

Kraków, 25 September 2023 r.

Sebastian Trzcina

The Chair for Business Regulation and Economic Policy

Faculty of Law and Administration

Jagiellonian University in Krakow

SUMMARY

OF DOCTORAL DISSERTATION

entitled „The decoupling of the shareholders' rights in public companies and the duties related to the acquisition of significant blocks of shares arising from capital market law”

The doctoral dissertation includes an analysis of the impact of the decoupling of the shareholders' rights on the transparency of the capital market and the protection of minority shareholders in relation to obligations on major holdings disclosure and mandatory bid. In the course of the dissertation, the tightness of the current regulations in the field of capital market law regarding the examined subject was verified and *de lege ferenda* postulates were developed in terms of improving the quality of the legislation and adapting the relevant provisions to situations relevant from the perspective of the objectives pursued by them.

The aim of the doctoral dissertation was to examine the scope of obligations of purchasers of significant blocks of shares, as well as their effectiveness in terms of protecting the interests of shareholders and investors. Considerations in this field were conducted from the perspective of the decoupling of corporate and property rights. In addition, the existing solutions in the Polish legal system regarding obligations on major holdings disclosure and mandatory bid were evaluated and the necessity to extend these obligations was verified, taking into account the need to strengthen the transparency of the capital market and the protection of minority shareholders. Additionally, it was verified

whether there may be mechanisms (which historically have not occurred) allowing for circumvention of the law in the scope of the subject of a doctoral dissertation, and, as a result, whether there is a need to establish broader obligations for purchasers of significant blocks of shares.

In order to achieve the presented scientific objectives, the proposed and stated auxiliary theses (specified in the introduction to the dissertation) were verified in the course of the doctoral dissertation. These theses concerned, for example, the nature of property and corporate rights and their mutual relations, the theory of hidden ownership formulated by H. Hu and B. Black, the ban on decoupling, and the effectiveness of solutions existing in other jurisdictions.

The following research methods were used in the course of the doctoral thesis: dogmatic-legal, historical-legal, and comparative. These methods were focused on the analysis of applicable EU and Polish legal regulations, historical regulations (EU and Polish) regarding the issues discussed, as well as comparison of national solutions with mechanisms operating in other jurisdictions (i.e. in Germany, France and the United States).

In the first chapter of the dissertation, considerations were made about the share rights themselves. Individual corporate and property rights were analysed, such as the right to share in profit, subscription right, voting right and the right to participate in the company's general meeting. Attention was paid to the scope of property rights, and it was postulated that ownership right should also be included in their sphere. This approach allowed for a more complete reflection of the economic effects of membership in the company (including the recognition of risks associated with owning shares). Additionally, it was shown that corporate rights are not ancillary to property rights. They may be an independent subject of interest to market participants (i.e. they are independent) and important from the point of view of having influence on a public company. Due to the fact that the doctoral thesis concerns issues of capital market law relating to a public company (which can be described as a normative subtype of a joint-stock company), its character and main features were shown and analysed. Finally, subsection 1.3 "*Doctrine's views on the decoupling of shareholders' rights*" presents the possibility of decoupling shareholders'

rights in Poland from the perspective of private (commercial) law, including the views presented in the legal literature. On their basis, the boundaries of cases in which corporate and property rights may be decoupled have been established.

In the second chapter, the practical examples of decoupling of the shareholders' rights (both in the *sensu stricte* and in the *sensu largo* meaning) were included, e.g. record date capture, the situation of the pledgee and the share user, and the use of an intermediary third party. Additionally, situations indicated within the theory of new vote buying were analysed, i.e. separating the economic risk associated with owning shares from the right to exercise voting rights. It was emphasized that these situations may constitute examples of decoupling of the shareholders' rights. This chapter also included an analysis of the so-called stock parking and listed cases of such parking from the case law of Polish administrative courts.

Within the third chapter the scope of regulations regarding obligations on major holdings disclosure and mandatory bid was verified. However, it was preceded by an introduction to the issues related to market efficiency and the axiological basis of these obligations and the goals they pursue. The above-mentioned verification was conducted from the perspective of decoupling of the shareholders' rights. This part of the dissertation also initially identifies "gaps" in Polish regulations and situations that allow them to be circumvented. The analysis conducted showed that the relevant regulations may be characterized by a high level of interpretation uncertainty and inadequacy to the purposes pursued by the above-mentioned obligations. Additionally, special attention was paid to issues related to the definition of acting in concert and its significant defects.

In the fourth chapter, taking into account the need to verify the possibility of increasing the scope of obligations of purchasers of significant blocks of shares, an analysis was made of mechanisms operating in other jurisdictions (France, Germany and the United States). This allowed to identify solutions whose implementation in Poland could prove beneficial and increase the effectiveness of appropriate regulations. This type of solutions (which can be implemented in Poland) includes, for example, chain attribution of voting rights, covering the holdings of financial instruments with mandatory bid

obligations, notification of economic intentions and the establishment of a legal anti-circumvention clause.

The fifth chapter, which is a summary of the considerations, shows examples of mechanisms leading to the avoidance of obligations on major holdings disclosure and mandatory bid or in which the application of these obligations is unclear and raises justified doubts. This demonstrated the need to correct the currently applicable regulations. This mainly concerns the use of chains of intermediary entities and obligation contracts, as well as the scope of cases subject to mandatory bid obligations. Ultimately, changes were proposed aimed at tightening the legal system, improving the quality of legislation and adapting the scope of application of relevant regulations to situations relevant from the perspective of the objectives pursued by them. The proposal to implement obligations to notify economic intentions deserves special attention. Additionally, the definition of acting in concert was adjusted, which had previously been the subject of many controversies in the doctrine and *de lege ferenda* postulates. Based on the considerations carried out, it also seems necessary to establish a general legal anti-circumvention clause, enabling tightening of relevant regulations and flexible recognition of new ways of avoiding relevant obligations.