

Kinstellar overviews the new Ukrainian Law "On Joint Stock Companies"

On 18 August 2022, the President of Ukraine signed the new Law "On Joint Stock Companies" No. 2493 ("the Law"). It will enter into force on 1 January 2023. The Law was enacted to ensure the fulfilment of Ukraine's obligations under the **Association Agreement with the EU** regarding the harmonisation of national legislation with EU legislation in the field of corporate governance, as well as to improve Ukraine's position in the **World Bank's "Doing Business" ranking**, specifically on the indicator "Protecting Minority Investors".

Main changes introduced by the Law

01

The possibility to establish a single-level management structure for joint-stock companies ("JSC")

According to the Law, a JSC's management structure can be single-level or two-level. In a single-level structure, the governing bodies are the General Meeting and the Board of Directors, a collegial body that combines control and management functions. In a two-level management structure, which provides for a clear distribution of management and control functions, the management bodies are the General Meeting, the Supervisory Board, and the Executive Body.

02

The possibility to conduct General Meetings by means of electronic voting

Along with face-to-face and remote General Meetings, the Law introduces a new way to hold such meetings—electronic voting. Electronic meetings are to be held using an authorised electronic system, i.e., the software and servers of Ukraine's Central Depository maintained by the National Securities and Stock Market Commission.

03

Harmonisation with EU law of a number of legislative provisions on representation

- ✓ A depository institution can act as a shareholder's representative;
- ✓ A potential representative must inform the shareholder of the existence of a conflict of interest and provide the shareholder with information about any facts that may affect the decision of the shareholder to appoint a representative;
- ✓ An irrevocable power of attorney may be issued not only for the purpose of fulfilling a corporate agreement but also in connection with a pledge of shares;
- ✓ In the event of a violation of the rights and interests of the principal, the representative under an irrevocable power of attorney must, at the request of the principal, stop using such a power of attorney and renounce it.

04

Strengthening the protection of the rights of minority shareholders

The Law expands the rights of minority shareholders that own 5% or more of a company's ordinary shares. Thus, at the request of such shareholders, an Extraordinary General Meeting may be convened, and an independent assessment of property and audit of the JSC's activities can be enforced. The protection of the rights of minority shareholders of limited and additional liability companies (LLCs / ALCs) has also been strengthened. In particular, the Law stipulates that the agenda of the General Meeting must include issues submitted by the company's participants (shareholders) who collectively own 5% or more of the authorised capital. According to the amendments to the Economic Procedural Code introduced by the Law, such minority shareholders have the right to file a claim for damages caused by the company's officials.

05

Cancellation of requirements regarding the position of the auditor (audit commission) in a JSC

The Law cancels the requirement for the existence of an audit commission or an auditor in a JSC.

06

Regulation of the activities of the Corporate Secretary

The Corporate Secretary is an official responsible for the JSC's interaction with shareholders and investors; the coordination of the JSC's actions to protect the rights and interests of shareholders; maintaining the effective work of the Board of Directors and Supervisory Board; and other functions determined by law and the charter of the JSC. Its involvement is mandatory in public JSCs ("PJSCs"), JSCs of public interest, and JSCs with 1,000 or more shareholders/owners of ordinary shares.

07

Regulation of the liability of JSC officials

The Law details the liability of JSC officials, establishes a mechanism for reimbursement of losses caused by them, defines restrictions on holding positions in JSCs, and establishes the possibility of early termination of the powers of officials in case of damages caused by them.

08

Strengthening corporate governance in PJSCs and JSCs, where the state share is 50% or higher

For PJSCs and JSCs with a state shareholding of 50% or higher, the Law establishes the obligation to create committees of the Supervisory Board to oversee the appointment, remuneration, and audit functions of the company. At the same time, one-third of a PJSC's Supervisory Board should consist of not less than two independent directors. In JSCs where the state share is 50% or higher, independent directors must be the majority of all members of the Supervisory Board.

09

The possibility to record shares in LLCs / ALCs in the accounting system of the Central Depository

The General Meeting of the company's participants can decide to record the company's shares in the accounting system of shares maintained by the Central Depository in the manner established by the National Securities and Stock Market Commission.



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