

The American Chamber of Commerce Strongly Supports the Adoption of the Joint Stock Companies Law in Ukraine

Throughout 2007 and 2008 specialists of the Chamber's Legal Committee and the Chamber's Joint Stock Company (JSC) Working Group in conjunction with the best experts in the sphere of corporate governance legislation worked diligently to advocate for the adoption of the Draft Law on Joint Stock Companies.

The need for adoption of a Law regulating joint stock companies is of critical importance as Chapter I Part II of the Law of Ukraine "On Business Associations" is out of date and is no longer aligned with the Civil Code of Ukraine and the current legislative and regulatory framework does not meet international corporate standards. The main aim of the Draft Law On Joint Stock Companies is to define conditions and standards for establishing, governing and cessation of joint stock company activity as well as the legal status and mechanisms that protect the interests of shareholders.

The Chamber's Policy Team and fellow partner organizations were actively involved into the process of discussion and drafting of the Draft Law On Joint Stock Companies preparing a solid draft for the second reading. This work was carried out under the auspices of the special Working Group created under the State Commission on Securities and Stock Market. Members of the Working Group developed and considered several hundred proposed amendments with many taken into account by Parliamentarians during preparation of the Draft Law for the second reading in the Verkhovna Rada's Committee on Economic Policy.

The Chamber's Policy Team notes that the Draft Law On Joint Stock Companies in general complies with the EU Directives provisions in the sphere of corporate governance and is in line with principles of corporate governance recommended by the Organization of the Economic Cooperation and Development as well as national corporate governance principles. The essential advantage of the Draft Law On Joint Stock Companies is that it creates legal conditions to protect the rights of shareholders in Ukraine and removes many gaps in current legislation regarding the establishment and operations of joint stock companies.

The "anti-raidering" impact of the Draft Law On Joint Stock Companies is an important component that will assist in providing a legal basis for removing loopholes often utilized by illegal corporate raiders. The Draft Law On Joint Stock Companies removes commonly used mechanisms to mount an illegal raider attack by restricting: the manipulation of the list of shareholders, covert acquisition of controlling stock by a raider, as well as groundless appeals of the decisions of the general meeting making illegal takeovers more difficult to execute.

The Draft Law On Joint Stock Companies also properly protects the interests of the State as a shareholder. Corporate governance in companies, where the State has partial ownership in the statutory fund, will take into account the provisions provided within the Law of Ukraine "On Governing of Objects of State Ownership".

In the past, a major impediment blocking the adoption of a Draft Law On Joint Stock Companies was, among other reasons, the impact of the proposed joint stock company legislation on existing closed (private) joint stock companies and their owners. To overcome these obstacles authors of the Draft Law On Joint Stock Companies have identified a compromise concerning the ongoing existence of closed joint stock companies. According to the Draft Law On Joint Stock Companies, existing closed (private) joint stock companies will not fall under the Law On Joint Stock Companies and will be able to continue their operations indefinitely in accordance with their internal statutes and regulations as well as parameters stipulated by the Law of Ukraine “On Business Associations”. In accordance with the Draft Law On Joint Stock Companies, increasing of authorized capital can only take place when a closed (private) joint stock company will bring its statutes in correspondence with the Law of Ukraine “On Joint Stock Companies”.

The Draft Law also provides provisions for safeguarding interests of minority shareholders. Besides other important and commonly accepted mechanisms of minority rights protection, authors of the Draft Law have included the norm that minority shareholders have the possibility to elect their own representative to the supervisory board utilizing cumulative voting procedures.

The Chamber strongly believes that the adoption of the Draft Law On Joint Stock Companies will help to improve the investment climate, create conditions for development of the stock market in Ukraine and will help to further guarantee protection of property rights. The Chamber fully understands that the current version of the Draft Law On Joint Stock Companies is not perfect but to this point it is the most comprehensive and well thought through piece of legislation in the sphere of corporate governance in Ukraine. It will need further amendments and enabling regulations which the Chamber commits to continue to work upon.

The absence of the Law On Joint Stock Companies in Ukraine has continued to have a negative influence on the investment climate as well as the general economic situation within Ukraine. The Chamber will continue to strongly advocate for the passage of a well written comprehensive piece of legislation that levels the playing field, adds additional predictability and stability to the operations of joint stock companies in this important market.

The Chamber again thanks all active Chamber Members for their professional support and continuous cooperation and special thanks to: Mrs. Olena Scherbina, Expert of the Commercial Law Center as well as Baker & McKenzie, CMS Cameron McKenna CLC, Marks, Sokolov & Burd, Grischenko & Partners Law and Patent Offices and many others.

The American Chamber of Commerce in Ukraine (“Chamber”) is among the most active and effective non-government, non-profit business organizations operating in Ukraine. One of the Chamber’s principal activities is to represent the foreign investment community as well as to facilitate the entrance of potential new investors into the Ukrainian market. The Chamber advocates on behalf of their Members who are from more than 50 nations across the globe not only to the Ukrainian government, but also to all other governments, which are economic partners of Ukraine, on matters of trade, commerce, and economic reform.

The Member organizations of the Chamber represent the largest strategic and institutional investors operating in Ukraine who have committed a majority of the foreign direct investment into this market. The Chamber's diverse Membership base unites companies from a variety of regions and countries, including North America, Europe, Asia, Russia, and Ukraine.

Chamber Members collectively employ hundreds of thousands of Ukrainians, providing them with exposure to international business practices and the opportunity to develop into leading Ukrainian professionals. Chamber Members also bring international expertise and business knowledge to Ukraine, are among some of the largest taxpayers in Ukraine, and strive to be good corporate citizens.

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