

*В статье анализируется избирательное законодательство Украины относительно согласованности его норм, а также тенденции его изменения. По мнению автора, частое проведение выборов в Украине (особенно одновременное проведение различных видов выборов) вызвало хаотическую унификацию избирательного законодательства. Автор предлагает системно унифицировать нормы и процедуры, содержащиеся в различных законах о выборах, а также кодифицировать избирательное законодательство Украины, что обеспечит некоторую защиту от попыток политических акторов изменить его в свою пользу в преддверии новых выборов.*

*In the article the electoral legislation of Ukraine is analysed in relation to coordination of his norms, and also tendency of his change. In opinion of author, frequent realization of elections in Ukraine (especially simultaneous realization of different types of elections) caused the chaotic unification of electoral legislation. An author suggests system to unify norms and procedures that are contained in different laws on elections, and also codify the electoral legislation of Ukraine that will provide the certain protecting from the attempts of political actors to change him on the benefit on the eve of new elections.*

Стаття надійшла до редколегії 21.09.2015

УДК 347.721(410+477)

*Nahorniak Iryna, Kyiv*

## **BRITISH EXPERIENCE FOR MODERN CORPORATE LAW IN UKRAINE**

*System crisis in Ukraine, which accompanies all fields of human life, leads to the search for ways and mechanisms in order to minimize losses of group of interests. The author describes the basic mechanisms of English law, which are effectively carried out in Ukrainian legal field. It was revealed and justified the necessity of improvement of the national legislation by implementing provisions on non-competition and performance guarantees.*

### **1. Reasons for using of instruments of English law in Ukraine.**

Under the condition of the absence of effective reforms, armed conflict on the East of Ukraine, decline of the state's investment attractiveness, increasing of the external debt, deficit of the consolidated budget and system crisis, Ukrainian entrepreneurs attempt to minimize their risks. They are looking for the tools in order to protect their business. This is an incentive to go after a foreign jurisdiction and adaptation of foreign law.

Ukraine has risen four places in the annual ranking of doing business by the World Bank «Doing Business». It has occupied 83 place. A slight progress was caused by simplification of business registration. However, other criteria, which are presented in this ranking, clearly demonstrate the problematic aspects of doing business in Ukraine. In particular, it comes about international trade (109th), the resolution of insolvency (141 place), enforcing contracts (98th place), etc. [1].

Ukrainian legislation is full of peremptory provisions, which can not be violated during the process of doing business. Moreover, even the absence of an explicit prohibition on the including of some of the legal structures in the contract does not mean that the court would recognize such contracts valid.

That is why English law is often used during the fulfillment of complex deals in Ukraine (such as M & A, asset purchases, etc.). Its provisions are more dispositive and broaden horizons of the situation. English law allows to specify contract conditions, warranties and other details in order to secure the business.

Non-use of the provisions of Ukrainian legislation and the search for a foreign jurisdiction lead to deceleration of the development of Ukrainian law. Moreover, it does not increase the level of legal consciousness of Ukrainians. According to experts, the introduction of flexibility in Ukrainian law and the implementation of mechanisms, which are similar to the English ones, are absolutely real. [3]

It confirms the relevance of the given topic and its possible practical application.

The aim of this article – is research of English law instruments, which are suitable for implementation in Ukrainian legislation, in the context of its development.

The given topic is still insufficiently explored. The majority of publications and articles are published by legal practitioners, but not the scientists. The need for increasing the number of dispositive provisions in Ukrainian legislation has emerged a short time ago due to the scientific and technological progress.

D.Nishpal, N.Stetsenko, A.Babich, J. Romanchuk, O. Malsky – are the leading practicing lawyers, who call on the modifications to the Civil Code and Commercial Code.

N. Stojko, E. Alexandrova, E.Bychkova, Maria Jose Falconi y Tella, Paul Collier – are the world's scientists, who claim about the convergence of the Anglo-Saxon and continental legal systems. They note that these legal families tend to borrow specific arrangements in particular cases.

## **2. Basic mechanisms of English law which can be carried out in Ukrainian law field.**

Representations are past and present facts that spell out why each side was brought to the deal. A misrepresentation claim, if provided, gives rise to damages and a remedy called rescissions, which is the unwinding or undoing of the deal.

Warranties are inserted to protect a party if losses arise because the future doesn't unfold in the way that was represented by those facts. A breach of warranty gives rise to damages. So separate concepts, separate sets of remedies [4].

The seller's representations usually relate to the information that the buyer is relying on to value the company. Therefore, the seller ends up not only stating that all financial information provided is true and accurate, but also having to deliver information to support this statement such as financial statements, customer and supplier listings, copies of all major contracts, equipment listings, etc. This information all forms part of the schedules to the purchase and sale agreement, and may be referred back to post transaction to ensure that what was effectively purchased truly does exist.

The buyer's representations usually relate to the form of consideration being used to complete the transaction. If the buyer's stock is part of the transaction consideration, then the buyer must represent that it is legally able to offer this stock. In addition, the buyer must provide a shareholder agreement for the seller to review and state that the stock is being offered free and clear of any encumbrances [5].

Non-compete clauses have been on the rise over the last decade. What were once used for top executives, scientists and technicians, and sales people, are now being given to all new hires to sign.

Non-competition clauses, commonly called non-comps, are pretty standard in written employment contracts. Essentially, they attempt to prevent an individual from competing with a business for a certain period of time and within a certain geographical area. With a non-solicitation clause or agreement, there is no restriction on working in a certain field but the individual is prevented from contacting existing customers, clients and patients [6].

Non-compete clauses usually try to specify three key areas: the geographic scope of where you could or could not work; the scope of your services, roles, and skills that can or cannot be used for a competitor; and the duration of the clause, in which one year is a fairly typical time constraint. Non-compete clauses must protect a legitimate business interest of the employer, such as trade secrets, confidential information, and customer relationships [7].

Abovementioned mechanisms are a tiny part, which can be implemented in Ukrainian legislation.

### **3. Ways of improvement Ukrainian legislation in the context of the implementation of English law instruments.**

Nowadays, the legislation of the Russian Federation has moved many steps forward in contrast to Ukrainian one. The Civil Code of the Russian Federation has recently been filled with the articles, which have similar structure to English law. Such formulations also can be included in the Civil Code of Ukraine.

For instance, the mechanism of «representations and warranties» can be formulated in paragraph 4 «Warranty», Chapter 49, « Enforcement of obligations» «Party, which at the conclusion of the treaty, either before or after its conclusion provided the other side with false assurances concerning the circumstances, which are relevant to the conclusion of the treaty, its execution or termination (including those relating to the subject matter of the treaty, the authority to its conclusion, correspondence between the treaty and applicable law, the presence of necessary licenses and permits, its financial state or relating to third party), is obliged to compensate the other party at its request losses caused by the unreliability of the assurances provided in the treaty or pay a penalty. «

Non-competition clauses – is rather controversial mechanism. It is not contained in the legislation of the Russian Federation. Thus, Russian employers have to conclude «confidential agreement».

Employers have a right to protect their relationships with their customers and their confidential information, but former employees have a right to earn a living. When the employer and the employee have entered into a non-competition agreement, these interests must be balanced.

By analogy with US legislation (in particular, Oregon Law), it would be expedient to include such provisions to the Labor Code chapter «Labor Treaty»:

A noncompetition agreement entered into between an employer and employee is voidable and may not be enforced by a court of this state unless:

A. The employer informs the employee in a written employment offer received by the employee at least two weeks before the first day of the employees employment that a noncompetition agreement is required as a condition of employment; or

B. The noncompetition agreement is entered into upon a subsequent bona fide advancement of the employee by the employer [9].

Thus, due to the fact that the English law instruments has long been used in Ukrainian law field during complex dealings, it would necessary to include these provisions to Ukrainian legislation.

*Bibliography:*

1. World Bank Group «Doing business 2015». Retrieved from <http://www.doingbusiness.org/data/exploreconomies/ukraine>
2. Nyshpal D. English Premier League. Yuridicheskaya Praktika, 11. Retrieved from <http://www.integrites.com/en/publication/article-by-nyshpal-english-law>
3. Stetsenko N. Ispolzuya instrumenty angliyskogo prava, my ne izobretayem velosiped. Yurliga, Ligazakon. Retrieved from <http://jurliga.ligazakon.ua/news/2011/12/29/54642.htm>
4. Hasselback D. Representations and warranties: The same thing only different. Entrepreneur. Retrieved from <http://business.financialpost.com/entrepreneur/representations-and-warranties-the-same-thing-only-different>
5. Reps and Warranties. In Encyclopedia Divestopedia online. Retrieved from <https://www.divestopedia.com/definition/889/reps-and-warranties>
6. Cobb M. Non-Competition and Non-Solicitation Clauses or Agreements. Retrieved from <http://www.cobbjones.ca/cj/article/non-competition-and-non-solicitation-clauses-or-ag/>
7. Randall S. Hansen. Dealing With Non-Compete Clauses and Agreements. Retrieved from <http://www.quintcareers.com/non-compete-clauses/>
8. Osborne Clark Representations and warranties in private M&A. Retrieved from <http://www.osborneclarke.com/connected-insights/blog/representations-and-warranties-in-private-mergers-and-acquisitions/>
9. Oregon Laws. Noncompetition agreements § 653.295<sup>1</sup>. Retrieved from <http://www.oregonlaws.org/ors/653.295>

*Системна криза в Україні, яка супроводжує усі сфери життєдіяльності людини, обумовлює пошуки шляхів і механізмів мінімізації втрат груп інтересів. У даній статті розглянуті основні механізми англійського права, які ефективно застосовуються в українському правовому полі. Виявлено та обґрунтовано необхідність удосконалення вітчизняного законодавства шляхом внесення положень про неконкурунцію і гарантій виконання зобов'язань.*

*Системный кризис в Украине, который сопровождает все сферы жизнедеятельности человека, обуславливает поиски путей и механизмов минимизации потерь групп интересов. В данной статье рассмотрены основные механизмы английского права, которые эффективно применяются в украинском правовом поле. Выявлена и обоснована необходимость совершенствования отечественного законодательства путем внесения положений о неконкурунции и гарантий выполнения обязательств.*