МАТЕРІАЛИ ДЛЯ САМОСТІЙНОЇ РОБОТИ

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LECTURE COURSE OF CORPORATE LAW LECTURE 3. FEATURES OF LEGAL STATUS OF CERTAIN TYPES OF CORPORATIONS

For centuries the optimal ways of attracting and retaining capital were evolving; they incorporated in various legal forms known as companies and corporations.

A joint-stock company is one of the types of economic societies; its statutory capital is divided into a certain number of shares of equal nominal value, the corporate rights of which are confirmed by the shares. Joint-stock companies are divided by their type into public joint-stock companies and private joint-stock companies.

The peculiarities of the joint-stock company result from the definition; they define the special character of its legal status:

- it is an economic organization of corporate type, a variety of economic entity;
- it belongs to companies being associations of capital, in which the property elements dominate the personal ones (in order to participate in a joint-stock company it is sufficient to make a property contribution: to pay a share, and a personal participation (working) in the management of the company is usually is optional);
- the statutory capital of the company has a shared nature, it is formed by issuing and selling shares to individuals and/or entities;
- it has a public status of issuer of securities (shares, bonds), it is a legal person which, in its own name, issues shares and agrees to fulfill the liabilities resulting from the conditions of their issue;
- individuals and entities who purchase the shares of joint stock companies, receive the status of shareholders whose rights and liabilities are stipulated by law;
- a special feature of the joint-stock company is the limited liability of its shareholders:

they are responsible for the company's liabilities only to the extent of their shares.

Positive and negative features of joint stock companies

Joint stock companies have gained significant popularity because of their positive features. However, these companies have many negative features which require state regulation in order to reduce hazardous displays of such features to the public.

Positive features of JSC include:

- an ease of creation of a significant capital;
- limited risk of a shareholder within the amount paid for the shares, which favors the attraction of significant number of members (shareholders) and concentration of capitals;
- stability of JSC's property base, as it usually does not affected by withdrawal of a shareholder (this is done by alienation of shares to other persons which does not lead to a decrease of the company's property base);
- non-obligatory personal participation of shareholders in the activity of a JSC, which facilitates membership in it and thus attracts new shareholders and their funds;
- an ability to involve large masses of people into membership in open-type JSCs and accordingly, profit distribution between them;
- applicability in different fields of the economy (banking, insurance, investment, industry, agriculture, transportation, etc.) and in all economy sectors: state, municipal, private, as well as creation of mixed-type JSCs;
- utilization of JSC form in the process of deregulation and privatization;

 an ability to control JSC via ownership of controlling interest (for a strategic investor) without spending funds on the purchase of all shares.

Negative features of JSCs:

- complexity and duration (especially for public JSC) of creation;
- significant requirements for minimal statutory fund and complexity of change of this fund:
- ignoring the interests of the minority;
- an ability to form an executive body of employees and non-obligatory requirement of personal participation by shareholders results in alienation of the latter from the management of the JSC;
- complexity of JSC management and control on its executive body on the part of the shareholders due to the presence of a system of bodies: general meetings of shareholders, the board, the supervisory board, the audit committee:
- an ability of abuse on the part of the founders in connection with an ease of accumulating the funds;
- attraction to monopoly;
- an ability to control the JSC via ownership of controlling interest, if such control is exercised to the detriment of the JSC and its shareholders;
- a significant degree of government regulation of the company.

Types of joint stock companies

Depending on the method of creation and the order of alienation of shares, the JSCs are traditionally divided into two main types: public and private joint-stock companies, each having their own characteristics. In particular, public and private JSCs are differentiated by:

- the order of allocation of shares (in public ones, through subscriptions and free sale on the stock market; in private ones, by allocating among the founders);
- the order of movement of members (in public joint stock companies it is free, in private ones it is somewhat limited because the shares of such company are not sold/bought on the stock exchange);
- the types of shares issued by these companies (PJSC may issue both registered shares and bearer shares, while the private one, only registered shares);
- the order of creation (in public JSC it is quite difficult due to allocation of shares among obviously indefinite

- number of persons by subscription, and, consequently, by the stages not typical for private JSC: registering information about the shares (published), announcement of subscription, procedure of subscription, solving, at the founding meeting, issues related to the results of the subscription);
- the list of issues required for consideration at the founding meeting (in a public jointstock company it is more significant due to the results of the subscription for the shares of a public joint-stock company);
- the amount of liabilities and responsibilities
 of the founders: the founders of public joint
 stock companies have more significant
 ones due to the subscription for the
 shares (a liability to return to the persons
 who subscribed for the shares the amount
 they paid, if creation of a public joint-stock
 company did not occur).

A limited liability company is a company with a statutory capital divided into shares the size of which is determined by the constituent documents.

The maximal number of members of a limited liability company can reach 100 persons.

Members of the company are responsible within their contributions.

Constituent documents of a limited liability company shall include information on the size of the share of each member, the size, composition and procedure of making contributions, the amount and procedure of formation of the reserve fund, the order of transfer of shares in the statutory capital.

The statutory capital of a limited liability company shall be paid by the members before the end of the first year from the date of state registration.

A member of a limited liability company is entitled to sell or otherwise cede his share (its part) in the statutory capital to one or more members of this company.

Alienation of a member's share (its part) in the limited liability company to third parties is allowed, unless otherwise provided by the company's articles.

The company's members enjoy the preemptive right to purchase shares (a part thereof) from a member in proportion to the size of their shares, if the company's articles or an agreement between the parties does not foresee another order of exercising this right. Purchase is made at the price and on the terms on which the share (a part thereof) was offered for sale to third parties. If the company's members do not exercise their preferential right within one month after the notice of intention to sell the member's share (a part thereof) or within such other period specified by the company's articles or

an agreement between the parties, the share (its part) may be alienated to a third party.

Upon withdrawal of a member from a limited liability company, he is paid the value of the part of the company's property in proportion to his share in the statutory capital.

Upon reorganization of a legal entity, a member of the company or in connection with the death of a member, his successors (heirs) have the preferential right to join this company.

The supreme body of a limited liability company is the general meeting of members. It consists of its members or their designated representatives.

The general meeting of members of a limited liability company shall be convened at least twice a year, unless otherwise stipulated by the constituent documents.

Limited liability company shall create an executive body: collegial (board) or sole (director). The board shall be headed by the general director. Members of the executive body may also be persons who are not members of the company.

Control on the activity if the Board of Directors (Director) of a limited liability company shall be carried out by the Audit Committee formed by the general meeting of members from the members, in the amount provided for by the constituent documents, but at least of 3 people.

One of the types of economic entities having a status of private law legal entity is a company with additional liability. A company with additional liability is a company whose statutory (share) capital is divided into shares the size of which is determined by the constituent documents. Members of such company are liable for its debts with their contributions to the statutory (share) capital and upon an insufficiency of these amounts – with the property additionally owned by them in the same proportion to the amount of the contribution of each member.

The limiting scope of liability of the members is defined in the constituent documents.

A full company is a company in which all members are engaged in joint business activities and are severally liable for the liabilities by all their property. A full company, along with a commandite company, belongs to companies being associations of persons.

The constituent document of a full company is the founding treaty.

The name of a full company shall contain the names (designations) of all its members, the words "full company" or the name (designations) of one or more members with the addition of the words "and company" and the words "full company". Absence of

such information is the ground for denial of its state registration.

The number of members of a full company is not limited by law.

A commandite company is a company in which, together with one or more members engaged in business on behalf of the company and responsible for the company's liabilities by all their property, there is one or more members whose responsibility is limited to his contribution to the property of the company (investors) and who do not participate in the company's activity.

The name of a commandite company shall contain the names (designations) of all its full members, the words «commandite company» or the name (designations) of at least one of its full members with the addition of the words «and company» and the words «commandite company».

The founding treaty of a commandite company should include the size of the shares of each member with full responsibility, the size, composition and procedure of making contributions, the form of their membership in the company's affairs.

The founding treaty, as to the contributors, specifies only the total amount of shares in the company's property, as well as the size, composition and procedure of making contributions.

The contributor may join a commandite company by making monetary or material contribution.

Management of the commandite company shall be is only done by the members with full liability.

Profits and losses of the commandite company shall be allocated between the parties, as a rule, in proportion to their shares in the shared capital.

A commandite company, except for reasons common to all legal persons, shall be also terminated in case of withdrawal of all members with full liability.

The features of the legal status of consumer and production cooperatives are due to a set of the following attributes: the legal regime of the property of the cooperative; creation of a cooperative based on membership; objects of title of the cooperative's members; property and non-property rights of the cooperative's members, the scope of liability of the cooperative's members towards the cooperative's liabilities.

A production cooperative is a cooperative formed by association of individuals for common production or other economic activities on the basis of their obligatory labor participation with the purpose of gaining profit.

A consumer cooperative (consumer company) is a cooperative formed by association of individuals and/or legal entities in order to organize a commercial service, storing of agricultural products,

raw materials, manufacturing of products and rendering other services to meet consumer needs of its members.

The given definitions of production and provide consumer cooperatives grounds distinguish the features under which they differ: the scope of economic activity, association of individuals in production cooperatives and associations of individuals and/or entities in consumer cooperatives; different purpose of activities, because the production cooperatives are created for profit and consumer cooperatives are created to meet consumer needs of their members. The main difference between these cooperatives is the belonging of the first ones to business entities, and the belonging of the others to non-business entities (Art. 84, 86 of the Civil Code).

Unlike other types of corporations, such as economic entities which create a statutory fund, the consumer and production cooperatives are characterized by the formation of an undivided and mutual funds.

The Law of Ukraine *On Cooperation* contains two concepts of mutual fund: the fund formed with equity contributions of the cooperative's members upon creating the cooperative (Art. 2), the property of the cooperative formed by the shares (including additional ones) of the members and associate members (Art. 20).

However, consumer and production cooperatives, besides the mutual fund, also have an indivisible fund, which is an obligatory fund formed by entrance fees and deductions from the income of the cooperative and is not subject to distribution among the shareholders.

The Law of Ukraine On Cooperation, besides the indivisible and mutual funds, foresees the creation in the cooperative of other funds, namely: the special fund, the reserve fund. The purpose of the reserve fund is to provide cover for possible losses (damage) of the company; the special fund's purpose is not clearly defined, it is only mentioned that it shall be used upon the decision of the management bodies.

Consumer and production cooperatives are created on the basis of membership.

The procedure of joining consumer and production cooperatives can be divided into several stages: 1) submission of a written application, making the contribution and share in the manner and amount defined by articles; 2) decision of the executive body on the member's admission to the cooperative; 3) approval of this decision by the general meeting.

Membership in consumer and production cooperatives is due to the origination of title to a share.

A share is property contribution of the member for the creation and development of the cooperative, which shall be effected by transfer of the property to the cooperative, including money, property and land plots.

Attention should be paid to the character of exercising the right to participate in the management of the cooperative, namely, the right to vote at the general meetings of members. After all, one of the principles of cooperation is the principle of granting to the cooperative's members one vote at the general meeting.

This review provides an opportunity to distinguish the features of the legal status of consumer and production cooperatives. First, the formation in the cooperatives of mutual and indivisible funds, not the statutory fund, as it happens in the economic entities.

Second, creation of a cooperative is not only on the basis of association of property contributions, but also on the basis of membership.

Third, membership in a cooperative results in arousal of title to a share, as opposed to economic entities, where the rights of the members originate from their share, a part in the statutory (shared) capital.

Fourth, a special procedure of exercising the right to participate in the management of the cooperative.