko
SSMSC Chairman