

# KyivPost

INDEPENDENCE. COMMUNITY. TRUST

Business Focus

## LAWYER: BENEFITS FAR OUTWEIGH HEADACHES IN THE NEW JOINT STOCK COMPANY LAW

2 July, 21:29

The law replaces outdated legislation from 1990s

*The long-awaited law on joint stock companies, which aims to strengthen minority shareholder rights and bring Ukrainian legislation on corporate governance closer to international and transparent standards, came into force on April 29. Companies have two years to comply and change their statutes, other documents and structure.*

*Due to changes introduced in the law, companies will also need to change their official names in documents. Official company names such as Open Joint Stock Company (OJSC), or Closed Joint Stock Company (CJSC), will be changed into Public Joint Stock Company (PJSC), or Private Joint Stock Company (PrJSC).*

*In this interview, the Kyiv Post turned to one of the authors of the law, Olena Shcherbyna, counsel at Sayenko Kharenko law firm, and asked how it will affect businesses in Ukraine. Shcherbyna has served as a member of a working group on the law within the Securities and Stock Market State Commission.*

**KP:** Why is this new law on joint stock companies important? Does it bring Ukrainian legislation closer to international norms?

**SS:** Undoubtedly it does, and it has been long-awaited. Change was desperately needed to the original law "On economic companies" adopted in the early 1990s. The new law better establishes the principles of corporate governance, economic partnership organizations and brings Ukraine closer to the European Union standards. This law incorporated mechanisms international investors are familiar with, including better protection of minority shareholder rights. For example, if minority shareholder does not agree with the decision of general shareholder meeting he or she can apply to the company for obligatory stocks' redemption on their market price. This rule will work both in private and public companies. Before the law, the minority shareholder didn't have the right of obligatory stock redemption, except in the case of the company's reorganization. Another innovation of the law is cumulative voting during election of a supervisory board, which will help shareholders manage their business better. Previously, international investors used to make such agreements through contacts, but they were not recognized or defensible in Ukrainian courts. The law also introduces the term "market price" for shares, something that has not existed until now. Shares were commonly sold at nominal prices or less. Now the market price is obligatory.

**KP:** What other improvements does the new law bring?

**SS:** It is 99 percent new and innovative compared to the previous legislation. Before, there was virtually no regulation of a joint stock company's activity. All we had were 25 articles of the law of Ukraine "On economic companies" dated back to 1991, and 10 articles of the Civic Code. The law introduces a new classification of companies, switching into the more internationally-accepted terminology of public and private companies, instead of open and closed. Previously, open and closed joint stock companies could contain from one to hundreds thousands of shareholders. Accordingly to the new law, only public companies may include large numbers of shareholders. A private company can not have more than 100 participants. This means that those closed joint stock companies which, at the present day, have more than 100 shareholders will no longer be classified or regulated as private companies. They must open and become public, or restructure their shareholding structure. This is the most important part of this law.

**KP:** Why is this the most important part of this law? What will it change and for what reason?

**SS:** It is one of the most important parts along with new classification because now more companies in Ukraine will start working transparently and openly. Closed companies which have more than 100 shareholders will become public and

accordingly will be faced with more strict requirements in audit and information disclose which will made company's operations more transparent. Such companies will become more open because their shares will be selling now not among shareholders but on the stock exchange where they can be bought by everybody including foreign investors.

**KP:** Are all closed joint stock companies satisfied with these changes?

**SS:** No. Not all are eager to switch to the new regulation. And not only because their shares will be sell publicly on the stock exchange. New law also brings more rights to minority shareholders. It will affect many managers in Ukraine who often play a bigger role in shaping and benefiting from companies than the shareholders do. Closed joint stock companies were not ready for this law. Primarily it was supposed to be applied only to open companies but at the last moment it was decided to expand it to include all stock companies. Now, a lot of them are seeking for ways to adjust. Some may reorganize into limited liability companies. There is a lot of focus nowadays, more so with the economic crisis, to restructure businesses. This law will be taken into consideration during this process. Law firms and consultants are eager to help companies adjust. There are benefits, for the market and their companies specifically, that they may not see immediately.

**KP:** What is the deadline for companies to abide by the new law and how will the process work?

**SS:** All existing joint stock companies – both open and closed – are obliged no later than by end of April 2011 to adopt a new edition of their statute and inner documents, to bring them into accordance with the new law. Currently, both electronic and paper stock systems are used, but it is planned that electronic systems will fully replace the paper stock notes by October 2010. Company documents, stamps, licenses and permissions will have to be upgraded.

Many companies think that the changes will come at a high cost. However, in practice it's not as bad and complicated of a system as many expect. Some companies can do it in-house. Others will have to pay several thousand dollars to lawyers to handle the work.