

Mgr Dominik Delczyk
Department of Economic and Commercial Law
Institute of Civil Law
Faculty of Law, Administration and Economics
University of Wrocław

Squeeze-out. Conflict of Values and Interests
Summary of a PhD Dissertation

The aim of the dissertation is to examine the conflict of values and interests related to squeeze-out. In the paper, attempts were made to prove that it concerns both the essence of squeeze-out – depriving a shareholder of shares against his will with a remuneration, and individual legal norms concerning, inter alia, the way in which redemption is initiated and performed, the moment at which redemption occurs, the method of determining the amount of the redemption price. Realizing the assumed research goal, the analysis of the legal norms concerning squeeze-out was made. The dissertation consists of an introduction, nine chapters and a summary.

The first chapter explains basic concepts and phrases for issues discussed in the dissertation and presents the general characteristics of squeeze-out and its historical outline. An important element of this chapter is the consideration of the differences between the interest of a group of companies and the interest of the company, between the interest of the company and the interest of shareholders, and between the interest of minority shareholders and the interest of majority shareholders.

The second chapter analyses the context of values which deserve legal protection. This is important for the whole dissertation. The considerations contained therein relate to corporate governance, the obligation of shareholders to be loyal to the company and the obligation of equal treatment of shareholders in a similar situation, the principle of majority rule, respect for minority rights and property rights.

In the third chapter, the provisions on squeeze-out are assessed in terms of their compliance with the Constitution of the Republic of Poland. This chapter also attempts to answer the question whether squeeze-out constitutes a form of expropriation. The chapter analyses in detail the judgment of the Constitutional Tribunal of June 21, 2005 (file number P

25/02), the sentence of which had a significant impact on the perception by the doctrine and the judicature of conflicts of values and interests related to squeeze-out.

Chapter four deals with issues directly related to carrying out the procedure of squeeze-out, which are important, from the point of view of the chosen topic. The chapter attempts to demonstrate the benefits for the company or majority shareholders resulting from squeeze-out. It also analyses important issues related to the compliance of squeeze-out with the nature of a joint-stock company and its economic efficiency.

Chapter five presents the conflict of values and interests related to the determination of who may acquire shares by way of squeeze-out and who may be deprived of them. Both the applicable provisions and the proposed regulations on squeeze-out in the group of companies as well as the procedure of squeeze-out merger known to foreign law were considered.

Chapter six deals with issues related to initiating and carrying out the procedure of squeeze-out. This chapter also addresses issues related to balancing the values which are important for the whole work and considers the differences between the adoption by the general meeting of a resolution on squeeze-out and a request from an authorized shareholder to sell shares. The considerations contained therein also concern the legal nature of the transfer of rights to shares from a deprived shareholder to a buyer and the determination of the moment at which squeeze-out takes place.

In the seventh chapter, the regulations defining the method of determining the amount of the price were analysed. The mechanism of its determination in the squeeze-out procedure in practice leads to depriving minority shareholders of shares for compensation below the fair price. Considering the above, the author of the dissertation tries to justify that the implementation of the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids was defective, not guaranteeing the fair value of the shares being the subject of squeeze-out. This chapter also analyses some doubts related to the application of income taxes to income generated by shareholders deprived of shares by squeeze-out. The issue of effective verification of costs and benefits related to squeeze-out arises here.

Chapter eight examines the legal grounds for repealing a resolution of the general meeting, declaring a resolution of the general meeting invalid, and an action for establishing the existence or non-existence of a legal relationship. This chapter refers also to the axiological and systemic justification of the possibility of questioning the resolution on squeeze-out, considering the goals and functions of squeeze-out.

Chapter nine analyses the inverse reverse squeeze-out, sell-out, compulsory redemption of shares and the exclusion of a shareholder in a limited liability company. A reference is also made to whether a shareholder whose shares were included in the scope of the resolution on squeeze-out, could dispose of the remaining shares by way of reverse squeeze-out. It also compares sell-out carried out in non-listed and listed companies and compares squeeze-out with sell-out, compulsory redemption of shares and the exclusion of a shareholder of a limited liability company.

The dissertation ends with a summary, which includes general conclusions regarding the necessary changes in the procedures of squeeze-out, including ensuring the fair value of the shares. The lack of protection of transparent valuation criteria leaves doubts as to the ratio legis of the mechanisms used. This is one of the ways to eliminate the conflict of values and interests personified in the company. Modern axiology of companies should take into consideration not only the most common elements of the dispute regarding the importance of the company's interests, the group of stakeholders which must be taken into account in its decisions, but also the scope of available legal protection measures for its weaker participants, including minority shareholders.

Dominik Delczyński
29.04.2022