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SHAREHOLDER RIGHTS, EQUITABLE TREATMENT AND THE ROLE OF THE STATE

*Registration of shareholders at general meeting: problems and
violations of shareholders' rights*

By

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Process of successful fulfilment of economic plans at every enterprise with joint-stock form of ownership directly depends on both level of legislation development and level of corporate culture.

Almost 36 thousand of Ukrainian joint-stock companies, among them 12 thousand of public companies, belong to 20 million of owners- individuals and legal entities. Majority of them are citizens of Ukraine which became owners of industrial enterprises in the process of mass privatisation.

According to statistical data of last year UAH 21,921 billion were actually attracted by enterprises through mechanism of corporate securities issues.

In 2001 Securities and Stock Market State Commission registered corporate bond issues for the amount of UAH 694,32 million, which exceeds total amount of bond issues in the previous years more then two times (in 1996-2000 amount of corporate bond emissions totalled UAH 339,515 million)

During 2001 the volume of transactions concluded at organised securities market comprises UAH 7 510,976 million, which is by UAH 4 690,478 million more then in the previous year.

Totally the volume of securities transactions on stock market reached the record level - UAH 68,5 billion.

Legal relationship between company management and shareholders in Ukraine are regulated by Civil Code, Law «On Enterprises in Ukraine», Law «On business associations», legislation on privatisation, Decrees of President of Ukraine, regulations of SSMSC, specifically, Regulation On control of registration of shareholders for participation in general meeting of joint-stock companies, approved by SSMSC Resolution of 23.12.1998 #199 with amendments approved by SSMSC Resolution of 6.11.2001 #333 etc.

According to Article 41 of Law of Ukraine «On Business Associations» the highest body of joint-stock company is general meeting of shareholders. This article sets up procedure of registration of shareholders for participation in general meeting.

According to Article 41 of Law of Ukraine «On business associations», registration of shareholders participating in general meeting is carried out with indication of amount of votes which belong to every participant. Registration of shareholders which arrived to participate in general meeting is executed accordingly to shareholders registry on the day when general

meeting is held by executive body of joint-stock company or registrar according to the agreement concluded with him.

This is necessarily to admit, that according to above mentioned law shareholders which own together more than 10% of votes and Securities and Stock Market State Commission (Central and territorial offices) can appoint their representatives to control registration of shareholders participating in general meeting and should inform executive body of joint-stock company about that.

Given that majority of claims - 32% of total amount, received by Commission from individuals and legal entities concerns activity of joint-stock companies, one of efficient method for protection of shareholders rights is providing, by State, control over registration of shareholders participating in general meeting; to take appropriate sanctions in case when violation of legislation is revealed .

In 2001 Securities and Stock Market State Commission executed control over registration of shareholders participating in 242 general meetings. (in 2000 - 260; in 1999 - 156).

By results of monitoring of compliance with legislative norms carried out one can determine typical violations on the stage of registration of shareholders participating in general meetings, namely:

- registration of shareholders without registry of holders of registered securities of company;
- shareholders registry made up not to the date of general meeting;
- registration of shareholders without submission of identification documents and share certificates (extracts of the securities account).

Examples:

1. By results of scheduled inspection of activities of CJSC CIF «Svityaz-invest» it was revealed that the company violated Article 43 of Law of Ukraine «On business associations» in the regard with providing general information about conducting general meeting of shareholders on 26.04.2001 in the official edition of SSMSC -newspaper «Visnyk. Tsinni papery» 30.03.2001. and in local press by the location of the company newspaper «Ridne Prybyzga»- 29.03.2001 - less than 45 days prior convening of general meeting.
2. By results of unscheduled inspection of activities of OJSC «Lazurnyi» it was revealed that the company violated Article 43 of Law of Ukraine «On business associations», specifically, failed to print general notification about holding of general meetings, which took place on 6.05.98, 5.01.99, 21.11.2000. in local press by location of company and in one of official prints of Verhovna Rada of Ukraine, Cabinet of Ministers of Ukraine or Securities and Stock Market State Commission with information about time and place of holding general meeting and its agenda.
3. By results of inspection of CJSC «VOZKO» violations were revealed concerning registration of shareholders' representatives, for general meeting, based on powers of attorney which were drawn up with violations of requirements of Article 41 of Law of Ukraine «On business associations» and Article 65 of Civil Code of Ukraine.
4. By results of inspection of CJSC «Plant «Avangard»» it was revealed that registration of company shareholders for participation in general meeting was executing on the ground of shareholders registry drawn up not to the date of holding general meeting - that is violation of Article 41 of Law of Ukraine «On business associations».
5. By results of control executed of shareholders registration participating in general meeting of OJSC «Institute (Centre) of transport problems» it was revealed that company's registrar didn't provide shareholders registry for registration procedure in this connection registration was

carried out only on the ground of submitted share certificates and passports - that is violation of Article 41 of Law of Ukraine «On business associations».

Development of market relationship system in Ukraine and economic growth are impossible without establishment of corporate sector of economy. Corporate governance practice in Ukraine should foster co-ordination of interests of shareholders and governing body of joint-stock company (selected an appointed) and correspond to generally employed international standards.

Besides realisation of Decree of President of Ukraine «On additional measures regarding development of stock market of Ukraine», which approved Principal directions of development of stock market of Ukraine on 2001-2005, this is necessarily to adopt Law of Ukraine «On joint-stock companies».

Draft Law of Ukraine «On joint-stock companies», in contrast to active Law of Ukraine «On business associations» regulates in detail relationship between shareholders and governing body of joint-stock company. By this draft the procedure of shareholders registration will be developed.

Securities and Stock Market State Commission will undertake farther all possible efforts to support the process of improvement of active legislation, provide understanding and due application of the best practice of securities markets regulation, corporate activities and corporate governance in Ukraine.