NEWSLETTER

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'Squeezing-out'
- a controversial judgment of the Supreme Court

Dear Sirs,

we would like to inform you about the Supreme Court's judgment of the 20th of February 2008, in which the Supreme Court raised the issue of compulsory buyout of minority shareholders. The commented ruling of the Supreme Court has been subject to substantial criticism from the doctrine.

I. At the beginning of considerations it is worth recalling that the **compulsory buyout of shares**, commonly called **'the sqeeze out procedure', is to squeeze out the minority shareholders by majority shareholders**, which aims to gain complete control over a joint-stock company and reduce maintenance costs of shareholders.

II. The existence of squeeze out institution in a legal order creates for the company the ability to protect against small shareholder who maliciously hinders its current activities through widespread appealing against the decision of the company to the commercial court.

III. Due to the facts of the case occurred, the Extraordinary General Meeting adopted a resolution on compulsory redemption of shares. The majority shareholder paid the price on the company's account, which is the price which was then paid to the shareholder who was bought. A minority shareholder, whose shares were subject to redemption, filed to the Court Register application for verification of the redemption price. The Court changed the price of the shares which were subject to redemption - the price has been increased three times. Due to the change in the price, the majority shareholder resigned from the squeezing out - did not pay the price difference between the share price fixed by the Court and the share price originally agreed by the expert auditor. At the same time, he urged the management of the company to pay back the amount originally paid by him on the squeeze out. A shareholder, whose shares were subject to redemption, called the company for payment of the redemption price.

IV. On the basis of the occurred case, the Supreme Court analyzed the issue of verification of the original redemption price by the Court Register and the impact on the entire squeeze out procedure and the consequences of non-payment by the shareholders who purchase the difference resulting from a court ruling.

V. The Supreme Court took the view that shareholders who purchase shares have the responsibility to pay the difference to the redemption price paid in advance on the company's account within three weeks of announcing the redemption price ultimately determined by the Court's decision. **However, the Court held that as, that payment of the redemption price is a *sine qua non* condition for the effectiveness of the squeeze out procedure, the failure to pay the difference in the assessment of the Supreme Court will result in the collapse of the entire procedure.**

VI. To sum up, in the Supreme Court's opinion, the fact that the Court Register has set a higher price of a share buyback, could undermine the squeeze out procedure. It follows that the state of binding the shareholders who purchase, does not include *de facto* a price established as a result of verification by the Court Register.

VII. In conclusion, the Supreme Court's ruling puts the majority shareholders in a much more favorable position. They do not bear the risks associated with changing prices, and therefore there is no lack of critics regarding the ruling in the commented judgment.