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CREATION OF LEGISLATION ON MERGERS AND ACQUISITIONS AND PROPOSALS FOR ACQUISITIONS IN UKRAINE BASED ON EUROPEAN MODELS

Further improvement of the legislation on the fight against raiders and its negative consequences, including standards for judicial protection against raiding, should take place by borrowing the best legal regulations of different countries, which can be implemented in our country and optimizing government policies on fight against raiding.

In Ukrainian legislation issues of mergers are fragmentary consolidated in paragraphs 2-5 of Art. 107 of the Civil Code, paragraphs 1-3 of Art. 59 of the Commercial Code and in the Procedure for issuance and registration of shares of joint stock companies created by the merger, division, separation or transformation, or in relation to which the accession is applied. However, objectively, the institution of mergers should be regulated by a separate legal act, given the importance of this phenomenon for the economy and the possibility of using the institution for corporate raids.

Thus, based on the rule-making practices of the EU on this issue, it should be noted that the main provisions of the law "On Mergers" should be:

1) determination of the ways to merge;

2) creditors, including bondholders and those with other debt claims for the companies participating in the merger

shall be protected to avoid breach of their interests;

3) protection of shareholders' rights;

4) publicity of information about the merger. For information about merging company must be published, which makes the acquisition of enterprise objectives;

5) the impact of the merger. The merger should lead to the following consequences: transfer of all rights and obligations of the acquired company to the acquiring company; acquisition by the shareholders of the acquired company, of the status of shareholders of the company implementing the acquisition; dissolution of the company being acquired;

6) declaration of procedure of merger invalid.

It seems expedient to create special Law of Ukraine "On Acquisition and Take-Over Offers", which would be developed within the process of adapting existing legislation of our country to EU law. That is why, for the example of creation of such act, first of all, it is necessary to consider the rules of the Thirteenth Directive (Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids), which govern the rules applicable to the acquisition of companies by offering the purchase of shares.

Thus, this law in the first place should define the concept of acquisition, which, given the European practice, should be understood as the public offer made to all holders of securities to purchase some or all of these securities, mandatory or voluntary, that supposes or is intended to gain control of the company absorbed in accordance with current legislation.

Also, the law “On Acquisition and Take-Over Offers” should regulate the issue of termination of the offer, review of the offer, competition of offers; reporting results of the offer.

Thus, summing up all the above, it should be noted that inclusion in current

corporate law of developments concerning the detailed regulation of mergers and acquisitions of companies or passing of a special law regulating these issues is justified trend in the economy and the fight against raiding. Thus, the development and adoption of legal acts regulating a legal question of raiding and forbidding illegal mergers and acquisitions, namely the development and adoption of the Laws of Ukraine “On Mergers” and “On Acquisition and Take-Over Offers”. Codification of developed standards into a special codified legal act – the Code on Mergers and Acquisitions – seems expedient as well.