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PUBLIC JOINT STOCK COMPANY AS A FORM OF FUTURE MUNICIPAL STEAMSHIP COMPANIES IN UKRAINE

World economy's globalization high rates of development have led to the growing of importance of the maritime and river transportation. These processes are accompanied by the growing role of water transport as a basis of transport nodal points of Ukraine. Taking into account the geopolitical situation of Ukraine, the level of development of the national economy and foreign economic activity, including the external and internal commodity turnover the urgent needs of the state in sea transportations, the state of political, economic and social relations with other states and marine potential of the state and ability to ensure the implementation and protection of national interests in the Azov and Black seas, Kerch Strait and other parts of the World Ocean, security of maritime boundaries and freedom of the shipping define the most central role for water transport of the country.

Currently in Ukraine the process of improving forms and methods of shipping business goes in order to improve effectiveness of their work, the establishment of competitive principles in all areas of their activity, bringing into accordance with international practice of the procedures on transportation services. The effectiveness of these processes is connected with the necessity of creation of the advanced modern regulatory and legal framework of steamship companies taking into account Ukraine's national interests in increasing goods traffic.

Today's realities, unfortunately, dictate the conclusion that the way out

of the situation surrounding the Navy of Ukraine is possible only if the legislative reform will be continued [11, 479].

For the development of freight traffic among European countries and Asian regions, involving water transport of Ukraine it is required to reform and modernize water transport potential of Ukraine bringing its financial, organizational and legal framework into the line with international standards. Some steps in this regard have already been made. The basic document adopted in this area — "Marine Doctrine of Ukraine up to 2035", approved by the Cabinet of Ministers of Ukraine on October 7, 2009 N 1307 [4]. An important condition for achieving the objectives and implementation of tasks is to develop and implement an effective state maritime policy that will contribute to further strengthening of position of Ukraine as a maritime power, to protect national interests defined in the priorities of the state maritime policy to the basic principles of domestic and foreign policy. A special significance for the preparation and carrying out a reform in the system of Maritime and River Transport of Ukraine will be establishing a legal and regulatory framework which at this stage presupposes a theoretical elaboration by scientists. This was reflected in approving of the topic of scientific research work carried out by the state budget titled "Innovative organizational and legal mechanism of establishment and operation of municipal steamship companies in Ukraine" for the National University "Odessa Law

Academy” for the period 2013–2014. The main purpose of developing the abovementioned research topic is to provide scientific proposals for amendments to the current legislation on the activities of municipal steamship companies in Ukraine as well as receiving, ultimately, the practical result in the form of newly created municipal steamship Company based on the ownership of territorial communities of one or more territorial units [5, 96]. Enter despite the fact that the abovementioned problem is fairly new and is not researched enough it should be noted that scientists of the Department of maritim and customs law of NU “Odessa Law Academy” have managed to explore some aspects of the concept of municipal shipping in Ukraine. Thus, we should mark the following researchers: T. V. Averochkina, L. O. Batanova, E. V. Dodin, S. V. Kivalov, S. O. Kuznetsov, S. G. Levchenko, N. O. Machkur, D. O. Nikischa, V. V. Prokopenko, T. V. Russkikh. Enter the disintegration of the USSR led to a global redistribution of cargo traffic: Soviet Steamship Company as we know used cargo flows that were formed mostly by not economic and political means carrying out transportation to countries which were supported and subsidized by the USSR. Exactly such significance had a huge lighter fleet that was in possession of the Danube Shipping. The next reform of Ukrainian steamship companies such as changes in the legal form into Joint Stock Company with the abandonment of one hundred percent of shares owned by the state did not contribute to the development of water transport. Ukraine did not provide the Steamship Companies with goods, but “provided” with procedures that governed even internal decisions of an enterprise. Ministry of Infrastructure of Ukraine manages steamship companies not by the General Meeting of Shareholders as provided by applicable laws but by applying the Supervisory Board and the issuance of orders of the ministry which is not very clear and from the legal viewpoint — illegal. On the other hand the experience shows that the steamship

company can exist as a state one only in countries with a sufficient level of state exposure. Thus, the state fleet of Venezuela, Cuba, China, North Korea, Russian Federation is successful partially because it has a priority to load both in export and in import direction. Modern Ukrainian steamship companies operate in a competitive market along with private steamship companies which are not burdened with liabilities including taxation.

Among others it has identified a clear understanding of the need to change the form of ownership for Ukrainian steamship companies. Studying an international experience we conclude that in the most countries the steamship companies are in the hands of not central but local governments. Moreover, in the most cases the municipal government reserves to steamship companies a possibility of independent economic activities. Thus at transferring of steamship companies into municipal property some control over the relevant source of income remains of the state without losing strategic importance. For example steamship companies of Germany, New Zealand, Belgium, Singapore and others are in municipal ownership. The state can not be an effective owner. To make domestic steamship companies competitive means to let private capital there. In this case it is appropriate to transform the enterprises into public corporations with the subsequent release of the shares on the world market for investment and the formation of a competitive environment in the maritime industry. As successfully noted by T. Averochkina and T. O. Nikisha this legal form will not only help to revive the old traditions of Ukrainian naval power, to take a step towards the creation of a modern, competitive infrastructure of marine economy of our country but also to provide an opportunity to contribute to the recovery of sea power of Ukraine to everyone who is proud of the former power of the domestic fleet who is concerned about his current situation and who care about the future of Ukraine as a maritime state [5, 98]. Enter in this

As mentioned earlier the supreme body of a Joint Stock Company is a general meeting of shareholders. In the General Meeting all its shareholders may participate regardless of number and class of shares held by them which in its turn allows independent experts in the field of water transport to control steamship companies. Supervisory (Observation) Board can be created among the company shareholders and manage joint stock company in the period between the General Meetings and to regulate and monitor the activities of government. In this case the election of supervisory board members is an exceptional competence of the general meeting of the company.

In the light of creating a new entity that will be the a municipal Steamship Company and considering an appropriate organizational and legal norm it becomes necessary to define the term "shareholder". According to the current legislation, the Art. 4 of the Law of Ukraine "On Joint Stock Companies" shareholders of a company are recognized as an individuals and legal entity as well as the State represented by the body which is authorized to manage State property or a local community as a body authorized to manage municipal property who are the owners of shares.

The most common understanding of a shareholder in scientific literature is that a shareholder is a participant which primarily arises from the law terminology.

For example according to the opinion of O. Vinnyk, a shareholder is a participant of Joint Stock Company, a person who owns a share as the smallest part of an authorized capital of the company which is certified by the share as a security. The ownership of giving it out to the shareholder occurs only after a full payment for it which can stretch over time.

In literature shareholders are also often called members of Joint Stock Company [9, 135]. We think that the use of the term "member" is not closely correct in relation to shareholders because other shareholders' will not actually affect their legal status and it is determined by the

number of shares owned by them. This position is shared by E. O. Sukhanov who notes that open joint stock companies have transformed membership into participation long time ago [8, 60].

It became the custom ages ago not only to attach importance to differences of these concepts but rather consciously identify them. Thus, G. F. Shershenevich asserted that "a shareholder is the one who is a participant of an enterprise with limited liability for all, anyway possesses he shares or interest" [17, 111]. At the same time the possibility of using the term "participant" in relation to a shareholder (or inability to do so) has a fundamental nature. Establishment of one or another approach to this problem determines relationships in which there are shareholder and the joint stock company and leads to difficulties of a practical nature.

If we understand by participants all persons involved in any economic entities including joint stock companies then public officials are not allowed to be shareholders. However, this conclusion is hardly grounded because a legislator hadn't bear in mind such restrictions for this category of persons caused by the cessation of the possibility of abuse of them by the understanding of norms of the law. This goal can be achieved by imposing a ban on their entry into the body of joint stock companies and does not apply the possibility to be a shareholder for them.

Unity and differences of Russian and American legal and scientific approaches is interesting. The Russians consider acceptable to talk about the right of a shareholder to participate, and the Americans, in contrast, argue that all references to a shareholder as a participant or a member of the corporation shall be excluded. American doctrine comes from the fact that the main thing for a shareholder is profiting from the shares as dividends or at their sale on the stock market because shareholders virtually excluded from participation in the management of a Joint Stock Company [6, 43].

Ukrainian, Russian and European doctrine attach great importance to

and others in addition to representatives of the local community. They may consider strategic development issues of a municipal Steamship Company that is define a kind of “vector of development”, to determine the strategic direction and to keep implementation in the field of responsibility of the local community. At present state all necessary approval of the ministry still not the best way affecting the attitude of investors. The distribution of functions on governmental and commercial will provide enterprises of nongovernmental forms of ownership exist freely on the market of shipping services.

Thus, the modern concept of creating municipal Steamship in the form of a public joint stock company is recognized purely theoretical but relying on a sufficient set of legal tools available in the country and forms for its implementation provides opportunities for realization of the project. Public relations of our country are made so that possibility of existence and successful functioning of municipal Steamship in the form of public joint stock companies is determined real.

Keywords: municipal Steamship Company, public joint stock company, legal entity, joint stock company, registered capital, local community, municipal sector entities.

У статті розглядається тематика розробки, впровадження та експлуатації муніципального пароплавання в Україні. У цьому контексті підтримується думка, що оптимальна форма майбутніх публічних судноплавних компаній є публічне акціонерне товариство. Особлива увага приділяється специфіці управління та інвестицій в громадських акціонерних товариств у контексті муніципальних судноплавних компаній. Особлива увага звертається на специфіку управління державними акціонерними товариствами, залучення інвестицій у діяльність публічних компаній — муніципальних пароплавань.

В статье рассматривается тематика разработки, внедрения и эксплуатации муниципального пароплавления в Украине. В этом контексте поддерживается мнение, что оптимальной формой будущих публичных судоходных компаний является публичное акционерное общество. Особое внимание уделяется специфике управления и инвестиций в общественных акционерных обществах в контексте муниципальных судоходных компаний. Особое внимание обращается на специфику управления государственными акционерными обществами, привлечение инвестиций в деятельность публичных компаний — муниципальных пароплавления.

The article examines the topic of development, implementation and operation of municipal Steamship in Ukraine. In this context the view that the optimal shape of future public of shipping companies is a public joint stock company supported. Special attention is paid to the specifics of management and investment in public joint stock companies in the context of municipal shipping companies. Particular attention is drawn to the specifics of the management of public joint stock companies, attracting investment into the activities of public companies in the context of municipal steamship company.

Література

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