



LEGISLATION MONITORING: DIVIDENDS

January 12, 2011

Summary

As of **January 1, 2011**, the recent amendments to the Joint Stock Company Law mandating minimum amount of dividend payments expired. New amendments to the Joint Stock Company Law and Business Partnership Law passed with the Law of Ukraine "On amendments to the Budget Code of Ukraine and other legislative acts of Ukraine" #2856-VI (hereinafter – Law #2856) provide that joint-stock companies (excluding companies in whose authorized capital the state has ownership) again have the right, not the obligation, to pay dividends in the amount determined by the general shareholders meeting.

Overview

December 23, 2010. The Verkhovna Rada of Ukraine amended Joint Stock Company Law and Business Partnership Law passing the Law #2856. The new versions of Joint Stock Company Law and Business Partnership Law do not require mandatory dividend payments. They shall take effect on January 1, 2011 and are not limited to a specified term. The previous version of the Joint Stock Company Law, which mandated joint-stock companies to pay minimum dividends amount, expired on January 1, 2011.

According to the amended Joint Stock Company Law, the dividends on common shares shall be paid pursuant to a decision of general shareholders meeting within six months of the date of general meeting decision on dividend payments, as provided by law, and on preferred shares – according to a company charter within six months of the end of the reporting year. As before, dividends are paid from net profit of the reporting year and /or retained profit.

Thus, the payment of dividends on common shares is no longer mandatory, except for cases specified in separate laws. For example, according to the amendments by the Law #2856 to the Law of Ukraine "On Management of State-owned Objects", companies in whose authorized capital the state has ownership and companies in which a totally state-owned company owns 50% or more of shares (portions, units) shall pay mandatory dividends in the amount specified in the Law "On Management of State-owned Objects".

History and Process

April 27, 2010. The Law of Ukraine “On State Budget of Ukraine for 2010” (hereinafter referred to as Budget Law) was approved by the Rada. The amendments of both the Joint Stock Company Law and Business Partnership Law (according to the items 10-11 of Section VII “Final Provisions” of Budget Law) mandated that joint-stock companies subject to either law were required to pay dividends in an amount not less than 30% of their net profit in a reporting year and/or retained earnings within six months of the end of the reporting year. The amendments became effective as of April 30, 2010, the date of publication of the Budget Law.

Similarly, on October 1, 2009 the Verkhovna Rada registered Draft Law #5183 submitted by A. Pavlovskiy which proposed substantially the same amendments to the Joint Stock Company Law. This Draft Law was included into the Verkhovna Rada agenda to be additionally worked out for consideration on its current seventh session of the sixth convocation. The amendments limited the powers of the General Meeting of Shareholders by providing that decisions of this body can only increase the amount of dividends more than the mandatory minimum amount.

May 14, 2010. People’s Deputy Yuriy Voropaiev submitted to the Verkhovna Rada Draft Law #6396 amending the Budget Law to cancel the amendments on dividends in both the Joint Stock Company Law and the Business Partnership Law. The accompanying explanatory note stated that the amendments violate Article 22 of the Constitution of Ukraine, which provides, in part, that adoption of new laws and/or the amending of existing laws cannot restrict existing rights and freedoms. The explanatory note further stated that the Constitutional Court of Ukraine, in a decision dated July 9, 2007 (#6-rp/2007), said that the Verkhovna Rada, when adopting the Budget Law, is not allowed to

provide, in its text, for amendments to other laws, terminate other laws or somehow modify provisions of other laws in the sphere of social relations. The Draft Law #6396 was included into the Verkhovna Rada agenda to be additionally worked out for consideration on its current seventh session of the sixth convocation.

November 30, 2010. The Constitutional Court of Ukraine adopted the Decision #22-rp/2010 in response to constitutional petition of 54 People's Deputies of Ukraine concerning, in particular, compliance with the Constitution of Ukraine (constitutionality) of provisions of items 10-11 of Section VII "Final Provisions" of Budget Law mandating minimum dividend payments by joint-stock companies to shareholders. According to the Court's decision, these provisions were recognized as non-compliant with the Constitution (unconstitutional) due to procedural violations under which they had been adopted.

In its Decision the Constitutional Court concluded, similarly with its previous Decisions (#6-rp/2007 of July 9, 2007 and #10-rp/2008 of May 22, 2008), that the Budget Law has a special subject matter – only establishment of the state's incomes and expenditures on general social needs. Thus, the Budget Law cannot amend other laws, terminate their implementation or cancel them since these actions lead to inconsistencies in legislation. Separate laws would have to be adopted to accomplish these objectives. Thus, since November 30, 2010 these amendments became ineffective.

December 3, 2010. By adopting the Law "On Certain Issues of Budget Process Arrangement in 2010", the Verkhovna Rada of Ukraine re-enacted the same provisions of the Joint Stock Company Law and Business Partnership Law that were previously included as amendments to the Budget Law and then were recognized as unconstitutional. This Law (including the provisions mandating dividends) was to be applied effective November 30, 2010 and was valid only until January 1, 2011.