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Overview of the Explanatory Notes issued by the Securities and Stock Market State Commission in Respect of Applying Certain Provisions of the Law of Ukraine “On Joint Stock Companies”

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Please find below a brief overview of the Explanatory Notes issued by the Securities and Stock Market State Commission (the “SSMSC”) in respect of certain provisions of the Law of Ukraine “On Joint Stock Companies” (the “JSC Law”), namely:

- Explanatory Note No. 1 “On the Procedure for Applying Part 1 of Article 54 of the JSC Law Regarding the Reelection of the Supervisory Board Chairman of a Joint Stock Company” dated February 23, 2010 (“Explanatory Note No. 1”);
- Explanatory Note No. 3 “On the Procedure for Applying Articles 33 and 52 of the JSC Law Regarding the Competence of the Joint Stock Company’s Bodies on Cancellation of Treasury Shares of the Joint Stock Companies” dated February 23, 2010 (“Explanatory Note No. 3”);
- Explanatory Note No. 4 “On the Procedure for Applying Certain Provisions of the JSC Law Regarding the Election of the Supervisory Board Members of a Joint Stock Company by Cumulative Voting” dated February 23, 2010 (“Explanatory Note No. 4”); and

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- Explanatory Note No. 5 “On the Procedure for Applying Clause 14 of Article 2, Article 35 and part 7 of Article 38 of the JSC Law Regarding the Notification of the General Shareholders Meeting of the Joint Stock Company” dated March 16, 2010 (“Explanatory note No. 5”).

1. Election (reelection) of the Supervisory Board Chairman of a Joint Stock Company

According to a general rule and pursuant to paragraph 2 of part 1 of Article 54 of the JSC Law, the election (reelection) of the Supervisory Board Chairman of a Joint Stock Company (the “JSC”) shall refer to the competence of the Supervisory Board, which may reelect its Chairman at any time.

The JSC’s Charter may, however, refer the election (reelection) of the Chairman to the exclusive competence of the General Shareholders Meeting of the JSC.

According to Explanatory Note No. 1, the Supervisory Board shall have the right to reelect its Chairman at any time, unless the election (reelection) of the JSC’s Chairman is reserved by the JSC’s Charter with the exclusive competence of the General Shareholders Meeting.

2. Adoption of a resolution on cancellation of JSC’s treasury shares

Explanatory Note No. 3 states that Articles 33 and 52 of the JSC Law are in a conflict as they refer a treasury shares’ cancellation to the exclusive competence of the JSC’s General Shareholders Meeting (Article 33 of the JSC Law) and the JSC’s Supervisory Board (Article 52 of the JSC Law) simultaneously.

Pursuant to part 1 of Article 66 of the JSC Law JSC shall have the right to redeem the shares from the shareholders by a resolution of the General Shareholders Meeting and requires that the General Shareholders Meeting also resolve on the JSC’s actions in respect of the treasury shares, namely, regarding their cancellation or sale.

The cancellation of the JSC’s shares redeemed by the JSC itself entails either:

1. decrease of the JSC’s share capital due to the reduction in the total number of shares, or
2. increase in the par value of one share without any change in the share capital.

Any of the consequences of JSC’s share redemption mentioned above shall result in amendments to the JSC’s Charter, which is reserved to the exclusive competence of the JSC’s General Shareholders Meeting.

Therefore, the adoption of a resolution to cancel the treasury shares by the JSC’s Supervisory Board (provided that this issue refers to its competence) without the General Shareholders’ Meeting approving any amendments to the JSC’s Charter does not entail any legal consequences.



The General Shareholders' Meeting as a supreme body of the JSC may resolve on the cancellation of the treasury shares notwithstanding the decision of the Supervisory Board.

Thus, given the Article 66 of the JSC Law it is recommended to reserve the cancellation of the JSC's treasury shares to the competence of the General Shareholders' Meeting as it approves any amendments related to the JSC's Charter.

3. Cumulative voting procedure under the JSC Law

Pursuant to clause 9 of Article 2 of JSC Law, cumulative voting is casting of votes so that a shareholder's votes are calculated as multiplied by a number of members to be elected to the relevant JSC's body and such shareholder is entitled to cast all such cumulated votes for one nominee or split the votes between multiple nominees.

Paragraph 1 of part 3 of Article 53, paragraph 3 of part 1 of Article 73 of the JSC Law provide for a mandatory cumulative voting procedure when electing the members of the Supervisory Board and the Audit Commission of a public JSC.

Explanatory Note No. 4 was needed due to current wording of part 4 of Article 42 of the JSC Law, which provides that the nominees who received the largest number of votes among those who received more than 50 percent of votes shall be deemed elected to the JSC's body.

Considering the cumulative voting peculiarities, the SSMSC issued the following explanations in respect of the application of the above-mentioned provisions of the JSC Law.

Cumulative voting procedure

The members of the Supervisory Board of public JSCs may be elected by cumulative voting only and those of private JSCs – in cases when the foregoing procedure of Supervisory Board members' election is contemplated by private JSC Charter.

The requirements of part 4 of Article 42 of JSC Law providing nominees received the largest number of votes among those who received more than 50 percent of votes are deemed elected to JSC's body and shall be applied in case of election of the members of JSC's Supervisory Board, unless JSC's Supervisory Board members are elected via cumulative voting.

Therefore, upon cumulative voting procedure as provided by JSC Law and/or JSC's Charter, the said 50% threshold shall not apply. Should JSC's Supervisory Board members be elected by cumulative voting, nominees casted by majority of shareholders' votes shall be deemed elected to the Supervisory Board.

When the general meeting takes decision to establish the Supervisory Board and elect members of the Supervisory Board, a shareholder shall be entitled to suggest indefinite number of



nominees to be elected to the JSC's Supervisory Board as the JSC's General Meeting did not define a quantitative composition of the Supervisory Board. The nominations made by the shareholders are taken into consideration via including the nominees to the general list of potential members to the JSC's Supervisory Board.

Shall JSC's General Shareholders Meeting take decision to re-elect members of the Supervisory Board and resolve issues related to election of its members, the shareholders may propose new nominations, subject to the restrictions contained in paragraph 1 of Article 38 of JSC Law (in amount which may not exceed the number of JSC's Supervisory Board).

Voting

The shareholder may cast for a nominee by an integral number of votes only; the shareholders' votes are indivisible for the purposes of cumulative voting.

Using bulletins upon cumulative voting

In public JSCs cumulative voting is carried out by using voting bulletins only. In private JSCs, the cumulative voting is carried out either by using voting bulletins or in any other applicable manner enabling to reflect results of the voting and confirm them after shareholders' meeting.

In the minutes of Shareholders' Meeting in the part related to the results of the Supervisory Board member's election by cumulative voting, it is impossible to indicate a number of «pros», «contras» or «abstained» votes. For this purpose, the minutes should envisage a general list of nominees and a number of votes casted for each of them.

Consequences of incorrect distribution of votes by a shareholder upon cumulative voting

- Upon cumulative voting members of JSC's Supervisory Board are deemed elected and the Supervisory Board is deemed formed only if the full composition is elected (i.e. all JSC's Supervisory Board members are elected).
- If a number of shareholder's (his/her proxy) votes casted for a nominee (nominees) is more than the number of votes such shareholder has in the cumulative voting, such shareholder's votes are ignored while the votes calculation.
- Only casted votes are taken into account if the shareholder did not distribute all his / her votes among the nominees.
- If as a result of cumulative voting a number of Supervisory Board nominees voted for is less than required Supervisory Board members amount, decision following results of such cumulative voting is deemed to be failed and Supervisory Board deemed as not formed.

- If two or more nominees receive an equal number of votes and, as a result, a number of the nominees elected to the Supervisory Board is more than required, a decision following results of such cumulative voting is deemed to be failed, and Supervisory Board is deemed as not formed according to JSC Law.

Reelecting Supervisory Board members elected by cumulative voting

If the Supervisory Board member elected by cumulative voting procedure resigned earlier, the re-election of the new Supervisory Board member shall be done through the election of the entire composition of the Supervisory Board by cumulative voting.

4. Giving notices to the shareholders of general meetings

According to para 14 of clause 1 of Article 2 of the JSC Law, the notices to shareholders shall be made by registered mail with the return receipt and the enclosures list.

In accordance with Explanatory Note No. 5, JSC's Charter shall obligatory specify method of giving notices to the shareholders about the JSC's general meeting, its agenda and amendments thereto.

The said manner provided in JSC's Charter should be equal for all of JSC's shareholders and include at least sending written notices to shareholders' locations (places of residence) by post.

JSC's Charter may provide for the additional ways of JSC's shareholders notification as well.

Therefore, SSMSC has explained that the manner of shareholders notification on JSC's general meeting, its agenda and amendments thereto may vary from the method set out in clause 14 of Article 2 of the JSC Law and, thus, done by a regular mail with no return receipt and the enclosures list.

Should you need any additional information in relation to this Newsletter, please feel free to contact



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