

## Legislative Shortfall of Investor's Protection in the Process of Involuntary "Typological Death" of Accountable Enterprise from the Exchange Stock

*Scholarly article aims to give an objective coverage of involuntary deregistration of accountable corporations from the stock exchange, causal study of (in)voluntary delisting according to the Georgian regulation, grouping the types of deregistration. Simultaneously, stock price mitigation and small investor's economic interest protection along with the managerial liability are also considered. Due to the unsustainable level of Georgian stock market development, article partially happens to be descriptive; however, with the aim of comparison, foreign regulations in conjunction with the judicial practice analysis are also represented.*

**Key Words:** *accountable corporation, typological conversion, (in)direct voluntary delisting, compulsory deregistration, investor's economic interest, protection of property/financial rights.*

### 1. Introduction

„One creates laws, the others execute them”.<sup>1</sup> In conservative definition of modern corporate law, the area of research of the field, regulating the (entrepreneurial) ordonnance and internal organizational relationships, is quite wide at present.<sup>2</sup> Interest towards the corporate-legal institutions with the objective to identify the links between the corporate law and economic or social sciences or due to already existing relationships between the fields, is increasing. The relationship between the corporate and capital market laws is also interesting, as it is required for the dominant nature of social-economic status of the corporations established in the practical world.

The business subject from its establishment to its organizational “life” at the capital market under the legislative or listing regulations goes through the heterogenous, complex stages of evolution. These stages of development of the economic actor, in the best case, are achieved through the rational management policy oriented towards the capital market. Compliance with the law shall improve the company's value<sup>3</sup> and reduce (in)direct administrative costs.<sup>4</sup> According to the modern tendency, regulation of the capital market is directed towards the reasonable regulation. The above is necessary for the development of financial markets, for the mobilization of long-term investment resources via various financial instruments, which under the Georgian reality would be the alternative to the financing via the banking sector.

With the rising market economy, the attention of the regulating bodies has been driven towards the eradication of problems related to the institutional organization of the capital market, especially in the direction of creation of the trustworthy investment climate. Present work, via the causal study of “typological

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<sup>1</sup> *Tocqueville A.*, Democracy in America (trans. *Schleifer J.T., Nolla E.*), 2010, US, 278.

<sup>2</sup> *Javakhishvili Iv.*, Works in Twelve Volumes, Vol. VII, Tbilisi, 1984, 235 (in Georgian).

<sup>3</sup> On the company value, *Makharoblishvili G.*, General Analysis of Corporate Management, Tbilisi, 2015, 77-90 (in Georgian).

<sup>4</sup> *Dines R.*, Does Delaware Law Improve Firm Value? Journal of Financial Economics, Vol. 2001, 526-528.

death” of accountable enterprise – delisting process regulated under the national law, relates to the grouping of its types and protection of proprietary rights of investors. The research is primarily concentrated on the involuntary delisting, for which the issues of reduction of share value as well as responsibility of corporation leadership are relevant. Therefore, first chapter of the work relates to the essence of typological conversion<sup>5</sup> of the enterprise; chapter two studies the dichotomy in two main segments and classification of sub-types; as the research is focused on delisting, protection of economic interests of minority investors is reviewed in relation to the above.

Instable indicators for the development of Georgian Stock Exchange does not provide for the empiric investigation of the topic. Based on the above circumstances, work is partially descriptive; however, for the purpose of comparison, the foreign regulations valid for the topic under research and analysis of court practices are provided in the work.

## 2. Essence of Typological Changes of Enterprise

Anatomic (organizational-structural) or functional differences between the organizational-legal forms create the explicit differentiation at the legislative as well as law enforcement stages. The legislative deregulation conditioned by the less developed economic conditions, transforms the demarcation boundary of business subjects into the pale contour. This process is demonstrated more in the practical reality and makes the theoretical need for the identification of differences between the business subject questionable. However, normative disposition of organizational-legal forms creates the logical circle, organizational concept of which, one could say, conforms with the stages of society’s evolution process (for example, development from the individual entrepreneur to the joint stock company). National organizational management is demonstrated via the establishment of the company, gradual development of the company and achievement of the culmination point – effective operation at the capital market. The above, on one hand, ensures the material wellbeing for all stakeholders (partners as well as third, related parties), and, on the other hand, confirms the qualified administration performed by the management. Logical progression of the business subject<sup>6</sup> is continued by the accumulation of tangible resources at the stock market. Trading at the capital market requires organizational changes (and not only organizational)<sup>7</sup>, which is the basis for the typological classification of corporation in “transparent” and “public” manner<sup>8</sup>. Change of reorganizational rank in the essence of deduc-

<sup>5</sup> *Makharoblishvili G.*, Implementation of Fundamental Changes in the Structure of Capital Companies Based on the Corporate-legal Actions (acquisition, merger), Tbilisi, 2014, 211, <[http://press.tsu.ge/data/image\\_db\\_innova/disertacie-bi\\_samartali/giorgi\\_maxaroblishvili.pdf](http://press.tsu.ge/data/image_db_innova/disertacie-bi_samartali/giorgi_maxaroblishvili.pdf)>, [25.05.2016] (in Georgian). As in the quoted work “typological conversion” is used in the terminological sense, the variation of above works in the research follow the logical-contents line of the presented argumentation.

<sup>6</sup> Joint Stock Company, as the form designed for the implementation of large scale entrepreneurial activities provided with the relevant capital, has capability to publicly trade with stocks, *Burduli I.*, Fundamentals of Joint Stock Law, Vol. 1, Tbilisi, 2010, 109-127; *Makharoblishvili G.*, General Analysis of Corporate Management, Tbilisi, 2015, 31-35, 39-46 (in Georgian). The entrepreneurial company is named as the most acceptable form for the attraction of wealth via the capital market, *Schutz M., Wasmeier O.*, The Law of Business Organizations: A Concise Overview of German Corporate Law, Berlin, 2012, 70-71. According to the article 9, law of Georgia on the “Stock market”, issuer of stocks for trade is defined as the accountable enterprise; however, mentioned article does not include indication on the relevant organizational-legal form. At present at the stock exchange of Georgia, for example, the company registered in the form of LTD is freely admitted: Nikora Trader LTD, which trades with B category listed stocks, <[http://www.gse.ge/Stocks\\_G/Issues.htm](http://www.gse.ge/Stocks_G/Issues.htm)>, [25.05.2016]. Topic is focused on only one organizational-legal form – Joint Stock Company.

<sup>7</sup> *Judge W., Zattoni A.*, Corporate Governance and Initial Public Offering, An International Perspective, New York, 2012, 9-10.

<sup>8</sup> *Makharoblishvili G.*, Implementation of Fundamental Changes in the Structure of Capital Companies based on the Corporate-legal Actions (acquisition, merger), Tbilisi, 2014, 31-38 (in Georgian).

tive or inductive typological conversion<sup>9</sup>, is demonstrated via the entering the capital market. Corporation transformation in rank terms is equalized with the change to the fundamental category, as the issues related to the protection of proprietary rights of minority investors is distinguished with the particular sensitivity;<sup>10</sup> Accordingly, it is subject to the norms regulating the implementation of fundamental changes.

Chapter below will be devoted to the general comparison of public corporation and private (closed type) corporations; the key motives for *going public* of the private company and *going private* of accountable company will be also reviewed.

## 2.1. Going Public of the Private Accountable Company

One of the basis for the contents-terminology classification of public and private companies, together with the organizational structure is the mechanism for capital attraction. In case of public corporation, the above is achieved via the placement of stocks at the stock market and trading to the wide public.<sup>11</sup> One of the characteristics of the accountable company is lawful liability on the submission of reports to the stakeholders, stock and stock supervision body and information transparency.<sup>12</sup> Mandatory or voluntary disclosure of information is important not only during the period of operating at the market,<sup>13</sup> but also at the moment of admission to the stock market.<sup>14</sup> The latter ensures the efficiency of capital market, which is demonstrated via the constructive egalitarianism<sup>15</sup> and rational planning of investment policy, wide opportunities for correct investment decisions.<sup>16</sup> Trading with stocks<sup>17</sup> via the primary public offering is subject to the special normative regulations.<sup>18</sup> The "strictness" of two-stage – general-legislative and stock market – regulation

<sup>9</sup> *Makharoblishvili G.*, Implementation of Fundamental Changes in the Structure of Capital Companies based on the Corporate-legal Actions (acquisition, merger), Tbilisi, 2014, 207-215.

<sup>10</sup> Corporate transformation of fundamental category also implies: issue of additional shares, reorganization, distribution/sales of tangible resources, reincorporation, delisting, voluntary liquidation, *Kraakman R., Armour J., Davies P., Enriques L., Hansmann H., Hertig G., Hopt K., Kanda H., Rock E.*, The Anatomy of Corporate Law, 2<sup>nd</sup> ed., 183-224. *Thompson R. B.*, Preemption and Federalism in Corporate Governance: Protecting Shareholder Rights to Vote, Sell, and Sue, Law and Contemporary Problems, Vol. 62, №3, 1999, 217.

<sup>11</sup> *Sims V.*, English Law and Terminology, Aufl.3, Germany, 2010, 119-120. *Schulz M., Wasmeier O.*, The Law of Business Organizations, A Concise Overview of German Corporate Law, New York, 2012, 53.

<sup>12</sup> *Haas J. J.*, Corporate Finance in the Nutshell, 2<sup>nd</sup> ed., 2011, US, 1-14. *Palmiter A. R.*, Corporations, 7<sup>th</sup> ed., US, 2012, 432-434.

<sup>13</sup> *Bourne N.*, Principles of Company Law, 3<sup>rd</sup> ed., GB, 1998, 37-40; *Ladenfeld S. M., Moore A. B., Fischer J. M.*, The Public Company Handbook: A Corporate Governance and Disclosure Guide for Directors and Executives, 3<sup>rd</sup> ed., New York, 2006, 45-46.

<sup>14</sup> At the stage of making investment decision information included in the issuer's prospect is important, such information is one of the ways for the investor to calculate the ratio of risk and return, *Steinberg M. I.*, Understanding Securities Law, 5<sup>th</sup> ed., US, 2009, 115-117, *Pettet B.*, Company Law, 2<sup>nd</sup> ed., GB, 2005, 364; *Bragg S.*, Running a Public Company, From IPO to SEC Reporting, US, 2009 14-18.

<sup>15</sup> Considering the provision of information to the investors in compliance with the principle of the equality of information, *Pettet B.*, Company Law, 2<sup>nd</sup> ed., GB, 2005, 323. On the contrary, destructive egalitarianism considers partial or unequal disclosure of information.

<sup>16</sup> According to the efficient capital market theory, share value varies according to the availability and changes to the information beyond it; accordingly changes to information impacts the market value of the share, *Haas J. J.*, Corporate Finance in the Nutshell, 2<sup>nd</sup> ed., 2011, US, 147-151; *Pettet B.*, Company Law, 2<sup>nd</sup> ed., GB, 2005, 325.

<sup>17</sup> *Hamilton R., Freer R.*, The Law of Corporations in the Nutshell, US, 2011, 290; *Schneeman A.*, The Law of Corporations and other Business Organizations, US, 2010, 432-437; *Bragg S.*, Running a Public Company, From IPO to SEC Reporting, US, 2009, 3-18.

<sup>18</sup> *Haas J. J.*, Corporate Finance in the Nutshell, 2<sup>nd</sup> ed., US, 2011, 2. With the purpose to avoid speculation with stocks at the market, "Blue sky law" is based on the initiative of the Supreme Court of USA, which in 1929 year conditioned the financial crisis known as "Great depression", *Cox J. D., Hillman R. W., Langevoort D. C.*, Securities Regulation Cases and Materials, 6<sup>th</sup> ed., US, 2009, 3-10. *Meiners R. E., Ringleb Al. H., Edwards F. L.*, The Legal Environment of Business, 12<sup>th</sup> ed., US, 2012, 490-491, *Hamilton R., Freer R.*, The Law of Corporations in the Nutshell, US, 2011, 239-265.

is dictated by the need to protect interests of private investors, as well as the need to efficiently manage the macro-economic processes. As an example, for the above, it is sufficient to mention the wide legislative reforms implemented following the 2008-2010 financial crisis.

Generally<sup>19</sup>, authorization of accountable company at the stock exchange is implemented in compliance with the general-legislative or listing requirements, setting requirements for internal organizational readiness,<sup>20</sup> mobilization of tangible resources, relevant costs.<sup>21</sup> Hence, not all organizational-legal forms enjoy the possibility for financing through the capital market.<sup>22</sup> The latter is based on the normative will of the legislator as well as the practical capability to operate at the capital market.

Eclectics of positive and negative aspects of transforming the corporation into the accountable enterprise: a) Positive aspects: reduction in costs related to the keeping the capital; simple transfer of shares and increasing liquidity; expansion of corporation via acquisition-merger transactions; positive reputation.<sup>23</sup> b) negative aspects: time and costs required for placing the shares; transparency (“living in the crystal house”) – obligation to maintain intermediary and annual reports; danger for hostile takeover; escalation of problem related to agent-principal relationship – problem of information asymmetry; costs related to the compliance with general-legislative or listing rules; danger for the reputation due to the low liquidity; potential increase of shareholders’ claims.<sup>24</sup>

Reality established by the national economic history is distinguished with the diverse “anomaly” cases of organizational-legislative forms, particularly in the direction of functional-content wise separation of capital and solidarity entrepreneurial subjects. Deficit of good corporate practices causes devaluation of capital market, which in certain cases encourages the “expansive nature” of the banking sector.

## 2.2. Transformation of Corporation into Private Company (Going Private<sup>25</sup>)

Private company is distinguished with small number of shareholders and concentrated capital structure, which often is not separated from the control (management)<sup>26</sup> and such a “monolith structure” establishes

<sup>19</sup> As an exception, one can name such placement of stock (for example: stocks of educational, religious organization, state), which is released from the compliance with some stock exchange or legislative requirements, implemented by the stock regulator or based on the contractual agreement, *Steinberg M. I.*, *Understanding Securities Law*, 5<sup>th</sup> ed., US, 2009, 39.

<sup>20</sup> According to listing requirements of some stock exchanges, it is mandatory for the corporation to create various committees (for example: *risk management committee*; *audit committee*). According to “ALP” corporate management principles, the audit committee shall consist of at least three non-stakeholder members, *Marcey R. J.*, *Corporate Governance*, New Jersey, 2011, 187; *Bainbridge M.S.*, *The New Corporate Governance in Theory and Practice*, New York, 2008, 160-161; *Chanturia L.*, *Corporate Management and Responsibility of the Management in the Corporate Law*, Tbilisi, 2006, 116-117, 123, 135, 175 (in Georgian).

<sup>21</sup> Cost of registration at the stock exchange, initial installment for the initial admission to the stock listing, quarterly payments, *Bragg S.*, *Running a Public Company, From IPO to SEC Reporting*, US, 2009, 7; *Hamilton R.*, *Freer R.*, *The Law of Corporations in the Nutshell*, US, 2011, 290.

<sup>22</sup> *Haas J. J.*, *Corporate Finance in the Nutshell*, 2<sup>nd</sup> ed., US, 2011, 9.

<sup>23</sup> *Ibid.*, 9-11. *Hamilton R.*, *Freer R.*, *The Law of Corporations in the Nutshell*, US, 2011, 236-238; *Steinberg M. I.*, *Understanding Securities Law*, 5<sup>th</sup> ed., US, 2009, 137-38; *Bragg S.*, *Running a Public Company, From IPO to SEC Reporting*, US, 2009, 3.

<sup>24</sup> *Haas J. J.*, *Corporate Finance in the Nutshell*, 2<sup>nd</sup> ed., US, 2011, 11-13. *Steinberg M. I.*, *Understanding Securities Law*, 5<sup>th</sup> ed., US, 2009, 39-42, 137-38.

<sup>25</sup> In the literature transformation of public corporation into the non-accountable company is referred to as using the different terms: going private, doing dark, deregistration, delisting. Each of them are referred to in the different contexts. Based on the objective of the article, going private, generally, due to the termination of turnover of stocks at the stock exchange implies the typological change of the company, and delisting typology is determined according to the reasons for the termination. See chapter 2 of the present article.

<sup>26</sup> *Makharoblishvili G.*, *General Analysis of Corporate Management*, Tbilisi, 2015, 68-76 (in Georgian).

the different model for the corporate management.<sup>27,28</sup> Due to the reduced conflict of interests, management of the private company is less risky and less costly. Unlike the public corporation, limited opportunities for the sale of shares makes the private company less attractive.<sup>29</sup> As the investment decision is made based on the trustworthiness of the information disclosed by the issuer, in the event of back-conversion of the public corporation, the liquidity, possibility of sales of stocks reduces.<sup>30</sup> Therefore, process, volume of re-purchase of shares from the company by the shareholder often becomes the subject of the specific contractual agreements (*buy-out/buy-sell agreement*).<sup>31</sup>

The delisting concept is presented in a wide perspective in the work; the delisting process for each individual case is managed under the subjective-objective motives, which is achieved via the voluntary decision or forced, exogenic factors and different method, strategy. In a simple definition, the above implies withdrawal of stocks from the listing.<sup>32</sup> However, it does not mean the full de-registration of issuer's all stocks from the stock market, in other words, automatic full de-registration of accountable company. It is possible to carry out full or partial withdrawal of one class from the listing.<sup>33</sup> For more clearance, it is expedient to conduct causal comparative review of methods and essence of *going private* and *going dark* of the corporation.<sup>34</sup> According to the presented classification, both of them belong to the voluntary delisting segment. "*Dark existence*" of delisted corporation continues with non-stock exchange trade,<sup>35</sup> which operates via the "*Pink Sheet*" electronic system or Over-the-Counter system.<sup>36,37</sup> Despite the above, non-stock exchange trade has less reliability for investors, as unlike the initial placement, the imperative requirement for infor-

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<sup>27</sup> In case of each corporation, management and control is achieved via the heterogenous management policy. Difference in models are determined by the characteristics of the maintenance of business activities and economic market, as well as geographic location of the country, social-economic condition or legal order, *Kraakman R., Hansmann H., The End of History for Corporate Law*, Paper №280, Yale International Center for Finance, Paper №00-09, 2000, 2. *Makharoblishvili G., General Analysis of Corporate Management*, Tbilisi, 2015, 116-122 (in Georgian).

<sup>28</sup> *McCahery J. A., Vermeulen P. M., Understanding (Un)Incorporated Business Forms*, Topics in Corporate Finance, Amsterdam, 2005, 5-6; *Haas J. J., Corporate Finance in the Nutshell*, 2<sup>nd</sup> ed., US, 2011, 15-20. *Palmiter A. R., Corporations*, 7<sup>th</sup> ed., US, 2012, 531-535.

<sup>29</sup> *Bainbridge St. M., Corporation Law and Economics*, New York, 2002, 834; *Hamilton R., Freer R., The Law of Corporations in the Nutshell*, US, 197-202.

<sup>30</sup> *Salzill F., Minority Shareholders and Empirical Evidences on Voluntary Delisting Phenomenon*, Chair of Advanced Corporate Finance, 2013-2014, 24-25.

<sup>31</sup> *Bainbridge St. M., Corporation Law and Economics*, New York, 2002, 812.

<sup>32</sup> Statutes on the admission of stocks to the trade system and listing, "Stock exchange of Georgia", Paragraph 6, Section 2, Article 1.

<sup>33</sup> Georgian legislation refers to them as "treasury shares" and places certain restrictions to the possibility to repurchase them (up to 25% of placed shares), see paragraph 9, article 531, law of Georgia on "Entrepreneurs". The article does not discuss the possibility to sell treasury shares; the terms for the sales of shares. As for the non-target repurchase, it is ensured by the legal responsibility of management members, *Cox J. D., Hazen Th. L., Business Organizations Law*, US, 2011, 592, 602.

<sup>34</sup> *Onesti T., Romano M., Favino Ch., Pieri V., Going Private and Going Dark Strategies*, SSRN Electronic Journal, 2013, 1-2.

<sup>35</sup> *Martinez I., Serve St., Djama C., Reasons for Delisting and Consequences: A Literature Review and Research Agenda*, 4. *Zetzsche D., Going Dark Under German Law – Towards an Efficient Regime for Regular Delisting*, Center for Business and Corporate Law Research Paper Series (CBC-RPS), 2013, 3.

<sup>36</sup> *Mecay J., O'Hara M., Pompilio D., Down and Out of Stock Market: The Law and Finance of the Delisting Process*, SSRN electronic Journal, 2005, 4, 13-14.

<sup>37</sup> The main actor of the secondary capital market is broker-dealer, allowing for the trade with the shares of private corporation. Large corporation, such as *LinkedIn, Groupon* are trading via the market, *Osovsky A., The Curious Case of the Secondary Market with Respect to Investor Protection*, Tennessee Law Review, Vol. 82: XXX, 2014, 23, 18-26.

mation disclosure is deregulated.<sup>38</sup> Therefore, deregistration is not always followed by the “end of corporate life” (liquidation) of the business subject.

Transaction directed towards the back-conversion of accountable enterprise (Going Private Transaction)<sup>39</sup> implies the opportunism of dominant shareholder or group of shareholders directed towards acquiring the controlling authority, privatization of corporation.<sup>40</sup> Method for the conversion, organizational change via the “going private transaction”<sup>41</sup> could be merger, acquisition, division of shares, tender offer.<sup>42</sup> It differs from the establishment of mandatory sale, which is more characteristic to the closed type corporation.<sup>43</sup> Motive: costs related to fulfilment of the reporting, general-legislative or listing requirements, particularly at the times, when it is not profitable for the company to operate at the capital market and such operations become even more expensive.<sup>44</sup> In this regard, incentive of the management related to the typological change can be reviewed in the positive context, similarly to the delisting as the extreme mechanism for avoiding the potential hostile takeover.<sup>45</sup> On the other hand, there is a possibility, that the objective of delisting is related to the private interests of the majority shareholder<sup>46</sup> or masking the non-qualified administration implemented by the management.<sup>47</sup>

### 3. Reasons Conditioning the Involuntary Delisting

The rational decision of management is made via the correlation between the legal and economic analysis.<sup>48</sup> Rational choice theory is the formal analysis of structured process used for making reasonable decision, aiming at the achievement of the corporate actor’s objective with the most desirable outcome.<sup>49</sup> Obligation to follow the moral principles is the basis for the rational behavior, which opposes the decision

<sup>38</sup> Exception: *Pink Sheet Disclosure Policy*, Molitor M. K., Will More Sunlight Fade the Pink Sheets? Increasing Public Information about Non-reporting Issuers with Quoted Securities, *Indiana Law Review*, Vol. 39:309, 2006, 347-361. *Leuz Ch., Triantis A., Wang T.*, Why Do Firms Go Dark? Cases and Economic Consequences of Voluntary SEC deregistration, *Journal of Accounting and Economics*, 2008, 11-12, 18-24. It is possible to voluntarily disclose information to the investor via the corporation web-page as well as electronic address: <www.pinksheets.com>, *Ibid*, 33. *Salzill F.*, Minority Shareholders and Empirical Evidences on Voluntary Delisting Phenomenon, *Chair of Advanced Corporate Finance*, 2013-2014, 29-30.

<sup>39</sup> Transaction is also referred to as *Public-to-Private*, *Borden A. M., Yunis J. A.*, *Going Private*, New York, 2006, 2.

<sup>40</sup> *Borden A. M., Yunis J. A.*, *Going Private*, New York, 2006, 1-4. *Bragg S.*, *Running a Public Company, From IPO to SEC Reporting*, US, 2009, 282-283.

<sup>41</sup> *Cox J. D., Hazen Th. L.*, *Business Organizations Law*, US, 2011, 658-660.

<sup>42</sup> *Engel E., Hayes R.M., Wang X.*, The Sarbanes-Oxley Act and Firms’ Going Private Decisions, *SSRN Electronic Journal*, 2004, 12.

<sup>43</sup> *Borden A. M., Yunis J. A.*, *Going Private*, New York, 2006, 1-4. *Bragg S.*, *Running a Public Company, From IPO to SEC Reporting*, US, 2009, 5-6.

<sup>44</sup> *Leuz Ch., Triantis A., Wang T.*, Why Do Firms Go Dark? Cases and Economic Consequences of Voluntary SEC deregistration, *Journal of Accounting and Economics*, 2008, 2; *Boadle S., Jeffery H. M.*, *Taking Your Company Private in: Floating Your Company, The Essential Guide to Going Public*, 3<sup>rd</sup> ed., US, 2007, 237-238.

<sup>45</sup> *Makharoblishvili G.*, *Implementation of Fundamental Changes in the Structure of Capital Companies based on the Corporate-Legal Actions (acquisition, merger)*, Tbilisi, 2014, 211-215 (in Georgian). *Hamilton R., Freer R.*, *The Law of Corporations in the Nutshell*, US, 312. *Cox J. D., Hazen Th. L.*, *Business Organizations Law*, US, 2011, 658.

<sup>46</sup> *Ventoruzzo M.*, Freeze-outs: Transcontinental Analysis and Reform Proposals, *Virginia Journal of International Law*, Vol. 50:4, 2009-2010, 842-847.

<sup>47</sup> *Leuz Ch., Triantis A., Wang T.*, Why Do Firms Go Dark? Cases and Economic Consequences of Voluntary SEC deregistration, *Journal of Accounting and Economics*, 2008, 6-11.

<sup>48</sup> *Frerichs S.*, The Legal Constitution of Market Society: Probing the Economic Sociology of Law, *The European Sociology – The European Electronic Newsletter*, Vol. 10, № 3, 2009, 22.

<sup>49</sup> About the corporate actors, *Mashlow J. L.*, The Economic Context of Corporate Social Responsibility, in: *Corporate Governance and Director’s Liabilities, Legal, Economic and Sociological Approach* (eds., *Hopt J. L., Teubner G.*), Germany, 1984, 72-3.

oriented towards the maximization of personal benefits.<sup>50</sup> Alter-objective of the leadership and majority shareholders differ from the interest of minority shareholders, even more aggravating the management policy dilemma. The typological change of the enterprise is not an exclusion, especially in case of voluntary delisting, when the legal cause is to protect the proprietary rights of minority shareholders.

Typological segmentation of delisting is presented in the second chapter, which under the framework of article, reviews the methodology for transformation of accountable company and identification of legal risks. As the research is mainly devoted to the involuntary typological changes, the chapter below is designed to give better picture of the voluntary delisting.

### **3.1. Differentiation of Voluntary and Involuntary Delisting**

In some scientific publications, theoretical classification of delisting is represented in the form of typological dichotomy<sup>51</sup>, and often – trichotomy.<sup>52</sup> In schematic terms, deregistration of accountable company can be carried out with two – voluntary and involuntary basis. Out of the above two, voluntary deregistration could be divided into two - direct and indirect (one could refer to subjective or objective) - sub-categories. Direct voluntary deregistration is implemented via the expression of issuer's will, in the second case, the delisting is conditioned by the objective factors, corporate combination. As for the involuntary, forced delisting, it is conducted under the decision of the stock exchange or regulating agency.

#### **3.1.1. Direct Voluntary Delisting**

Voluntary delisting differs from the involuntary delisting in several aspects, these aspects being: first - causal aspect, second – aspect of will, third – economic effect over the value of shares and stocks in general. Voluntary deregistration is caused by the unprofitable condition of the corporation and reduction of costs related to the requirements for corporate compliance causes the maximization of shareholders' benefits; logically, involuntary delisting has destructive effect.<sup>53</sup> Avoiding undesirable economic or legal outcome is ensured via the fiducial liabilities of the management bodies.<sup>54</sup> When the management gets information on the devaluation of shares, initiation of delisting serves the purpose of avoiding additional costs.<sup>55</sup> However, prior to the official disclosure of information on delisting, the danger of trading based on the insider information is proportionally increased, and sales have big impact on the market value of the shares.<sup>56</sup> Devaluation of market value reduces chances of minority investors to sell the shares.<sup>57</sup> At this stage, even in case of re-purchase of shares from public, the compensation value calculated based on

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<sup>50</sup> Little D., Diversity of Social Explanation, Introduction to the Philosophy of Social Sciences (translated by L. Khechuashvili), Tbilisi, 2003, 90-5 (in Georgian).

<sup>51</sup> Generally, classification is down to differentiation of voluntary and involuntary delisting, which have their sub-categories, Onesti T., Romano M., Favino Ch., Pieri V., Going Private and Going Dark Strategies, SSRN Electronic Journal, 2013, 10-13.

<sup>52</sup> Salzill F., Minority Shareholders and Empirical Evidences on Voluntary Delisting Phenomenon, Chair of Advanced Corporate Finance, 2013-2014, 6-13.

<sup>53</sup> Martinez I., Serve St., Djama C., Reasons for Delisting and Consequences: A Literature Review and Research Agenda, SSRN Electronic Journal, 2-10, 4-16.

<sup>54</sup> McGuinness M. J., Renbock T., Going-Private Transactions: A Practitioner's Guide, Delaware Journal of Corporate Law, Vol. 80, 2005, 437 and subsequent pages.

<sup>55</sup> Martinez I., Serve St., Djama C., Reasons for Delisting and Consequences: A Literature Review and Research Agenda, 6.

<sup>56</sup> Schneeman A., The Law of Corporations and other Business Organizations, US, 2010, 461-462. Hamilton R., Freer R., The Law of Corporations in the Nutshell, US, 2011, 311-312.

<sup>57</sup> Khort J., Protection of Investors in Voluntary Delisting on the U.S. Stock Market, Uppsala Faculty of Law, Working Paper № 4, 2014, 7.

the market value will be much lower. The above has been missed by the national legislation, making the protection of proprietary rights of minority shareholders sensitive. As it is management's "responsibility" to retain high share prices for the prevention of costs caused by the reduced price, the share class could become subject of re-purchase.<sup>58</sup>

One of the important aspects of voluntary delisting is related to the opportunism of the managers; it is especially relevant in the event of Management Buyout, which is also related to the agent-principle problem and procedurally is conducted under the almost same context as the "going private", in case of purchase of company by means of attracted funds<sup>59</sup> (LBO -leveraged buyout).<sup>60</sup> In case of MBO, managers act independently or together for repurchase of shares by means of external borrowings, also requiring disclosure of the relevant information.<sup>61</sup> There is quite extensive review of tender offer for the repurchase of own shares (self-tender)<sup>62</sup> carried out by the issuing party, which is practice parallel to the transaction directed to the privatization in outcome terms in the Anglo-American law. There is also difference in the form of information disclosure.<sup>63</sup>

Generally, voluntary delisting is perceived as the "transaction directed towards the privatization".<sup>64</sup> One of the basis for withdrawal from the trade at Georgian stock exchange could be reorganization of issuer, personal application or termination of concluded agreement.<sup>65</sup> For example, one of the simplest form is provided below: accountable enterprise establishes the company; following the fulfilment of all prerequisites for the merger the affiliate company is merged with the public corporation, where such company generally continues its existence via one shareholder.<sup>66</sup> The acquirer, following the acquisition of the controlling package of shares carries out back-conversion of public corporation via *short-form merger*.<sup>67</sup>

Voluntary delisting is particularly impacting the proprietary rights of the minority shareholders; preventing the negative impact under the stock exchange rules is generally possible by means of decision made by the general meeting and submitting claim against the management appealing to the violation of fiduciary

<sup>58</sup> The difference between the redeem and repurchase in terms of contents and outcomes must be noted. Unlike the first, repurchase implies purchase of share from one specific shareholder, in other words it implies repurchase of share by shareholders and its proportional distribution among other members; as for the redeem is implemented equivalently, in compliance with the principle of equality towards the shareholders of one class, *Hamilton R., Freer R.*, The Law of Corporations in the Nutshell, US, 2011, 311-13. Repurchase could be carried out at the price considered in the founding act or based on the formula for the calculation of amount to be paid, *Schneeman A.*, The Law of Corporations and other Business Organizations, US, 2010, 409.

<sup>59</sup> *Maisuradze D.*, Corporate-legal Self-defense Measures in the Process of Reorganization of the Capial Organization (comparative-law research mainly based on the examples of Delaware and Georgian Corporate laws), Tbilisi, 2015, 92-94 (in Georgian).

<sup>60</sup> *Makharoblishvili G.*, Implementation of Fundamental Changes in the Structure of Capital Companies based on the Corporate-legal Actions (acquisition, merger), Tbilisi, 2014, 134-145, (in Georgian). *Haas J. J.*, Corporate Finance in the Nutshell, 2<sup>nd</sup> ed., US, 610.

<sup>61</sup> For example: on the repurchase objectives, see *ibid*, 662-664.

<sup>62</sup> *Haas J. J.*, Corporate Finance in a Nutshell, US, 2011, 660-664.

<sup>63</sup> According to the article 13e-4, act on stocks of USA, in case of self-tender the *Schedule TO* is filled up, and in case of "transaction directed towards the privatization" *Schedule 13E-3* is filled up. In general, the reasons for transaction, financial resources for implementation, involvement of independent leadership in the decision-making process, legal evaluation of transaction implementation from the side of management from the perspective of the minority, non-affiliated investors are indicated in the form *13E-3*, *Engel E., Hayes R. M., Wang X.*, The Sarbanes-Oxley Act and Firms' Going Private Decisions, SSRN Electronic Journal, 2004, 11, ft. 9. *Clark R. Ch.*, Corporate Law, US, 1986, 523-524.

<sup>64</sup> *Martinez I., Serve St., Djama C.*, Reasons for Delisting and Consequences: A Literature Review and Research Agenda, 6.

<sup>65</sup> Statutes on the admission of stocks to the trade system and listing, "Stock exchange of Georgia", Articles 5.12.1 and 6.10.2.

<sup>66</sup> *Engel E., Hayes R. M., Wang X.*, The Sarbanes-Oxley Act and Firms' Going Private Decisions, SSRN el. Journal, 2004, 13.

<sup>67</sup> *Ibid*, 13. *Makharoblishvili G.*, Implementation of Fundamental Changes in the Structure of Capital Companies Based on the Corporate-legal Actions (acquisition, merger), Tbilisi, 2014, 128 (in Georgian).



obligations.<sup>68</sup> In this regard, the decision made by the German federal court for *Macroton* case in 2002 year is quite interesting; according to the above decision, voluntary deregistration of the company shall be carried out based on the simple majority of votes at general assembly, which ensures the protection of proprietary rights of minority shareholders, practical implementation of repurchase of shares from the company.<sup>69</sup> However, according to the decision made by the Constitutional Court of Germany for *Frosta* case in 2012 year, above approach changed, and voluntary delisting did not any more require calling the general meeting or making an offer.<sup>70</sup> Later, in 2015 year, changes were made to the law of Germany on stock market, according to which, voluntary delisting does not require consent of the general meeting; however, it is mandatory to make tender offer for each shareholder and price paid for share must not be lower than the weighted average market value of the share for the last six month prior to the offer.<sup>71</sup>

### **3.1.2. General Review of Main Types of Indirect Voluntary Delisting**

#### **3.1.2.1. LBO – Anglo-American approach**

In the Anglo-American practice, financing of transaction directed towards the company acquisition, privatization is carried out by the attracted, external borrowed funds.<sup>72</sup> Prior to the development of structural strategy for acquisition, the acquisition of target company by the acquirer is partially financed via the attracted, loan capital.<sup>73</sup> This method, is generally used by corporation investors for purchase of company shares via cash.<sup>74</sup>

#### **3.1.2.2. BOSO – Continental European Approach**

There is a tendency of large dispersion of ownership structure in the majority of corporations in the Continental Europe. The *Buy-out Offer with Squeeze-Out* made by the majority shareholder to the minority investor is the classical mechanism applied for the company privatization.<sup>75</sup> Back-conversion of the company from the stock exchange via the purchase of controlling share package by the dominant shareholder is regulated under XIII directive.<sup>76</sup> Practically, the mandatory sale practice is used by the dominant shareholders with voting rights via the acquisition of controlling share and “squeezing out of minority from the

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<sup>68</sup> As the conversion conditions modification of proprietary interests of minority investors *Moye J. E.*, *The Law of Business Organization*, 6<sup>th</sup> ed., U, 2004, 521. *Khort J.*, *Protection of Investors in Voluntary Delisting on the U.S. Stock Market*, Uppsala Faculty of Law, Working Paper № 4, 2014, 6-8.

<sup>69</sup> BGHZ 153 S. 47=DB 2003 S. 544, See English language version of the decision in *Cahn A., Donald D. C.*, *Comparative Company Law, Text and Cases on the Laws Governing Corporations in Germany, the UK and the USA*, Cambridge, 2010, 500-509.

<sup>70</sup> *Khort J.*, *Protection of Investors in Voluntary Delisting on the U.S. Stock Market*, Uppsala Faculty of Law, Working Paper № 4, 2014, 13-15.

<sup>71</sup> *Zimmer L., Imhoff J. V.*, *New German Delisting Rules Aim to Protect Investors*, Skadden, 2016, 1-2.

<sup>72</sup> *Martinez I., Serve St., Djama C.*, *Reasons for Delisting and Consequences: A Literature Review and Research Agenda*, SSRN electronic Journal, 4. *Martinez I.*, *The Delisting Decisions: The Case of Buyout Offers with Squeeze-out (BOSO)*, SSRN Electronic Journal, 2011, 2-4.

<sup>73</sup> *Salzill F.*, *Minority Shareholders and Empirical Evidences on Voluntary Delisting Phenomenon*, Chair of Advanced Corporate Finance, 2013-2014, 9-10.

<sup>74</sup> *Makharoblishvili G.*, *Implementation of Fundamental Changes in the Structure of Capital Companies based on the Corporate-legal Actions (acquisition, merger)*, Tbilisi, 2014, 132 (in Georgian). *Haas J. J.*, *Corporate Finance in the Nutshell*, 2<sup>nd</sup> ed., 2011, US, 609.

<sup>75</sup> *Martinez I., Serve St., Djama C.*, *Reasons for Delisting and Consequences: A Literature Review and Research Agenda*, 2.

<sup>76</sup> *Kikvadze G.*, *Mandatory Tender Offer*, *Collection of Corporate Law*, Vol. III (ed. *Burduli I., Makharoblishvili G.*), Tbilisi, 2015, 54-57 (in Georgian).

company at a fair price”.<sup>77</sup> Later the deregistration of the enterprise is carried out,<sup>78</sup> which, unlike LBO, does not require financing via the attracted capital.<sup>79</sup> Practical implementation of this mechanism is carried out through the following scenario: a) Repurchase offer; b) Activation of *squeeze out* mechanism for minority shareholders automatically or immediately following the completion of the offer.<sup>80</sup>

### 3.2. Key Motives for Involuntary Delisting

Involuntary delisting could be provoked by the corporate incompliance with the general-legislative norm as well as listing rules valid for the stock exchange. Both motives are enforced via the compliance with the procedural formalities, in stages and in the end, is finalized with the involuntary back-conversion of accountable enterprise from the stock exchange.

Incompliance with the general-legislative rules, for example, could be demonstrated in the form of reduction of number of beneficiaries of the accountable company.<sup>81</sup> For each stock exchange, basis for delisting is individual, and the main basis is incompliance with the qualitative and quantitative standards set under the listing procedures.<sup>82</sup> For example, NASDAQ can carry out delisting of issuer, if the latter does not satisfy the following minimal standards: a) Share capital – in the amount of USD 10 million; b) 750 000 placed shares; c) Market value of placed shares – during the 30 working days, at least USD 5 million; d) Bid price per share during 30 working days – USD 1; e) At least 400 shareholders; f) At least two market intermediaries.<sup>83</sup> The list of noncomplying issuers, not satisfying the listing rules, is displayed on the official web-page of the stock exchange<sup>84</sup>, which is the precondition for temporary withdrawal of stock from the trading.<sup>85</sup> Monetary sanctions can also be considered.<sup>86</sup> Decision on temporary suspension is made by the director of stock exchange, who provides notification to the Chairman of the Supervisory Board.<sup>87</sup> According to the regulation valid for Georgian stock exchange, precondition for involuntary delisting is failure to eradicate the reasons for temporary suspension of share listing, the above is also implemented based on the decision of the Chairman of the Supervisory Board. In addition to non-compliance with the listing rules, basis for suspension of quoted shares could be such developments at the market, under which suspension of listing is aimed at protection of investors’ interests.<sup>88</sup> The above requires more specification, in terms of

<sup>77</sup> *Ventoruzzo M.*, Freeze-outs: Transcontinental Analysis and Reform Proposals, *Virginia Journal of International Law*, Vol. 50, 2010, 886.

<sup>78</sup> *Martinez I., Serve St., Djama C.*, Reasons for Delisting and Consequences: A Literature Review and Research Agenda, 2.

<sup>79</sup> *Martinez I.*, The Delisting Decisions: The Case of Buyout Offers with Squeeze-out (BOSO), *SSRN Electronic Journal*, 2011, 9.

<sup>80</sup> *Martin D. G., Montcel A. R., Baird-Smith M.*, France, Common Legal Framework for Takeover Bids in Europe, Vol. II, UK, 2010, 121.

<sup>81</sup> *Bragg S.*, Running a Public Company, From IPO to SEC Reporting, US, 2009, 304-305.

<sup>82</sup> Almost identical listing requirements are defined by *NYSE* and *NASDAQ*, *Mecay J., O’Hara M., Pompilio D.*, Down and Out of Stock Market: The Law and Finance of the Delisting Process, *SSRN Electronic Journal*, 2005, 11, 8-10.

<sup>83</sup> NASDAQ Listing Requirements, see <[http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selected-node=chp\\_1\\_1\\_4\\_3&manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F](http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selected-node=chp_1_1_4_3&manual=%2Fnasdaq%2Fmain%2Fnasdaq-equityrules%2F)>, [27.05.2016].

<sup>84</sup> List of issuers not complying with the listing rules at *NYSE* stock exchange web-page: <<https://www.nyse.com/regulation/noncompliant-issuers>>, [27.05.2016].

<sup>85</sup> From 10 June 2015, the trading with shares of JSC “Electric Technical Factory” and “Polygraphist” has been temporarily suspended, web-page of Georgian Stock Exchange: <[http://www.gse.ge/default\\_geo.asp](http://www.gse.ge/default_geo.asp)>, [27.05.2016].

<sup>86</sup> The list of corporations for which the disciplinary measures are carried out is available at *NYSE* official web-page; the basis for measures could be investors’ claims, SEC application. Sanction in the amount of USD 150 000 imposed over “Deutsche Bank” by *NYSE* on 29 December, 2015 year, <[https://www.nyse.com/publicdocs/nyse/markets/nyse/disciplinaryactions/2015/DBAB%20\(NYSE\)%2020130354658-01%20Decision.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/disciplinaryactions/2015/DBAB%20(NYSE)%2020130354658-01%20Decision.pdf)>, [27.06.2016].

<sup>87</sup> Statutes on the admission of stocks to the trade system and listing, “Stock exchange of Georgia”, Articles 5.1., 5.2 (in Georgian).

<sup>88</sup> *Ibid.*, article 5.4.3; article 6.10.3.

criteria for the interpretation of investors' interests and possible cases of counter-productive developments at the market. Renewal of trading is related to ensuring the safety of investors, again, requiring identification of preconditions for determination of safety. The quantitative requirements set for listing have to be mentioned, practical capability of fulfilment of which must be available for wide circle of companies.

In the best case, share delisting is implemented based on the voluntary decision of corporation,<sup>89</sup> not having major destructive impact over the share price, compared with the impact observed in the period from the announcement of involuntary delisting to its practical implementation.<sup>90</sup> Rationality of timely withdrawal from the market is also related to retaining the share market value, which is prerogative and moreover, the liability of the management.<sup>91</sup>

### **3.3. Investor's Economic Interest and Prime Defensive Tools while the Delisting Procedure**

Compliance with the legislative or listing rules might be a big financial deal for the corporation.<sup>92</sup> In the case of small and middle size companies expenditure of the compliance costs may have a rough impact<sup>93</sup> on the liquidity of the shares and the total firm cost, which is experiencing economic recession. Involuntary delisting is avoidable through: effective corporate governance<sup>94</sup>, setting up the board by uninterested individuals, recruiting investors into the administration of the corporation. Director's rational decisions are made by virtue of communication with investors, information disclosure, and accountability. Accounting and reporting to shareholders: preparation of an annual report and its representation to the shareholders general meeting is one of the expressions of director's accountability, which supports keeping shareholders informed, generally, on financial issues.<sup>95</sup> Thus, expansion of investor's non-property rights, raise of awareness, serves to defense their property rights.

For developing economic markets involuntary delisting happens to be way more rigorous to overthrow.<sup>96</sup> In the terms of an efficient capital market conditions, it is possible to calculate the fair value,<sup>97</sup> which will be paid to an investor leaving the company. The essence of the fair price is articulated in various material categories.<sup>98</sup> For example, if the majority shareholder acquires controlling packet through the acquisition of the shares by cash, then the minorities are entitled to be expelled by receiving the fund of the

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<sup>89</sup> *Mecay J., O'Hara M., Pompilio D.*, Down and Out of Stock Market: The Law and Finance of the Delisting Process, SSRN Electronic Journal, 2005, 14.

<sup>90</sup> *Park J., Lee P., Park Y. W.*, Information Effect of Involuntary Delisting and Informed Trading, Pacific-Basin Finance Journal, Vol. 30, Elsevier, 2014, 251-252.

<sup>91</sup> According to the 1994 decision of Delaware state court, the management of the company were assigned the responsibility for the violation of fiduciary liabilities, as delisting procedure was initiated based on the personal interests, which was demonstrated via the sales of share of minority shareholders at a low price, *Hamilton v. Nozko*, № 13014, 1994, WL413299 (Del. Ch, 26/07/1994). quotation. *Khori J.*, Protection of Investors in Voluntary Delisting on the U.S. Stock Market, Uppsala Faculty of Law, 2014, 11.

<sup>92</sup> *Osovsky A.*, The Curious Case of the Secondary Market with Respect to Investor Protection, Tennessee Law Review, Vol. 82:XXX, 2014, 13-14.

<sup>93</sup> *Engel E., Hayes R. M., Wang X.*, The Sarbanes-Oxley Act and Firms' Going Private Decisions, SSRN Electronic Journal, 2004, 3, 7-8.

<sup>94</sup> *Martinez I., Serve St., Djama C.*, What Do we Know about Delisting?, Thema Working Paper № 38, 2012, 13-17.

<sup>95</sup> Schneeman A., The Law of Corporations and other Business Organizations, US, 2010, 460.

<sup>96</sup> *Park J., Lee P., Park Y. W.*, Information Effect of Involuntary Delisting and Informed Trading, Pacific-Basin Finance Journal, Vol. 30, Elsevier, 2014, 252.

<sup>97</sup> While calculation market price of the firm, capital cost along with income rate are to be considered, U.S. GAAP and IFRS, Fair Value Measurements: questions and answers, 2013, 31.

<sup>98</sup> *Screiter L. R.*, SEC Rulemaking Authority and the Protection of Investors: A Comment on the Proposed "Going Private" Rules, Indiana Law Review, Vol. 51 (2), 1976, 437.

same category.<sup>99</sup> While voluntary delisting process getting paid for the “premium cost” is quite profitable from the perspective of the minority investors,<sup>100</sup> but it’s only in the case of voluntary delisting. As for the type of involuntary delisting; it is true that deregistration proceeded by the stock exchange is literally implemented in few days after an announcement,<sup>101</sup> however it is a sufficient condition for the reduction of the share price – firstly and secondly - for the practical incapability to alien the share by the minorities. One of the property rights of the dissident shareholders lays in leaving the company for the air price, redemption of the shares.<sup>102</sup> Thus, leaving the market in a timely manner may or “going dark” may be deemed as a “defensive tool” against involuntary delisting. Formation of such a defensive strategy is a managerial responsibility; to illustrate: issuing bonus or income management, which will make poor financial condition to disguise.<sup>103</sup>

#### 4. Conclusion

Generally, scholarly article regarded an issue of “typological death” of accountable enterprises according to the Georgian law, its classification, motives. Theoretical understanding and practical demonstration of typological conversion of the corporation is displayed while operating on the capital market. In contrast, reverse-conversion of the enterprise voluntarily or involuntary provoked due to the subjective-objective grounds, is perceived to be an organizational and structural transformation, “privatization” of an enterprise. According to comparative study, it may possibly be claimed, that both categories ((in)-voluntary delisting) fall into legislative and listing regulations for the sake of interested third parties, especially for the protection of the small investors, whilst the national provisions are limited for encompassing itself by stock market regulation. Withdrawal of the “dying” corporation, on the one hand, is refreshing for the capital market, on the other hand, is facilitative for the macro-economic processes (for example, competition between the exchange stock markets, share listing on non-resident exchange stocks (cross-listing)). This objective cannot be pursued in the case of less developed economies, which makes legal protection of the minority’s financial interest more urgent. With this respect, Georgian capital market is still at the stage of progression. Although deregulation of the legislation is less promising to guarantee the stability, but, following to the 2015 year’s data, amongst the rest 189 countries Georgia happens to be on the 43<sup>rd</sup> place for protection of the small investors.<sup>104</sup>

Even in the post-mode, delisting has a negative impact over the financial situation of the company, because of the decline in the market value of the shares, which makes investors to sell their stocks for unfavorable price or make the share transferability impossible. Therefore, regulation claiming the protection of investor’s economic interest remains to be just figurative. Before the practical implementation of the delisting, stock’s market value is probable to fall, thus with this regards, legislative amendments for improvement of the “fair value” payment regulation, are very favorable. In order to preclude the conflict

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<sup>99</sup> EU directive 2004/25/EC, *Ventoruzzo M.*, Freeze-outs: Transcontinental Analysis and Reform Proposals, Virginia Journal of International Law, Vol. 50, 2010, 891.

<sup>100</sup> *Ibid.*, 845.

<sup>101</sup> For the reasons of delisting, filled-in Form 25, stipulated according to the law, is sent by the NASDAQ to the Security Exchange Community of US; having the application granted by the SEC, delisting is proceeded in 10 working days after filling the form in, NASDAQ Stock Market, Listing Rules, § 5830.

<sup>102</sup> *Thompson R. B.*, Preemption and Federalism in Corporate Governance: Protecting Shareholder Rights to Vote, Sell, and Sue, Law and Contemporary Problems, Vol. 62 № 3, 1999, 217.

<sup>103</sup> *Martinez I., Serve St., Djama C.*, What do we know about delisting?, Thema Working Paper № 38, 2012, 11.

<sup>104</sup> Feasibility of Doing Business 2015, Ministry of Economy and Sustainable Development of Georgia, Tbilisi, 2014, 6 (in Georgian).