

**MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
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**CIVIL-LEGAL MODEL OF JOINT STOCK COMPANIES OF UKRAINE
IN TERMS OF EUROPEAN INTEGRATION AND GLOBALIZATION: A
COMPARATIVE LEGAL ANALYSIS OF THE LEGISLATION IN
UKRAINE, GERMANY AND CHINA**

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Abstract

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GENERAL DESCRIPTION OF THE DISSERTATION

Actuality of the theme. One of the priorities of the state policy of Ukraine is the gradual integration with the EU and the creation of a modern legal system in the country. Accordingly, it is required of the state to provide with elaboration of common approaches to the legislative drafting and mandatory consideration of the demands contained the EU legislation. One of the important areas in the process of the adaptation of Ukrainian legislation to the EU acquis is the introduction and elaboration of the efficient rules and methods in the legislation on joint stock companies (hereinafter – JSC) as it is determined by the Association Agreement. Certain issues, that should be considered and adjusted in the domestic law of Ukraine as outlined by this Agreement (articles 378, 387). These are different conceptual approaches in legislations related to the establishment and operation of JSC, as well as models of corporate governance, imperfect legal system in the issue related to the protection of the rights of shareholders and investors, development of small and medium enterprises. Respectively, a model of JSC depends on this, approaches which should comply with the EU law and be brought into their uniform form.

At the methodological level German national legislation was taken to solve these problems with the purpose of comparison and bringing the legislation of Ukraine in compliance with the EU legislation that is related to the legal model of JSC.

It is also important to consider the fact that the economic interests of Ukraine are not only limited to the cooperation with the EU during the elaboration of a legal model of the JSC. Processes of globalization affect every country in the world and require flexibility from the legislation in order to be attractive to foreign investors. In this sense not only legal approaches enshrined in the EU legislations should be taken into account, but also advanced or established and time-tested approaches that exist in other states while considering a legal model of JSC. Chinese legislation is taken for this purpose in order to identify such approaches and assess the possibilities of their borrowing into the legislation of Ukraine.

Therefore, the importance of this research is due to the development of a sustainable legal basis in order to seek new forms of human society in civil relations, subjects to which JSC are. This should be achieved by determining an optimal legal model of the JSC in terms of European integration and globalization. Expansion and diversification of their activities, development and exploration of new and most attractive areas of the development of their operation depends on the level of a legal model, that has its consolidation in acts of civil law.

Analysis of scientific papers on the selected issue gives basis to assert that there is no single scientific approach to the legal model of JSC, including legal comparative studies of their legal nature. The research results of selected Ukrainian scientists related to JSC aspects were unable to find the solutions to all the manifestations of this problem (V. I. Borisova, O. I. Vyhovsky, M. Yu. Zhornokuy, O. R. Kibenko, I. V. Spasibo-Fateeva, B. V. Shuba, O. V. Scherbyna, Yu. Yu Akimenko etc.). With the consideration to the German and Chinese doctrine it should be noticed that certain aspects of this issue were subjects to scientific research of V. Bath, S. Bahter, P. Behrens, U. C. Braendle, D. C. Donald, You Yong Hui, A. Cahn, H. Kötz, Tong Lu, K. Zweigert, Huang Hui, D. Szentkuti, H.-P. Verspray, Chien-Chung Lin, Cui Bei, Chao Xi and others.

The theoretical basis of this study includes scientific works of legal scholars: Yu. Yu. Akimenko, V. Bath, V. I. Borisova, S. M. Bratus, O. I. Vyhovsky, O. M. Vinnyk, Zhang Xiao Hong, I. O. Dzera, Yu. M. Dzera, O. V. Dzera, Wang Jiang Yu, A. S. Dovgert, Yu. M. Zhornokuy, O. S. Iyoffe, T. V. Kasshanina, O. R. Kibenko, D. C. Clarke, N. V. Kozlova, N. S. Kuznetsova, V. V. Lutz,, Liu Yan Wen, R. A. Maydanyk, D. I. Meyer, O. V. Mizkevich, O. A. Pushkin, O. F. Skakun, S. O. Slipchenko, I. V. Spasibo-Fateeva, R. O. Stefanchuk, N. S. Suvorov, Ye. O. Suhanov, V. V. Chevichelov, Ya. M. Shevchenko, O. V. Sherbina, G. F. Shershenevich, O. R. Shyshka, R. B. Shyshka and others.

Therefore, the relevance of the problematic condition outlined, is associated with the necessity to elaborate a theoretical approach to a civil-legal model of JSC in Ukraine in terms of the European integration and globalization and develop deliberate recommendations in order to improve their civil-legal status.

Connection with academic programs, plans, themes. Dissertation was fulfilled in accordance with the plan of research-scientific works at the Department of Civil-Legal Disciplines № 4 at Kharkiv National University of Internal Affairs, paras. 2.8 and 5.29 of the Priority spheres of scientific support of the operation of internal affairs bodies of Ukraine for the 2015-2019 period, approved by the Order of the Ministry of Internal Affairs of Ukraine Number 275 dated 16.03.2015, and paras. 2.5 and 5.10 of the Priority areas of scientific researches of Kharkiv National University of Internal Affairs for the period of 2016-2019, as well as in accordance with topics of scientific-research and research-construction works of Kharkiv National University of Internal Affairs, registered at the Ukrainian University of Scientific-Technical and Economic Information for 2014-2017 (Number of the state registration is ДР0113U008189).

The purpose and objectives of the dissertation. The purpose of the thesis is to theoretically found the civil-legal model in terms of the Euro-

integration and globalization, on the basis of comparative legal analysis of the legislation of Ukraine, Germany and China.

The following main tasks of the research was formulated in accordance with this purpose:

- to establish the problems and define the research methodology of a legal model of JSC;
- to identify features of different models of JSC in the world and discover their specificity;
- to reveal the peculiarities of the models of JSC in Ukraine, Germany and China;
- to clarify the nature and types of JSC in Ukraine, Germany and China;
- to identify features of the legal status of the organs of JSC in accordance with the laws of Ukraine, Germany and China;
- to model a concept of a legal model of a JSC with one shareholder in accordance with the German legislation as the EU member and provide with recommendations for its possible implementation into the legislation of Ukraine;
- to determine the legal status of independent directors in JSC in China and provide with recommendations on the possibility of the implementation of its some elements in the legislation of Ukraine;
- to determine the peculiarities of the protection of JSC interests by the minority shareholders in accordance with the laws of Germany and China and provide recommendations with the possibility of their implementation into the legislation of Ukraine;

The object of the research is civil-legal relations involving JSC.

The subject of the research is a civil-legal model of JSC in Ukraine in terms of the European integration and globalization.

Methods of the research. The methodological basis comprised of general scientific and specifically legal methods of comprehension. A formal-legal method was used for the problem statement and methodology definition related to the research of a legal model of JSC (subsection 1.1). Modeling method was used when modeling and defining a model of JSC (subsections 1.2, 1.3). The comparative legal method was used for the analysis of models of JSC in Ukraine, Germany and China in order to identify their specificity (subsections 1.2, 1.3, 2.1, 2.2, 3.1-3.3) Application of the normative-dogmatic method made it possible to examine the content of legal norms that regulate features of the legal status of organs of JSC and independent directors, specificity of their legal status, protection of the interests of JSC by minority shareholders, as well as functioning of the JSC with one shareholder in accordance with the laws of Germany, Ukraine and the EU (subsections 1.2, 1.3, 3.1-3.3). The historical method was used to determine the development genesis of JSC with one shareholder (subsection 3.1). System-structural method allowed to establish a

place of JSC among other types of legal entities in accordance with the laws of Ukraine, Germany and China (subsection 2.1). Application of analysis and synthesis made it possible to identify the basic elements of the models of JSC in Ukraine, Germany and China, including JSC with one shareholder (subsections 1.3, 3.1-3.2).

Scientific novelty of the results is determined by the fact that the dissertation research is the first in Ukrainian science of civil law, which implements a systematic comparative legal analysis of the legislation of Ukraine to the legislation of Germany and China on the issue of a legal model of JSC, which has resulted in the following provisions submitted for defense:

for the first time:

– the definition of the model of a JSC is given. It is proposed to understand a civil-legal model of a JSC as a logical-intellectual (mind-visual) form, with internal contents filled with systemic-structural elements that have a different legal nature and are interconnected between each other, fulfill a clearly defined purpose and function, help to achieve a common goal for which this model, with its internal elements exists, that can serve as a mean of constructing law and become an integral part of it, in order to perform a specific function, namely, in streamlining, structuring and organizing the external and internal manifestations of a JSC that is a participant of civil relations;

– it is established that the concept of a legal status of a JSC has different legal approaches in each country and depends on the model of corporate governance that at its core may have a one-tier and/or two-tier structure, and have the properties that are peculiar only for a particular model of a JSC. At the same time the externally legal status of JSC usually stays the same in many countries. Accordingly, the model of a legal status of JSC in Ukraine should be considered, taking into account its internal and external manifestations that are interrelated. External manifestation of a legal status of JSC in Ukraine is based on its peculiarities as a participant of civil relations through manifestation (detection) of such elements as: structural-organizational elements (establishment order, registration and liquidation of a JSC; name of a JSC and its location, the internal structure of a JSC, which manifests itself through the legal form of a company); legal personality (legal capacity and capability); designated purpose of a JSC; rights and obligations of a JSC and their guarantees; limits and constraints in the implementation of civil rights and obligations of a JSC; responsibility of a JSC. The internal manifestation of the legal status of a JSC is the basis for the model of a JSC itself, which is revealed through the features of its internal structure, which can be one-tier and / or two-tier, the latter is a direct reflection of the corporate governance model, which organizes and coordinates the activities of the organs of a JSC, defines their competence (rights and duties), and, therefore establishes links between will-expression and will-forming actions of a JSC and its organs inside its structure;

– it is proposed to provide the Ukrainian legislation with such, as an internal structure of a model a JSC as: bodies, namely, the general meeting of shareholders, supervisory board, executive body; and to separately provide for independent directors. This gives a balance to the functions and tasks of the executive body, the supervisory board and the independent directors, and thus can create a supervisory system in a JSC (supervisory board and independent directors), which is a security tool for the efficient operation of the executive board in a JSC;

– it is proposed to establish, in a modern legislation, such a model as an independent director, that is based on independence criteria, and their activities would be based on a professional, impartial and contractual civil-legal basis. It is proposed in order to avoid any connection between an independent director and the company officials, their affiliates, contractors of the company or any other persons who may influence the activity of independent director;

– in order to protect the rights and interests of shareholders it is proposed to strengthen the protection function of civil law within their legal capacity by providing with such a mechanism, the protection of their rights and interests in law, in accordance with which its implementation would include, not only a judicial form of protection, but also a public form of a protection. For this it is proposed to expand the competence of independent directors and to enable minority shareholders to ask them to protect their rights and interests under Ukrainian legislation;

– a model with one shareholder is formed that reflects the features of such a JSC (one shareholder-founder can be part of an executive body and hire other directors simultaneously), to ensure the functioning of a JSC with one shareholder and a successful achievement of the purposes of adaptation of Ukraine's legislation to the EU legislation.

improved:

– legal definition of independent directors in accordance with new legislation would state that an independent director is an individual with capability who is not a member of the executive board and is not an official of the JSC as well as, is not an affiliated person to the JSC, is not associated in any way with other shareholders, chairman and / or members of the supervisory board, the executive board and other officials of a JSC, wasn't an employee of any other JSC during last five years, carries out its duties professionally, independently, impartially and operates in the JSC on a contract civil-legal basis;

– civil-legal status of minority shareholders in terms of their personality. In particular, it is proposed to legally enable a minority shareholder or minority shareholders to apply to the court for the protection of the interests of a JSC. The right to protection of the interests of a JSC can be implemented under the following conditions: 1) he / they were shareholder / shareholders more than 180

days by the moment of the interests a JSC were violated; 2) this / these shareholder / shareholders tried to appoint a general meeting on the issue of the violation of JSC's interests, but such actions had no result; 3) there are facts that confirm the suspicion of damage caused to the JSC in the results of the actions of the organs of the JSC; 4) there is no threat to the economic interests of the JSC.

further development received:

– views of scientists Yu. S. Chikhachev, Yu. M. Umantsiv, M. I. Iorhachovaya related to the definition of a model of corporate governance in Ukraine that is defined as a Ukrainian model due to the fact that it combines a variety of elements of other models that are present in the models of corporate governance of other countries, forming a single unit as a whole, however, it is not repeated because of its elements, structure and other specifics that are characteristic only for Ukraine with reference to the level of business turnover in the country, including economic, political, historical and other factors. On this basis, it is concluded that Ukraine has a segmental-variable approach to a model of a JSC, which basically allows the existence of a one-tier, as well as two-tier structure in a JSC;

– a concept of a JSC with one shareholder. It is determined that the concept of a JSC with one shareholder should be considered as a tool for small and medium businesses, as well as one of the means which allows a JSC to define and expand the boundaries of freedom of entrepreneurial activity that is not prohibited by law. For this purpose, it's important to draw attention to the approach developed by the European lawmakers and the experience of the EU member states, represented by Germany.

The practical significance of the expected scientific results is that the provisions, conclusions and recommendations outlined in the dissertation, can be used in:

– lawmaking – that is to improve the provisions of civil law that regulate civil relationships, the participants of which JSC are (Certificate of the Committee on Construction, Urban Development, Housing and Regional Policy of Supreme Council of Ukraine on the practical implementation of the results of the dissertation was received. Certificate number is 029-120, dated July 09, 2013);

– scientific-research area – as the basis for further scientific and theoretical research on problems of entities in general and JSC in particular;

– law application – for the unification of precedents, resolving disputes arising from the violation of the interests of JSC by their executives;

– study process – while teaching such disciplines as “Civil Law of Ukraine”, “Corporate Law”, “Comparative company law”, “Private International Law”, and in the preparation of methodological recommendations, books, tutorials.

Approbation of the dissertation results. The results of the study were presented and discussed at the international and national Ukrainian conferences, namely: International scientific and practical conference “Actual problems of Modern Jurisprudence” (Kyiv, 2011); International Reading in Memory of Professor P. Ye. Kazanky of the Imperial Novorossiysk University (Odessa, 2011); International scientific-practical conference “Development of the State and Law: the Realities of Today” (Odessa, 2011); International Scientific-Practical Conference “Legal problems of a State Creation and Protection of Human Rights in Ukraine” (Kharkiv, 2011); National Scientific Conference “Strategic Directions of Ukraine’s Legal System” (Lviv, 2012); the Sixth International Scientific Conference “Formation of a State and International Legal Order: a Theoretical and Practical Approach” (Moscow, Russia, 2012); International Scientific Conference “International Conference on European Science and Technology” (Wiesbaden, Germany, 2012); International scientific conference “New International and National Legislation – New Problems of Legal Science” (Kyiv, 2012); the Third International Conference on Law, Language and Discourse (Shanghai, China, 2013); Scientific-Practical Conference “Problems of Civil Law and Procedure”, dedicated to the blessed memory of Alexander Pushkin (Kharkiv, 2016).

Publications. The main results of the dissertation are reflected in eleven articles, that include seven articles that are published in specialized legal journals of Ukraine, and 4 articles published in the foreign legal journals. In addition the results of the research appear in ten theses and reports at the scientific-practical conferences.

The structure of the dissertation. The dissertation consists of an introduction, three sections that include eight subsections, conclusions, list of references and appendices. The whole dissertation is contained in 262 pages, including 180 pages of main text, 37 pages of references (336 items), 45 pages of appendices.

MAIN CONTENTS OF THE DISSERTATION

The Introduction substantiates the relevance of the dissertation topic, describes the relationship between it and academic programs, plans and themes defined goals and objectives, methodology, scientific novelty, covers theoretical and practical significance of the results, provides with information on the approbation of the thesis results.

Section 1. “General methodological bases of the research” consists of three subsections.

Subsection 1.1. "Statement of a problem and methodology of the research". Problem issues and research methodology are defined. It is concluded that the necessity for doing this research and solving practical problems is due to several issue. In particular, these are the following issues: 1) differences in the approach to the definition of such type of a legal entity form as JSC in the legal systems of Germany and China compared with the legal system of Ukraine, whereas JSC are considered as associations in Germany and as companies in China; 2) differences in the approach to the definition of corporate governance models around the world in general, and in Germany and China in particular, 3) differences in the functional content of JSC in the legal systems of Ukraine, Germany and China; 4) imperfection of the current Ukrainian legislation in the determination of JSC with one shareholder; 5) imperfection of the modern Ukrainian legislation regarding to its definition of an independent director; 6) the imperfection of the current legislation regarding legal possibility for minority shareholder or minority shareholders to apply to the court for the protection of the interests of a JSC; 7) imperfection of the current Ukrainian legislation on the establishment of a legal status of JSC with foreign capital.

Such main methods as comparative legal analysis, modeling and method of alternatives were chosen in order to solve the problems and achieve the goal of this scientific document.

There is an analysis of the legal models of JSC in order to identify their specificity in *subsection 1.2. "Models corporations and their specificity"*. It is concluded on the basis of the analysis of various approaches to the definition of the model that a legal model of a JSC is a logical-intellectual (mind-visual) form, with internal contents filled with systemic-structural elements that have a different legal nature and are interconnected between each other, fulfill a clearly defined purpose and function, help to achieve a common goal for which this model, with its internal elements exists, that can serve as a mean of constructing law and become an integral part of it, in order to perform a specific function, namely, in streamlining, structuring and organizing the external and internal manifestations of a JSC that is a participant of civil relations. The aim of its application is in regularizing, structuring, organization of internal and external manifestations of a JSC as a participant of civil relations.

It is concluded that all the models of JSC in the world have a one-tier and/or two-tier structure at their cores. It is a direct reflection of a model of corporate governance; however, of these models each is not repeatable, because it has the properties that are peculiar only for this particular model of a JSC, which defines the differences between the models. Besides which, it is concluded that the model of JSC should be considered with reference to its external and internal manifestations.

Subsection 1.3. “Models of joint stock companies in Ukraine, Germany and China” consists of the analysis of the peculiarities of the models of JSC in Ukraine, Germany and China. The author found that the legal system in Germany, China and Ukraine have various conceptual approaches to the definition of a model of JSC. Thus, the property of a model of JSC in Germany is its two-tier structure, but with a particular feature of the supervisory board, namely, quantity and quality in its composition. As for a model of JSC in China, it is characterized by a segmental approach, which combines some elements of a one-tier and two-tier structure, as well as elements that are peculiar to this model, creating one model as whole. The property of a model of JSC in Ukraine is based on the existence of one-tier and two-tier structure (i.e. properties of variation), which depends on the number of shareholders. In accordance with the abovementioned, it is concluded that there is a segmental-variative approach to the definition of a model of JSC in the Ukrainian legal system. In addition, each of the manifestations of the variability of a model of a JSC has properties that are peculiar only to itself.

Section 2. “Peculiarities of legal model of the company in the Ukraine, Germany and China” consists of two units.

Section 2.1. “Joint-stock companies in Ukraine, Germany and China: the nature and types” analyzes the nature and typology of JSC in these countries. It is found that JSC in Ukraine can be established only in the form of an economic entrepreneurial association, while in Germany JSC is considered as a capital commercial association. The legislation in China (in our perception) defines JSC as a company with national capital (joint stock company with limited liability), that can be defined as a commercial organization in the form of an association. With reference to these, it is concluded that the concept of economic entrepreneurial associations in Ukraine, capital commercial associations in Germany and joint stock companies with limited liability in China are based on different criteria. For Ukraine it’s a profit criterion. For Germany, the latter doesn’t have a significant value, but the subject of the activity matters. In China the criterion is based on the external and / or internal nature of the capital.

On the basis of the analysis of the legislation of Ukraine, Germany and China it is concluded that there is a uniform concept regarding the division of JSC on such types as public and private JSC, however, with certain peculiarities.

In the *subsection 2.2. “Features of the legal status of organs of joint stock companies under the laws of Ukraine, Germany and China”* it is determined by the author that various conceptual approaches to the definition of a legal model of JSC in Ukraine, Germany and China exist, which basically depend on the model of corporate governance of JSC and affect the system of its organs that may have different functions, goals and objectives in accordance with the laws

of these countries.

The common and different features of the organs of JSC are outlined in the result of the analysis of the legislation of Ukraine, Germany and China. It is concluded by the author that executive boards can have the same names in Germany and Ukraine, however, the content of their competence is not equivalent. Then, the legal status of the board of directors in JSC in China is not equivalent to the content of the legal status of the supervisory boards in Ukrainian and German laws. The same conclusion is made in relation to other organs of the JSC that can have the same names, but nonequivalent legal status. It is also concluded that there are various conceptual approaches to the legal status of independent directors in the legislation of Ukraine and China. While in China, independent directors perform their functions and tasks independently from the supervisory board, the independent directors in Ukrainian law are members of the supervisory board, and their criterion of independence is relative.

Section 3. “Some ways of improving legal model of the company in Ukraine” consists of three divisions.

It is concluded in *Section 3.1. “The company of one person: the law of Germany as a member state and the possibility of borrowing in the law of Ukraine”* that “single member company” is a legal concept in the European legal system, which is recently used in legal literature to denote business partnerships with one participant.

A retrospective analysis of the formation of a single person companies in Germany was fulfilled. It was found that its existence is linked to the centralization of capital in the period of the development of capitalist relations; and the idea of a property allotment by a single member is in its basis. Therefore, at present JSC should be considered as an organization that is not only created by the union of individuals or property, but also by a property allotment for a particular purpose.

The author grounded and formed a model of the JSC with one shareholder that reflects the features of the JSC (one shareholder as a founder can be part of the executive body and hire the directors). It is proposed to ensure the functioning of the JSC with one shareholder and successful achievement of the goals of adaptation of the Ukrainian legislation to the EU legislation.

It was established by the author that both in the Ukrainian and German laws this model allows the state to found JSC and to be the only single owner of its property. It is concluded that JSC with a state as a single shareholder should be founded if in this way the state contributes to the development of its national interests, and ensures the safety of individuals and society from external and internal threats in all spheres of life. Also the conclusion is substantiated that approaches to the regulation of the JSC with one shareholder owned by the state and JSC owned by other persons should be different because of their specificity

and the specific nature of the state.

In *Section 3.2. "The legal status of independent directors in joint-China and the possibility of borrowing some of its elements in the legislation of Ukraine"* the legal status of independent directors in the joint-stock company with limited liability in China is examined in order to identify the possibility of implementation of some of its elements in the legislation of Ukraine.

The author concludes that the main role of an independent director in the law of China is in creating a system of checks and balances in order to ensure effective management in the company. It is concluded that it should be implemented into the legislation of Ukraine due to the following reasons: The approach in accordance to which there is a separate operation of independent directors in the structure of Ukrainian JSC will provide a balance of the functions and tasks of the executive body, the supervisory board and the independent directors, and thus it can create such supervisory system (supervisory board and the independent directors), which can be a security tool to effective operation of the executive board in a JSC. In order to avoid any connection is proposed to establish in a modern legislation such a model of an independent director, that it is based on the independence criteria, and their activities would be based on a professional, impartial and contractual civil-legal basis. It is proposed in order to avoid any connection between an independent director and the company officials, their affiliates, contractors of the company or any other persons who may influence the activity of an independent director.

The author provides with the analysis of legislation in Germany and China, which defines protection of the interests of a JSC by the minority shareholders in the *subsection 3.3. "Protecting the interests of a JSC by minority shareholders: the legislation of Germany and China and the possibility of their implementation in the law of Ukraine"* .

Based on the analysis of the precedent in Ukraine and current Ukrainian legislation, it is found that there is an ambiguous approach to the possibility for minorities to apply to a court for the protection of the interests of a JSC. The author of this research addressed this to the legislation of Germany and China in order to solve this problem. As a result on the basis of a comparative legal analysis it is found that both German and Chinese laws contain conditions under which minority shareholders acquire the right to apply to a court for the protection of the interests of a JSC.

It is proposed to legally enable a minority shareholder or minority shareholders to apply to the court for the protection of the interests of a JSC. The right to protection of the interests of a JSC can be implemented under the following conditions: 1) he / they were shareholder / shareholders more than 180 days by the moment of the interests a JSC were violated; 2) this / these shareholder / shareholders tried to appoint a general meeting on the issue of the violation of JSC's interests, but such actions had no result; 3) there are facts that

confirm the suspicion of damage caused to the JSC in the results of the actions of the organs of the JSC; 4) there is no threat to the economic interests of the JSC.

On the basis of the approach in the Chinese legislation it is substantiated to strengthen the protection function of civil law in order to protect the rights and interests of shareholders within their legal capacity by providing such a mechanism of protection of their rights and interests in law, in accordance with which its implementation would include not only a judicial form of protection, but also a public form of protection. For this it is proposed to expand the competence of independent directors and to enable minority shareholders to ask them to protect their rights and interests in the Ukrainian legislation

CONCLUSIONS

This dissertation is devoted to a systematic study of the civil-legal model of joint-stock companies of Ukraine in conditions of European integration and globalization based on the comparative analysis of the legislation of Ukraine, Germany and China. The following main conclusions in the connection with the main scientific and practical results of the dissertation are made:

1. Attention was paid to the importance of substantiating of a poly-variable model of a JSC in Ukraine as a guarantee of investment attraction to the economy of Ukraine, as well as the following problem, other issues should be considered, such as: It is concluded that the necessity for doing this research and solving practical problems is due to several issues. In particular, these are the following issues: 1) differences in the approach to the definition of such type of a legal entity form as JSC in the legal systems of Germany and China compared with the legal system of Ukraine, whereas JSC are considered as associations in Germany and as companies in China; 2) differences in the approach to the definition of corporate governance models around the world in general, and in Germany and China in particular, 3) differences in the functional content of JSC in the legal systems of Ukraine, Germany and China; 4) imperfection of the current Ukrainian legislation in the determination of JSC with one shareholder; 5) imperfection of the modern Ukrainian legislation regarding its definition of an independent director; 6) the imperfection of the current legislation regarding the legal possibility for minority shareholder, or minority shareholders to apply to the court for the protection of the interests of a JSC; 7) imperfection of the current Ukrainian legislation on establishing of a legal status of JSC with foreign capital.

2. It is defined that the civil law model of a joint stock company is a logical-intellectual (mind-visual) form, with internal contents filled with systemic-structural elements that have a different legal nature and are interconnected between each other, fulfill a clearly defined purpose and

function; help to achieve a common goal for which this model, with its internal elements exists, that can serve as a mean of constructing law and become an integral part of it, in order to perform a specific function, namely, in streamlining, structuring and organizing the external and internal manifestations of a JSC that is a participant of civil relations.

3. It is concluded that all the models of JSC in the world have a one-tier and/or two-tier structure at their cores. It is a direct reflection of a model of corporate governance, however, of these models each is not repeatable, because it has the properties that are peculiar only for this particular model of a JSC, what defines differences between the models.

Besides, it is concluded that the model of JSC should be considered with reference to its external and internal manifestations that are interrelated. In this sense, the homogeneity of these models can be determined only by the criterion of its structure. On this basis, it is concluded that the concept of the legal status of JSC in each state has different legal approaches and depends on the model of corporate governance, which basically can have one-tier and / or two-tier structure, but the properties that are characteristic only for a certain model a JSC. In addition, it is concluded the model of the legal status of a JSC should be considered, taking into account its internal and external manifestations that are interrelated.

3. It is concluded that all the models of JSC in the world have a one-tier and/or two-tier structure at their cores. It is a direct reflection of a model of corporate governance, however, of these models each is not repeatable, because they have properties that are peculiar only for this particular model of a JSC, which defines differences between the models. Besides, it is concluded that the model of JSC should be considered with reference to its external and internal manifestations.

4. The author found that the legal system in Germany, China and Ukraine have various conceptual approach to the definition of a model of JSC. Thus, the property of a model of JSC in Germany is its two-tier structure, but with a particular feature of the supervisory board, namely, quantity and quality in its composition. As for a model of JSC in China, it is characterized by a segmental approach, which combines some elements of a one-tier and two-tier structure, as well as elements that are peculiar to this model, creating a one model as whole. The property of a model of JSC in Ukraine is based on the existence of one-tier and two-tier structure (i.e. properties of variation), what depends on the number of shareholders. In accordance with the abovementioned, it is concluded that there is a segmental- variative approach to the definition of a model of JSC in the Ukrainian legal system. In addition, each of the manifestations of the variability of a model of a JSC has properties that are peculiar only to it.

5. The author grounded and formed a model of a JSC with one shareholder is formed that reflects the features of such a JSC (one shareholder-

founder can be part of an executive body and hire other directors simultaneously), to ensure the functioning of a JSC with one shareholder and a successful achievement of the purposes of adaptation of Ukraine's legislation to the EU legislation.

It was established by the author that both in the Ukrainian and German laws this model allows the state to found JSC and to be the only single owner of its property. It is concluded that JSC with a state as a single shareholder should be founded, if in this way the state contributes to the development of its national interests, and ensures the safety of individuals, and society from external and internal threats in all spheres of life. Also the conclusion is substantiated that approaches to the regulation of the JSC with one shareholder owned by the state and JSC owned by other persons should be different because of their specificity and specific nature of the state.

6. It is determined that the separate operation of independent directors in the structure of the Ukrainian JSC will provide with a balance in the functions and tasks of the executive body, the supervisory board and independent directors, and thus can create a supervisory system in a JSC (supervisory board and independent directors), which is a security tool for the efficient operation of the executive board in a JSC.

A definition of an independent director was formulated. In accordance with this definition, an independent director is an individual with capability who is not a member of the executive board and is not an official of the JSC as well as is not an affiliated person to the JSC, is not associated in any way with other shareholders, chairman and / or members of the supervisory board, the executive board and other officials of a JSC, wasn't an employee of other JSC during the last five years, carries out its duties professionally, independently, impartially and operates in the JSC on a contract civil-legal basis. Main features of the independent director were highlighted: professionalism; independence of judgment; financial independence; impartial decision-making; impeccable reputation; probity; privacy statement. This pattern of behavior suggests that he has the right to vote along with other members of the executive body. Depending on the content of the question, the decision is made either on the basis of consensus or voting qualification or a simple agreement by the majority. If the independent directors have not been provided with the information on the issue in question, it is not required from the independent directors to make a decision about it. For this, an independent director should indicate the reasons why he cannot decide what prevent him from giving his decision in writing. It is substantiated that independent directors (in their majority) should give their consent if there is a transaction of interest. The decision on transactions of interest will contribute to the protection of the interests of the JSC.

7. It is substantiated to strengthen the protection function of civil law in order to protect the rights and interests of shareholders within their legal capacity by providing with such a mechanism of the protection of their rights and interests in law, in accordance with which its implementation would include not only a judicial form of a protection, but also a public form of a protection. For this it is proposed to expand the competence of independent directors and to enable minority shareholders to ask them to protect their rights and interests in the Ukrainian legislation

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SUMMARY

Sushko Ye. A. Civil-legal model of joint-stock companies of Ukraine in terms of European integration and globalization: a comparative analysis of the legislation of Ukraine, Germany and China. – *On the manuscript.*

The dissertation on the completion of a scientific degree of candidate of juridical sciences on the speciality 12.00.03 – civil law and civil process; family law; international private law. – Kharkiv National University of Internal Affairs. – Kharkiv, 2017.

This dissertation is devoted to a systematic study of the civil-legal model of joint-stock companies of Ukraine in conditions of European integration and globalization based on the comparative analysis of the legislation of Ukraine, Germany and China. It is defined that the civil law model of a joint stock company is a logical-intellectual (mind-visual) form, with internal contents filled with systemic-structural elements that have a different legal nature and are interconnected between each other, fulfill a clearly defined purpose and function; help to achieve a common goal for which this model, with its internal elements exists, that can serve as a mean of constructing law and become an integral part of it, in order to perform a specific function, namely, in streamlining, structuring and organizing the external and internal manifestations of a JSC that is a participant of civil relations.

It is established that the concept of the legal status of a JSC has different legal approaches in each country and depends on the model of corporate governance that, at its core, may have a one-tier and/or two-tier structure, and have the properties that are peculiar only for a particular model of a JSC. The model of the legal status of a JSC should be considered, taking into account its internal and external manifestations that are interrelated.

Theoretical and practical recommendations and proposals on the improvement of legislative regularizing of a civil-legal model of JSC in Ukraine were substantiated and proposed by the author.

Key words: civil-legal model of a joint stock company, joint stock company, law, general meeting of shareholders, executive body, supervisory board, independent director, joint stock company with one shareholder, minority shareholders.