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ПРАВОВИЙ СТАТУС КОРПОРАЦІЙ В ПРАВІ ЄВРОПЕЙСЬКОГО СОЮЗУ

(Legal status of companies in the European Union)

методичні вказівки

**для підготовки до семінарських занять
магістрантів 1-го курсу денної та заочної форми навчання
спеціальності 081 «Право»**

м. Івано-Франківськ

2023 р.

УДК 347.61/.64
349

Затверджено на засіданні кафедри цивільного права Навчально-наукового юридичного інституту Прикарпатського національного університету імені Василя Стефаника (протокол № 1 від «28» серпня 2023 р.)

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349 Зеліско А. В. Legal status of companies in the European Union. Методичні вказівки для підготовки до семінарських занять магістрантів 1-го курсу денної та заочної форми навчання спеціальності 081 «Право» [текст]. 2023. 21 с.

Дисципліна «Legal status of companies in the European Union» є складовою частиною підготовки фахівців у галузі юриспруденції. Вивчення дисципліни дозволить сформувати у здобувачів системні і комплексні знання стосовно поняття корпорацій у праві Європейського Союзу, їх окремих видів; особливостей регулювання статусу окремих видів корпорацій у світовій спільноті, порядку їх виникнення, зміни і припинення тощо. Засвоєння здобувачами знань в галузі права корпорацій Європейського Союзу забезпечить формування у здобувачів навиків щодо практичного застосування норм законодавства, які регулюють правовий статус окремих їх видів.

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Василя Стефаника, 2023

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Вступ

Метою навчальної дисципліни «Legal status of companies in the European Union» є набуття знань про особливості створення окремих видів корпорацій, особливості правового режиму майна,

управління діяльністю, правового статусу учасників або членів, особливості припинення шляхом ліквідації чи правонаступництва. Дана дисципліна покликана: розкрити особливості виникнення, формування та розвитку корпорацій в Європейському Союзі, зробити наголос на окремих недоліках правового регулювання діяльності окремих видів корпорацій, розкрити проблеми адаптації вітчизняного законодавства до основних принципів права корпорацій Європейського Союзу. Предметом навчальної дисципліни «Legal status of companies in the European Union» є система Директив та Регламентів Ради Європейського Союзу, що регулюють порядок створення, діяльності та припинення компаній у межах цього світового співтовариства.

Завдання дисципліни:

- формування у здобувачів розуміння існуючої у прав Європейського Союзу системи корпорацій;
- озброєння їх знаннями основних концепцій розуміння сутності корпорацій у європейському просторі, особливостей їх окремих різновидів;
- формування в здобувачів навиків щодо практичного застосування норм європейського законодавства, які регулюють правовий статус окремих корпорацій ЄС.

У результаті вивчення навчальної дисципліни здобувачі повинні знати:

- закономірності регулювання статусу окремих видів компаній в Європейському Союзі;
- структуру правового статусу компаній в Європейському Союзі;
- характеристику особливостей їх створення та набуття компаніями в Європейському Союзі правосуб'єктності;
- особливості виникнення та припинення окремих видів компаній в Європейському Союзі;
- порядок здійснення корпоративного управління в компаніях Європейського Союзу;
- механізм реалізації учасниками або членами компаній корпоративних прав та обов'язків.

А також вміти:

- визначати поняття правового статусу компанії (корпорації) в Європейському Союзі;
- формулювати сукупність тих правових рис юридичних осіб, які визначають їх належність до компаній;
- характеризувати елементи правового статусу окремих видів компаній в Європейському Союзі;
- розкривати механізм створення та припинення компаній в Європейському Союзі;
- розкривати зміст корпоративних прав і обов'язків, які належать учасникам компаній в Європейському Союзі;
- застосовувати норми чинних Директив та Регламентів Європейського Союзу у сфері компаній на практиці.

Програма навчальної дисципліни «Legal status of companies in the European Union»

Змістовий модуль 1.

Topic №1. Introduction to Company Law

The structure of European Law. The European Private Company. The framework of company law. European Economic Interest Grouping.

Topic №2. Types of companies in the European Union

A company and partnership. Chartered company. Statutory company. Registered company. Limited and unlimited company. Public and private company. Community interest company. Company formation-companies limited by shares. Company formation – companies limited by guarantee. Groups of companies.

Topic №3. Corporate personality

A separate legal entity. Disregarding the separate entity. The corporate group – separate entities or single unit. Corporate acts and liabilities.

Topic №4. Founders, promoters and pre-incorporation contracts.

Founders of the company. Founder's duties. Promoters. Promoter's duties. Remedies for breach of promoter's duties. Payment for the promoter's services. Pre-incorporation contracts.

Topic №5. The constitution of the company.

Defining the constitution. Content of the articles. Amending the articles. Interpreting the articles. Enforcing the articles. Supplementing the constitution-shareholders'agreements.

Topic №6. Corporate Governance.

Defining and principles of the corporate governance. The general meeting of the company: powers and procedure for forming. Corporate Governance requirements-the board of directors. Board committees. The procedure for forming of the committees. Directors' duties owed to the company: a) duty to act within constitution and power; b) duty to promote the success of the company; c) duty of care, skill and independent judgement; d) duty to avoid a conflict of interest; e) directors' liabilities for breach of duty.

Змістовий модуль 2.

Topic № 7. Membership and the incidents of membership

Becoming a member. Classes of shares. Class rights. The register of members. Property and non-property corporate rights. The payment of dividends. Share transfer and transmission. Voting entitlement. Informed shareholders and stakeholders.

Topic № 8. Legal mode of the property of companies

Share capital requirements. Issuing shares at par, premium or a discount. Alteration of share capital. Allotment of shares. Payment for shares. Capital raising. An overview of the doctrine of capital

maintenance. Purchase and redemption of a company's own shares. Reduction of capital. Loan capital—secured creditors and company charges.

Topic № 9. Liquidation and dissolution-winding up the insolvent company

Voluntary winding up. Compulsory winding up. Consequences of winding-up order. The role and powers of a liquidator. The anti-deprivation rule, proof of debts and set-off. The order of distribution. Dissolution of the company.

Плани і завдання семінарських занять для магістрантів денної форми навчання

Topic №1. Introduction to Company Law of the European Union (Вступ до права корпорацій (компаній) в Європейському Союзі) (2 год.)

European law is a daily reality. The legislation and, correspondingly, the extend of regulations given by the written primary and secondary European Union (EU) law becomes so densely, meanwhile almost as densely as it was hitherto only known from the national regulations system. Consequently, e.g. in Germany, more than 50 per cent of all administrative decisions on federal, state or communal level are taken on basis of regulations coming from Brussels— not everybody is aware of this development yet.

From a theoretical point of view, this EU-legislation can be divided into two different types of rules. One type, of course, are the rules passed by the EU-legislator which create new fields of law. This is regularly then the case if supranational European institutions are founded. The by far bigger part of EU-legislation is, however, that type which consists of rules created to harmonize the regulations already existing on national level in the Member States in order to lighten the burden of friction caused by 12 different (not to talk about the future developments, namely the East-Enlargement of the European Union) systems within the EU in the age of globalization, especially seen from an economical point of few.

Questions for discussion:

1. The structure of European Law.
2. The European Private Company.
3. The framework of company law in the European Union.
4. European Economic Interest Grouping.

Питання для обговорення:

1. Структура права Європейського Союзу.
2. Європейські приватні корпорації (компанії).
3. Межі права корпорацій (компаній) в Європейському Союзі.
4. Європейське об'єднання з економічних інтересів.

Key notions: the European Company, the European Private Company, harmonization, modernisation, simplification, corporate governance, corporate mobility (restructuring).

Ключові поняття і терміни: Європейське товариство, Європейське приватне товариство, гармонізація (адаптація), модернізація, універсалізація (спрощення), корпоративне управління, корпоративна мобільність (реорганізація).

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- Seth C. Oranburg. Oranburg's Corporate Law Compendium. Shareholder Rights. 2019. 535 p.

Topic №2. Types of companies in the European Union

The purpose of EU rules in this area is to enable businesses to be set up anywhere in the EU, provide protection for shareholders and other parties with a particular interest in companies, make business more efficient and competitive, encourage businesses based in different EU countries to cooperate with each other.

EU rules on accounting and reporting complement this legal framework. On 3 December 2015, the Commission adopted a proposal to codify and merge a number of existing company law Directives. The aim of this proposal is to make EU company law more reader-friendly and to reduce the risk of future inconsistencies. It does not involve any change to the substance of these Directives. The proposal follows the announcement made in the 2012 Action Plan on company law and corporate governance. It will be examined in the Council and the European Parliament according to an accelerated procedure for codification proposals.

Questions for discussion:

1. A company and partnership.
2. Registered company.
3. Limited and unlimited company.
4. Public and private company.
5. Company formation-companies limited by shares.
6. Company formation – companies limited by guarantee.
7. Groups of companies.
8. Supranational legal entity.

Питання для обговорення:

1. Товариства (корпорації) та прості товариства.
2. Зареєстровані товариства (корпорації).
3. Товариства (корпорації) з обмеженою та необмеженою відповідальністю учасників за зобов'язаннями товариства.
4. Приватні та публічні товариства (корпорації).
5. Конструкція товариств з відповідальністю учасників в межах належних їм часток (акцій).
6. Конструкція товариств з відповідальністю учасників в гарантованих ними межах.
7. Об'єднання товариств (корпорацій).
8. Наднаціональні товариства (корпорації).

Key notions: EU Company Law, European Company, European economic interest grouping, Societas cooperativa, Societas privata, limited liability company, joint stock company, full partnership, commandite partnership.

Ключові терміни та поняття: корпоративне право ЄС, європейська компанія, європейське угруповання економічних інтересів, Європейський кооператив, Європейська приватна компанія, товариство з обмеженою відповідальністю, акціонерне товариство, повне товариство, командування товариство.

Self-test questions:

How does a company differ from a partnership?

What are the different types of company?

Set out the names of the major pieces of legislation relevant to company law today?

Which government department is responsible for the area of company law today?

Literature:

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Topic №3. Corporate personality

Corporate personality is the fact stated by the law that a company is recognized as a legal entity distinct from its members. A company with such personality is an independent legal existence separate from its shareholders, directors, officers and creators. This is famously known as the veil of incorporation.

As a result of corporate personality, a company has perpetual succession. It simply means the company is everlasting and will continue to do business until it is properly wound up. As a separate legal person, a company will not be affected by changes such as death, transfer of shares or resignation of any members but will continue to exist despite the number of times the changes of membership occur. Even if all the members die, it will not influence the privileges, immunities, estates and possessions of a company.

Questions for discussion:

1. A separate legal entity.
2. Disregarding the separate entity.
3. The corporate group – separate entities or single unit.
4. Corporate acts and liabilities.

Питання для обговорення:

1. Юридичні особи як самостійні суб'єкти правовідносин.
2. Недотримання відокремленості юридичної особи.
3. Корпоративні об'єднання – самостійні юридичні особи чи єдине ціле.
4. Корпоративні акти і відповідальність за зобов'язаннями юридичних осіб.

Key notions: legal entity, capacity, liability, corporate acts, shareholder, personality.

Ключові терміни та поняття: юридична особа, правоздатність, зобов'язання, корпоративні акти (локальні акти), учасник, правосуб'єктність.

Self-test questions:

What is the significance of the *Salomon* decision?

Where has the legislature intervened to lift the corporate veil? Do you think legislative intervention has been sensible?

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Topic №4. Founders, promoters and pre-incorporation contracts.

A promoter is person who brings the company into existence and holds a fiduciary relationship towards the corporation. Almost in all cases it is the promoter who enters into a contract on behalf of a company before its incorporation, and in plethora of cases court found it very difficult with those people who appear on the legal horizon in the process of creating a corporation called as promoter. An important problem arising as a result of this situation is that of the legal consequences which should result when a promoter deals with a third party on behalf of a future corporation. Promoter is a person who brings the company into existence but there are number of legal consequences in relation to promoter and pre-incorporation contract. It is very clear from the point of promoter that he is not the agent of the company nor he is doing any authorized work but he is entering into a contract with a third party on behalf of non existing principle. The position of a promoter is very ambiguous and in most of the time it is found that the corporation refuses to adopt the pre-incorporation contract.

Questions for discussion:

1. Founders of the company. Founder's duties.
2. Promoters.
3. Promoter's duties. Remedies for breach of promoter's duties.
4. Payment for the promoter's services.
5. Pre-incorporation contracts.

Питання для обговорення:

1. Засновники компанії. Обов'язки засновників компанії.
2. Промоутери.
3. Обов'язки промоутерів. Правові наслідки порушення обов'язків промоутерами.
4. Оплата послуг промоутера.

5. Договори, укладені до створення компанії.

Key notions: legal entity, founder, promoter, shareholder.

Ключові терміни та поняття: юридична особа, промоутер, засновник, учасник.

Self-test questions:

What is a promoter?

What duties are owed by promoters?

What are the remedies available to an injured party where there has been a breach of promoters' duties?

How may promoters be reimbursed for their services to a company?

Literature:

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Topic №5. The constitution of the company.

A company's constitution has effect as a contract between the company and each member, a member and each other member and the company and each director and company secretary, under which each person agrees to observe the provisions of the constitution so far as they apply to that person. This only creates enforceable rights and obligations in relation to shareholders in their capacity as shareholders of the company, not in their personal capacity. It also does not create enforceable rights and obligations between the shareholders of a company and the company's directors and/or company secretary.

Consequently, a shareholder may be precluded from enforcing any provisions in a constitution that confer personal rights, which may include the right to be employed by the company, non-compete provisions and provisions designed to protect the interests of minority shareholders.

Questions for discussion:

1. Defining the constitution. Content of the articles.
2. Amending the articles. Interpreting the articles.
3. The name of the company. Business name. Change of name.
4. Supplementing the constitution-shareholders' agreements.

Питання для обговорення:

1. Поняття установчих документів. Зміст положень установчих документів.
2. Зміна положень установчих документів. Тлумачення положень установчих документів.
3. Найменування компанії. Комерційне найменування компанії. Зміна найменування компанії.
4. Доповнення до установчих документів – корпоративні договори учасників.

Key notions: company's constitution, shareholders' agreement, business name of a company.

Ключові терміни та поняття: установчий документ компанії, договір учасників (корпоративний договір), комерційне найменування компанії.

Self-test questions:

How does the company register its constitution?

Is a company free to choose any name it likes as the name of the corporation?

How may a company change its name?

Explain the interaction of business names with company names.

What is the importance of the company's registered office?

Describe how a company may change from being a private company to a public company.

What is the importance of the objects clause of a company?

Describe some of the manoeuvres used by entrepreneurs with the help of their lawyers in drafting objects clauses.

What happens where a company enters into a transaction and one of the other parties is a director or someone connected with a director?

Describe how directors may bind the company, even if the contract is beyond the company's constitution.

How does the law on *ultra vires* apply to charitable companies?

Literature:

- Farrar, JH, 'Inquorate Boards, Organs and Section 35A of the Companies Act 1985' [2003] CLJ 65.
 Ferran, E, 'The reform of the law on corporate capacity and directors and officers authority' (1992) 13 Co Law 126 and 177.
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 Twigg-Flesner, C, 'Sections 35A and 322A revisited: Who is a "person dealing with a company"?' (2005) 26 Co Law 195.
 Wedderburn, KW, 'Unreformed Company Law' (1969) 32 MLR 563.
 Wedderburn, KW, '*Ultra vires* in modern company law' (1983) 46 MLR 204.
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Topic №6. Corporate Governance

Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.

Corporate governance is therefore about what the board of a company does and how it sets the values of the company, and it is to be distinguished from the day to day operational management of the company by full-time executives.

Questions for discussion:

1. Defining and principles of the corporate governance.
2. The general meeting of the company: powers and the procedure for forming and the order of the conduct.
3. Corporate Governance requirements-the board of directors. Board committees. The procedure for forming of the committees.
4. Directors' duties owed to the company: a) duty to act within constitution and power; b) duty to promote the success of the company; c) duty of care, skill and independent judgement; d) duty to avoid a conflict of interest; e) directors' liabilities for breach of duty.

Питання для обговорення:

1. Поняття та принципи корпоративного управління.
2. Загальні збори компанії: повноваження та порядок формування та проведення.
3. Вимоги до корпоративного управління – рада директорів. Комітети ради директорів. Порядок формування комітетів.
4. Обов'язки директорів перед компанією: а) обов'язок діяти в межах установчих документів та повноважень; б) обов'язок сприят успіху компанії; с) обов'язки щодо незалежності прийняття рішень та дострокового припинення повноважень; d) обов'язок уникати конфлікту інтересів; е) відповідальність директорів за порушення службових обов'язків.

Key notions: corporate governance, principles of the corporate governance, general meeting, board of directors, board committees.

Ключові терміни та поняття: корпоративне управління, принципи корпоративного управління, загальні збори, рада директорів, комітети ради директорів.

Self-test questions:

To whom do directors owe duties?

Explain what is meant by the duty to exercise independent judgement.

Give examples of how directors must exercise powers for a proper purpose.

Explain the evolution of the duty of care and skill.

What is the scope of directors' fiduciary duties?

Can a director ever legitimately take a corporate opportunity?

Can a director ever compete with a company of which he is a director?

Can a director ever take a benefit from a third party conferred by reason of the directorship?

Can directors ever be personally liable in relation to contracts undertaken by the company through the agency of a director?

Describe the impact of international developments in relation to corporate governance.

What European developments are worthy of note in relation to corporate governance in the EU?

Literature:

- Hemraj, M, 'Corporate Governance: rationalising stakeholder doctrine in corporate accountability' (2005) 26 Co Law 211.
- Alcock, A, 'Corporate governance: a defence of the status quo' (1995) 58 MLR 898. Belcher, A, 'Regulation by the market: the case of the Cadbury Code and Compliance Statement' [1995] JBL 321.
- Aherne, D, 'Nominee Directors' Duty to Promote the Success of the Company: Commercial Pragmatism and Legal Orthodoxy' [2011] 127 LQR 118.
- Alcock, A, 'An accidental change to directors' duties' (2009) 30 Co Law 362.
- Bean, GMD, 'Corporate governance and corporate opportunities' (1994) 15 Co Law 266. Beck, S, 'Saga of Peso Silver Mines: corporate opportunity reconsidered' (1971) 49 Can Bar Rev 80.
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- Lowry, J, 'The Duty of Loyalty of Company Directors: Bridging the Accountability Gap through Efficient Disclosure' [2009] 68 CLJ 607.
- Prentice, D, 'Creditors' interests and directors' duties' (1990) OJLS 265.
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Topic № 7. Membership and the incidents of membership

The concept of a company as an association of persons is a constant theme in company law. Because fundamental rights and duties arise on becoming a member of the company, it is important to determine whether a person has become a member. A person may become a member of the company in any following ways: a) by subscribing to the memorandum of association; b) by application and allotment; c) by transfer of shares; d) by transmission of shares; e) by holding out as a member.

The most important rights that all common shareholders possess include the right to share in the company's profitability, income and assets, a degree of control and influence over company management selection, preemptive rights to newly issued shares, and general meeting voting rights.

Questions for discussion:

1. Becoming a member.
2. Classes of shares. Class rights. The register of members.
3. The property corporate rights: a) the payment of dividends; b) share transfer and transmission.
4. The non-property corporate rights: a) voting entitlement; b) informed shareholders and stakeholders.
5. Minority protection.

Питання для обговорення:

1. Порядок набуття участі в компанії.
2. Види часток у компаніях (акція, частка, пай). Права на частку. Реєстр учасників.
3. Майнові права на частку: а) виплата дивідендів; б) порядок переходу прав на частку.
4. Немайнові права на частку: а) право голосу; б) порядок інформування учасників та зацікавлених осіб про діяльність компанії.
5. Охорона та захист прав міноритаріїв.

Key notions: membership, share, property corporate rights, non-property corporate rights, voting entitlement.

Ключові терміни та поняття: участь, частка, майнові корпоративні права, немайнові корпоративні права, право голосу.

Self-test questions:

What is the general principle in relation to the payment of dividends?

What constitutes distributable reserves?

What special rules apply in relation to dividends paid by investment companies?

What particular rules apply in relation to the payment of dividends by insurance companies?

Set out how a dividend may be justified by reference to a particular set of accounts.

What constitutes a distribution in kind?

What are the consequences of a wrongful payment of a dividend?

How long can a company go without holding an Annual General Meeting?

Set out the different ways in which company meetings may be called.

When may class meetings be necessary?

What matters have to be set out in the notice calling a company meeting?

What is the statutory provision in relation to a quorum at a company meeting?

How may a chairman of a meeting be elected?

Literature:

Kershaw, D, 'Involuntary creditors and the case for accounting-based distribution regulation' (2009) JBL U0.

Alcock, A, 'Insider dealing - how did we get here?' (1994) 15 Co Law 67.

Jain, N, 'Significance of *mens rea* in insider trading' (2004) 25 Co Law 132.

McVea, H, 'What's wrong with insider dealing?' (1995) 15 LS 390.

Aherne, D, and Mâcher, K, 'The continuing evolution of proxy representation' [2011] JBL 125.

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Topic № 8. Legal mode of the property of companies

Share capital consists of all funds raised by a company in exchange for shares of either common or preferred shares of stock. The amount of share capital or equity financing a company has can change over time.

The concept of share capital has fundamentally different interpretations between civil law jurisdictions such as Switzerland, Denmark, Russia or Latvia and common law jurisdictions such as the United Kingdom, United States of America as well as most offshore jurisdictions.

In civil law jurisdictions, the term “share capital” refers to the amount of funds set aside by the founders of the company to start its operations. Frequently, this amount must be credited to the company’s account at the time of its incorporation or within a specified period after incorporation of the company. This means that the “concept of the fixed capital” is observed.

Questions for discussion:

1. Company’s property.
2. Share capital requirements. Issuing shares at par, premium or a discount.
3. Alteration of share capital.
4. Allotment of shares. Payment for shares. Capital raising.
5. An overview of the doctrine of capital maintenance.
6. and redemption of a company's own shares. Reduction of capital.
7. Loan capital - secured creditors and company charges.

Питання для обговорення:

1. Власність компанії.
2. Вимоги до статутного (дольового) капіталу.
3. Зміна розміру статутного (дольового) капіталу.
4. Підписка на частки (акції). Оплата часток (акцій).
5. Підтримання розміру статутного (дольового) капіталу.
6. Придбання та викуп власних часток (акцій) компанії.
7. Залучений капітал компанії: забезпечення інтересів кредиторів та витрати компанії.

Key notions: share capital, shares, company, creditors.

Ключові терміни та поняття: дольовий капіталу, частки, компанія, кредитори.

Self-test questions:

In what circumstances is it not permissible to provide financial assistance towards the purchase of a company’s own shares?

How may a company issue redeemable shares?

Other than redeemable shares, in what circumstances may a company purchase its own shares?

How may a private company redeem or purchase its own shares out of capital?

Explain the concept of treasury shares.

What is the capital redemption reserve?

How may a company reduce its issued share capital?

Literature:

- Drury, R, 'The Delaware Syndrome: European Fears and Reactions' [2005] JBL 709.
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Topic № 9. Liquidation and dissolution-winding up the insolvent company

Dissolving is the process of removing or “striking off” a company from the register at Companies House.

In situations where a company has become surplus to requirements (i.e. it has fulfilled the purpose it initially set out to achieve) and is no longer trading, the most cost-effective and simple way forward for a director may be to apply to the Registrar to be struck off and dissolved.

Liquidation is when a company’s assets are extracted and used to pay off any remaining debts before that company is dissolved.

When it comes to liquidation, there are three main types:

- Compulsory liquidation: where creditors force you into going into liquidation as a way of recovering the debt owed.
- Creditors’ voluntary liquidation (CVL): generally appropriate in situations where you and your shareholders conclude that the company is unable to pay its debts. The process is managed by a liquidator and requires the input of your creditors. Your company’s assets are sold and any surplus is distributed to its members.

- Members' voluntary liquidation (MVL): this is an option where the company is capable of paying its debts, but there is nevertheless a desire on the part of (at least) three quarters of the company's members to wind up the company. Once again a liquidator is appointed, assets are realised (that is, to convert the assets into cash) and any resulting balance is distributed amongst shareholders.

Questions for discussion:

1. Voluntary winding up.
2. Compulsory winding up.
3. Consequences of winding-up order.
4. The role and powers of a liquidator.
5. The anti-deprivation rule, proof of debts and set-off. The order of distribution.
6. Dissolution of the company.

Питання для обговорення:

1. Добровільна ліквідація компанії.
2. Примусова ліквідація компанії.
3. Наслідки прийняття рішення про ліквідацію.
4. Статус і повноваження ліквідатора.
5. Порядок складення ліквідаційного балансу і порядок розподілу активів компанії.
6. Припинення компанії.

Key notions: voluntary winding up, compulsory winding up, liquidator.

Ключові терміни та поняття: добровільна ліквідація, примусова ліквідація, ліквідатор.

Self-test questions:

Set out the different types of winding up or liquidation.

Set out the conduct of a typical liquidation in brief.

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- Doyle, LG, 'Anomalies in the wrongful trading provisions' (1992) 13 Co Law 96.
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Плани і завдання семінарських занять для магістрантів заочної форми навчання

Topic №2. Types of companies in the European Union

The purpose of EU rules in this area is to enable businesses to be set up anywhere in the EU, provide protection for shareholders and other parties with a particular interest in companies, make business more efficient and competitive, encourage businesses based in different EU countries to cooperate with each other.

EU rules on accounting and reporting complement this legal framework. On 3 December 2015, the Commission adopted a proposal to codify and merge a number of existing company law Directives. The aim of this proposal is to make EU company law more reader-friendly and to reduce the risk of future inconsistencies. It does not involve any change to the substance of these Directives. The proposal follows the announcement made in the 2012 Action Plan on company law and corporate governance. It will be examined in the Council and the European Parliament according to an accelerated procedure for codification proposals.

Questions for discussion:

1. A company and partnership.
2. Registered company.
3. Limited and unlimited company.
4. Public and private company.
5. Company formation-companies limited by shares.
6. Company formation – companies limited by guarantee.
7. Groups of companies.
8. Supranational legal entity.

Питання для обговорення:

1. Товариства (корпорації) та прості товариства.
2. Зареєстровані товариства (корпорації).
3. Товариства (корпорації) з обмеженою та необмеженою відповідальністю учасників за зобов'язаннями товариства.
4. Приватні та публічні товариства (корпорації).
5. Конструкція товариств з відповідальністю учасників в межах належних їм часток (акцій).
6. Конструкція товариств з відповідальністю учасників в гарантованих ними межах.
7. Об'єднання товариств (корпорацій).
8. Наднаціональні товариства (корпорації).

Key notions: EU Company Law, European Company, European economic interest grouping, Societas cooperativa, Societas privata, limited liability company, joint stock company, full partnership, commandite partnership.

Ключові терміни та поняття: корпоративне право ЄС, європейська компанія, європейське угруповання економічних інтересів, Європейський кооператив, Європейська приватна компанія, товариство з обмеженою відповідальністю, акціонерне товариство, повне товариство, командування товариство.

Self-test questions:

How does a company differ from a partnership?

What are the different types of company?

Set out the names of the major pieces of legislation relevant to company law today?

Which government department is responsible for the area of company law today?

Literature:

S. Grundmann, European Company Law (Intersentia 2006)

M Habersack and D Verse, Europäisches Gesellschaftsrecht (CH Beck 2011)

M Andenas, 'Free Movement of Companies' (2003) 119 LQR 221

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Arlt, C. Bervoets, K. Grechenig, S. Kalss, The Societas Europaea in Relation to the Public Corporation of Five Member States (France, Italy, Netherlands, Spain, Austria), European Business Organization Law Review (EBOR) 2002, p. 733-764.

Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE)

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Topic №6. Corporate Governance

Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.

Corporate governance is therefore about what the board of a company does and how it sets the values of the company, and it is to be distinguished from the day to day operational management of the company by full-time executives.

Questions for discussion:

1. Defining and principles of the corporate governance.
2. The general meeting of the company: powers and the procedure for forming and the order of the conduct.
3. Corporate Governance requirements-the board of directors. Board committees. The procedure for forming of the committees.
4. Directors' duties owed to the company: a) duty to act within constitution and power; b) duty to promote the success of the company; c) duty of care, skill and independent judgement; d) duty to avoid a conflict of interest; e) directors' liabilities for breach of duty.

Питання для обговорення:

1. Поняття та принципи корпоративного управління.

2. Загальні збори компанії: повноваження та порядок формування та проведення.

3. Вимоги до корпоративного управління – рада директорів. Комітети ради директорів. Порядок формування комітетів.

4. Обов'язки директорів перед компанією: а) обов'язок діяти в межах установчих документів та повноважень; б) обов'язок сприяти успіху компанії; с) обов'язки щодо незалежності прийняття рішень та дострокового припинення повноважень; d) обов'язок уникати конфлікту інтересів; е) відповідальність директорів за порушення службових обов'язків.

Key notions: corporate governance, principles of the corporate governance, general meeting, board of directors, board committees.

Ключові терміни та поняття: корпоративне управління, принципи корпоративного управління, загальні збори, рада директорів, комітети ради директорів.

Self-test questions:

To whom do directors owe duties?

Explain what is meant by the duty to exercise independent judgement.

Give examples of how directors must exercise powers for a proper purpose.

Explain the evolution of the duty of care and skill.

What is the scope of directors' fiduciary duties?

Can a director ever legitimately take a corporate opportunity?

Can a director ever compete with a company of which he is a director?

Can a director ever take a benefit from a third party conferred by reason of the directorship?

Can directors ever be personally liable in relation to contracts undertaken by the company through the agency of a director?

Describe the impact of international developments in relation to corporate governance.

What European developments are worthy of note in relation to corporate governance in the EU?

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Alcock, A, 'Corporate governance: a defence of the status quo' (1995) 58 MLR 898. Belcher, A, 'Regulation by the market: the case of the Cadbury Code and Compliance Statement' [1995] JBL 321.

Aherne, D, 'Nominee Directors' Duty to Promote the Success of the Company: Commercial Pragmatism and Legal Orthodoxy' [2011] 127 LQR 118.

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Burridge, S, 'Wrongful rights issues' (1981) 44 MLR 40.

Christie, M, 'The director's fiduciary duty not to compete' (1992) 55 MLR 506.

Conaglen, M, 'The Nature and Function of Fiduciary Loyalty' (2005) 121 LQR 452. Edmunds, R, and Lowry, J, 'The continuing value of relief for directors' breach of duty' (2000) MLR 195.

Finch, V, 'Company directors - who cares about skill and care?' (1992) 55 MLR 179. Grantham, R, 'Can directors compete with the company?' (2003) MLR 109.

Lowry, J, 'The Duty of Loyalty of Company Directors: Bridging the Accountability Gap through Efficient Disclosure' [2009] 68 CLJ 607.

Prentice, D, 'Creditors' interests and directors' duties' (1990) OJLS 265.

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Topic № 8. Legal mode of the property of companies

Share capital consists of all funds raised by a company in exchange for shares of either common or preferred shares of stock. The amount of share capital or equity financing a company has can change over time.

The concept of share capital has fundamentally different interpretations between civil law jurisdictions such as Switzerland, Denmark, Russia or Latvia and common law jurisdictions such as the United Kingdom, United States of America as well as most offshore jurisdictions.

In civil law jurisdictions, the term “share capital” refers to the amount of funds set aside by the founders of the company to start its operations. Frequently, this amount must be credited to the company’s account at the time of its incorporation or within a specified period after incorporation of the company. This means that the “concept of the fixed capital” is observed.

Questions for discussion:

1. Company’s property.
2. Share capital requirements. Issuing shares at par, premium or a discount.
3. Alteration of share capital.
4. Allotment of shares. Payment for shares. Capital raising.
5. An overview of the doctrine of capital maintenance.
and redemption of a company's own shares. Reduction of capital.

6. Loan capital - secured creditors and company charges.

Питання для обговорення:

1. Власність компанії.
2. Вимоги до статутного (дольового) капіталу.
3. Зміна розміру статутного (дольового) капіталу.
4. Підписка на частки (акції). Оплата часток (акцій).
5. Підтримання розміру статутного (дольового) капіталу.
6. Придбання та викуп власних часток (акцій) компанії.
7. Залучений капітал компанії: забезпечення інтересів кредиторів та витрати компанії.

Key notions: share capital, shares, company, creditors.

Ключові терміни та поняття: дольовий капіталу, частки, компанія, кредитори.

Self-test questions:

In what circumstances is it not permissible to provide financial assistance towards the purchase of a company's own shares?

How may a company issue redeemable shares?

Other than redeemable shares, in what circumstances may a company purchase its own shares?

How may a private company redeem or purchase its own shares out of capital?

Explain the concept of treasury shares.

What is the capital redemption reserve?

How may a company reduce its issued share capital?

Literature:

Drury, R, 'The Delaware Syndrome: European Fears and Reactions' [2005] JBL 709.

Leyte, P, 'The Regime of Capital Maintenance Pertaining to Public Companies, Its Reform and Alternatives' (2004) 25 Business LR 84.

Morse, G, 'The introduction of Treasury shares into English law and practice' [2004] JBL 303.

Pettet, BG, 'Developments in the law of financial assistance for the purchase of shares' (1988) 3JIBL 96.

Pettet, BG, 'Financial assistance for the acquisition of shares: further developments' (1995) 10 JIBL388.

Sterling, MJ, 'Financial assistance by a company for the purchase of its shares' (1987) 8 Co Law 99

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Topic № 9. Liquidation and dissolution-winding up the insolvent company

Dissolving is the process of removing or “striking off” a company from the register at Companies House.

In situations where a company has become surplus to requirements (i.e. it has fulfilled the purpose it initially set out to achieve) and is no longer trading, the most cost-effective and simple way forward for a director may be to apply to the Registrar to be struck off and dissolved.

Liquidation is when a company’s assets are extracted and used to pay off any remaining debts before that company is dissolved.

When it comes to liquidation, there are three main types:

- Compulsory liquidation: where creditors force you into going into liquidation as a way of recovering the debt owed.
- Creditors’ voluntary liquidation (CVL): generally appropriate in situations where you and your shareholders conclude that the company is unable to pay its debts. The process is managed by a liquidator and requires the input of your creditors. Your company’s assets are sold and any surplus is distributed to its members.
- Members’ voluntary liquidation (MVL): this is an option where the company is capable of paying its debts, but there is nevertheless a desire on the part of (at least) three quarters of the company’s members to wind up the company. Once again a liquidator is appointed, assets are realised (that is, to convert the assets into cash) and any resulting balance is distributed amongst shareholders.

Questions for discussion:

1. Voluntary winding up.
2. Compulsory winding up.
3. Consequences of winding-up order.
4. The role and powers of a liquidator.
5. The anti-deprivation rule, proof of debts and set-off. The order of distribution.
6. Dissolution of the company.

Питання для обговорення:

- 1.Добровільна ліквідація компанії.
- 2.Примусова ліквідація компанії.
- 3.Наслідки прийняття рішення про ліквідацію.
- 4.Статус і повноваження ліквідатора.
- 5.Порядок складення ліквідаційного балансу і порядок розподілу активів компанії.
- 6.Припинення компанії.

Key notions: voluntary winding up, compulsory winding up, liquidator.

Ключові терміни та поняття: добровільна ліквідація, примусова ліквідаці, ліквідатор.

Self-test questions:

Set out the different types of winding up or liquidation.

Set out the conduct of a typical liquidation in brief.

Literature:

Doyle, LG, 'Anomalies in the wrongful trading provisions' (1992) 13 Co Law 96.

Ferran, E, 'Timing requirements of the companies and insolvency legislation' [1994] 3 CLJ 37.

Finch, V, 'Doctoring in the Shadows of Insolvency' [2005] JBL 690.

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Keay, A, 'What Future for Liquidation in the light of the Enterprise Act Reforms?' [2005] JBL 143.

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Базова та додаткова література.

№ з/п	Назва	Кількість примірників у бібліотеці
Базова		
1.	Brenda Hannigan. Company Law (Право компаній). Oxford University Press. 2012. 747 p.	1
2.	Nicholas Bourne. Bourne on Company Law (Про право компаній). 2011. 372 p.	1
3.	Paul Davies. Introduction to Company Law (Вступ до права компаній). Oxford University Press. 2010. 322p.	1
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7.	Fazio, Silvia. The Harmonization of International Commercial Law. Alphen aan den Rijn: Kluwer Law International, 2007. – 2014. – 428 p.	електронний ресурс
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9.	Kelly, Dominic. International Chamber of Commerce. Leiden - Boston: Martinus Nijhoff Publishers, 2010. doi:10.1163/ej.9789004163300.i-1081.100.	електронний ресурс

10.	McConville, Michael, and Wing Hong Chui. Research Methods for Law. Edinburgh: Edinburgh University Press, 2007.	електронний ресурс
11.	Nakagawa, Junji. International Harmonization of Economic Regulation. Oxford: Oxford University Press, 2011.	електронний ресурс
12.	Papadopoulos, Thomas Gr. EU Law and the Harmonization of Takeovers in the Internal Market. Alphen aan den Rijn: Kluwer, 2010.	електронний ресурс
13.	First Council Directive 89/104 of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ L 40, 11.2.1989, p 1)	електронний ресурс
14.	Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p 31)	електр. ресурс
15.	Directive 98/5 of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p 36)	електр. ресурс
16.	Directive 98/71 of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (OJ L 289, 28.10.1998, p 28)	електронний ресурс
17.	Council Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p 22)	електронний ресурс
18.	Council Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p 16)	електронний ресурс
19.	Directive 2001/29 of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p 10)	електр. ресурс
20	Nakagawa, Junji. International Harmonization of Economic Regulation. Oxford: Oxford University Press, 2011.	електр. ресурс
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2.	Bonell, M. J. The Use of the Unidroit Principles in Practice. Leiden - Boston: Martinus Nijhoff Publishers, 2010. doi:10.1163/ej.9789004177161.i-692.29.	электрон- ний ресурс
3.	Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p 1)	электрон- ний ресурс
4.	Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p 114)	электрон- ний ресурс
5.	Council Directive 2004/113 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p 37)	электрон- ний ресурс
6.	Council Regulation 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p 93)	электрон- ний ресурс