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Ukraine Continues Development of Securities Regulations: New Rules for Issuers and Investors

On 11 June 2009 Ukraine's parliament adopted the Law of Ukraine "On Amendment of the Law of Ukraine 'On Securities and Stock Market' With Respect to Some Rules Applicable to Issuers and Investors" (the Securities Amendment), which went into effect on 30 October 2009.

The Securities Amendment was adopted mainly to bring the "On Securities and Stock Market" law in compliance with the Joint Stock Company Law (2008). In addition, the Securities Amendment introduces important rules applicable to issuers and investors in Ukraine's securities market. The Securities Amendment (i) limits the number of potential investors who may be solicited during private placements of joint stock company (JSC) shares, (ii) introduces grounds for termination of a shares subscription and (iii) establishes a requirement to convert shares into either paper or electronic form by 30 October 2010.

1. Maximum Number of Potential Investors During Private Placements

The Securities Amendment limits the number of potential investors who may be directly solicited to buy shares during private placement of a private JSC to 100 persons, who must be determined in advance. In addition to 100 new persons, all existing shareholders may be solicited during the private placement of a

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public JSC's shares.

2. Termination of Shares Subscription; Consequences and Penalties

The Securities Amendment introduces the following grounds for termination of a shares subscription:

- The Ukraine Securities and Stock Market State Commission (SSMSC) invalidates the issuance of shares;
- The JSC does not approve the results of the shares placement within 60 days after its completion; or
- Shareholders do not amend the JSC's statutes to reflect the increase of the JSC's charter capital. Ukraine law does not establish any deadline for when a company must amend its statutes. Therefore, termination of a shares subscription on this ground is not likely until the deadline is established by law or the SSMSC.

The Securities Amendment further provides that, no later than six months after any of these events occur, the JSC must return to shares subscribers the money, property or proprietary rights they paid as a subscription fee. In turn, subscribers must return to the JSC any share certificates they received.

If the JSC or subscriber breaches these obligations, they will be subject to a penalty equal to double the discount rate of the National Bank of Ukraine (currently, 10.25 percent per annum). However, this penalty provision is quite general and the procedure for its application needs to be further clarified by the SSMSC.

3. Electronic Shares

The Securities Amendment requires all JSCs with both paper and electronic shares to convert them to one form by 30 October 2010. In addition, the Securities Amendment restates the Joint Stock Company Law provision that, starting from 29 October 2010 (i.e., one day earlier than the previous deadline), all shares must be only electronic.

From a practical point of view, the almost simultaneous deadlines mean that before 29 October 2010 all shares must be converted into electronic format. Conversion from electronic to paper format would be unreasonable (unless there were a strong need to do this) because by 29 October 2010 all shares would have to be converted

back to electronic.

Conversion of shares from paper to electronic format is quite complex and protracted, taking approximately two to three months. To meet the 29 October 2010 deadline, a JSC should start the share conversion process no later than June 2010. Due to the SSMSC's exacting approach, all documents required for conversion should be carefully drafted and all deadlines should be met. Otherwise, the SSMSC may delay conversion of shares and a JSC may be subject to administrative penalties for violation of the securities regulations.

To convert shares from paper into electronic format, the following steps must be taken:

1. The General Shareholders Meeting decides to convert shares from paper to electronic.
2. No later than 10 days after the conversion decision date, the JSC publishes an announcement about the decision in one of the SSMSC's official publications and informs all shareholders who own shares subject to conversion.
3. The JSC applies to the SSMSC and, no later than 30 days after the conversion decision date, changes the certificate of registration of paper shares to a certificate of registration of electronic shares.
4. The JSC determines the date when the shareholder register will be terminated.
5. No later than 10 days before the shareholder register termination date, the JSC concludes (i) an agreement with a licensed depository for servicing the issuance of electronic shares and (ii) an agreement with a licensed custodian for opening securities accounts for owners of shares subject to conversion.
6. On the shareholder register termination date, the shareholder register is transferred to the custodian.
7. The JSC prepares a global certificate of shares subject to conversion and deposits it with the depository, which then generates the electronic shares.
8. After the electronic shares are generated, the JSC instructs the depository to transfer the shares to

accounts of the JSC and the custodian and instructs the custodian to credit shares to the shareholders' securities accounts.

If you have questions about the Securities Amendment, please contact your principal Squire Sanders lawyer or one of the lawyers listed in this Alert.



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