



**<The European Union's ENPI>
For Ukraine**

**<Assessment of approximation of the present
company, corporate governance, accounting and
auditing legislation and existing practices in
Ukraine to EU standards and practices>**

<Final Report>



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DELEGATION of the EUROPEAN UNION

Ukraine

**Assessment of approximation level of the present company,
corporate governance, accounting and auditing legislation and
existing practices in Ukraine to EU standards and practices**

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LIST OF ABBREVIATIONS AND ACRONYMS

AA – Association Agreement
ABGB - Austrian Allgemeines Bürgerliches Gezetzbuch (General Civil Code)
AGM – Annual General Meeting
ALC – Additional Liability Company
BGB – German Bürgerliches Gesetzbuch (Civil Code)
Capital Directive – Second Company Law Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent
CC – Civil Code of Ukraine
CoAU – Chamber of Auditors of Ukraine
CP-SRD (Commission proposal for SRD) – Proposal for a directive amending SRD (2014/0121(COD)), dated 10 April 2014
EC – Economic Code of Ukraine
ECP – Economic Procedure Code of Ukraine
EU – European Union
GM – General Meeting
HLG – High Level Group of Company Law Experts
ISA – International Standards of Audit
JSC – Joint-Stock Company
JSCL – Law on Joint Stock Companies
LLC – Limited Liability Company
Merger Directive - Directive 2011/35/EU (former Third Company Law Directive) on mergers of public limited liability companies
MS – Member State
NCSSM – National Commission on Securities and Stock Market
OECD - Organization for Economic Co-operation and Development
PCA – The Partnership and Cooperation Agreement
PCT-SRD (Presidency compromise for SRD) – Presidency compromise text (2014/0121(COD) - st-13758/14-INIT), dated 10 November 2014
PCG - The Principles of Corporate Governance adopted by the Resolution of the NCSSM from July, 22, 2014 (the updated version of 2003)
PIE - Public Interest Entities
RPT – Related Party Transaction
SGM – General Shareholder Meeting
SLAG – Sectoral Legal Approximation Standards
SLIM Group – Siplmer Legislation for the Internal Market initiative of the EU Commission
SRD – Shareholders' Rights Directive (Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies)
Takeover Directive – Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
ToR – Terms of Reference

1. EXECUTIVE SUMMARY

This Study has been produced at the request of Mr Enzo Damiani and prepared by Mr Arkadiusz Radwan (Team Leader), Ms Alla Nadzon and Ms Viktoriia Zdiruk. The purpose of this Study is to review the Ukrainian legislation and practices on company law, corporate governance, accounting and auditing and to examine its current compliance level with the EU law requirements and standards. The Study also provides an update on the main changes in the respective sectors in 2014.

Legal developments is a phenomenon that rarely occurs linear. Times of rapid changes are alternated with times of stagnation, reforms are followed by the times of digest. Ukrainian law does not deviate from this pattern. A few points in time over the last nearly 25 years have marked milestones in the process. These points in time are 1991 – the enactment of the Law on Business Association, 2004 – the adoption of Civil Code and Economic Code and 2008 – birth of the new Law on Joint Stock Companies. Now a new impulse for law reform became topical and politically valid: under the Association Agreement between the European Union and Ukraine that was signed in 2014 Ukraine undertook a legal obligation to bring its legislation in line with the requirements of the EU law. This Study contributes to the part of the Association Agreement concerning the company law, corporate governance, accounting and auditing. The global objective of this Report is to improve business climate in Ukraine by aligning its company, corporate governance, accounting and audit legislation with the EU standards and practices. This Report presents the assessment of current approximation level of relevant legislation of Ukraine to the EU *Acquis* as well as provides recommendations for its further harmonization. In addition, the study reaches out to national jurisdictions of some European countries as well as to the US and attempts to learn from their corporate law reforms.

In general, Ukraine has reached a good level of compliance of its company, corporate governance, accounting and auditing legislation with the *Acquis*. However, the Report has confirmed the existence of dualistic regulations for private relations in Ukraine manifested in parallel operating of the legislative acts based on outdated soviet-time concepts (Economic Code of Ukraine) and relatively new legislation based on European standards (“Law on Joint-Stock Companies”, and Civil Code of Ukraine). In certain respects Ukrainian law has excelled European standards, e.g. it has long implemented rules on related party transactions, whereas it is only now becoming part of the EU legislative agenda. In spite of this generally positive assessment, a number of legislative discrepancies related, *inter alia*, to the Takeover Directive, Shareholder Rights Directive, Mergers and Divisions Directives, Capital Directive, Directive regarding cross-border mergers of public limited liability companies continue to exist. Also, the modernization of Ukrainian company law appears to have been a selective process – while the law on joint stock companies contains many modern features, the law on limited liability companies remains underdeveloped and fails to adequately address all vital issues of small and medium-sized business organizations.

Our main findings with respect to aforementioned objectives include recommendations for the abolishing of outdated Economic Code and overlapping provisions from the other acts (the Law on Business Associations, the Civil Code, the Law on Joint Stock Companies) in order to provide legal certainty for investors and shareholders in Ukraine. Legal framework for private limited liability companies should be put in place in form of a new law which should increase the level of minority protection while at the same time leaving enough space for flexible arrangements that are needed in small and medium sized enterprises. In the sphere of

corporate reorganisations (mergers, divisions, spin-offs) and transformations enactment of a new law could be recommended as well.

Dual regime for listed and non-listed JSC should be introduced and the exclusive criterion of division into public and private joint stock companies shall be public placement of the shares (not a number of shareholders). Moreover, Shareholder Rights Directive should be implemented with regard to listed companies. Takeover law should be reformed (by implementation of squeeze-out and sell-out rights, lowering the threshold triggering mandatory takeover bid, introducing the break-through rule, improving guarantees for equitable bid price and defining the duties of the board), pre-emptive rights to take up newly issued shares shall be mandatory in all JSC companies and must be provided in the law (*ex lege*). The terminology of JSCL, the quorum for the validity of GM in JSC, and list of triggering events for appraisal rights should be reconsidered. In the reporting requirements the statement on CG Code to which the listed company adheres shall be added and the 'comply or explain' principle shall be introduced with mandating the corporate governance statement as a part of company's disclosure. Derivative actions should be facilitated and possibility for arbitration of corporate law disputes should be considered.

The project firstly embraced review of the current Ukrainian legislation in the field of company law, corporate governance, accounting and auditing. The review has been conducted in form of approximation tables where article-by-article examination of the applicable laws has been made against the background of the EU law requirements. Whenever possible, the draft EU laws have been also taken account of, in order to possibly make advance or anticipated recommendations, so as to facilitate leapfrogging and learning from earlier experiences of EU law in the member states of the EU. Thus, for proposed solutions and recommendations for Ukraine, foreign laws have been also referred to. Based on the results from this review, a narrative part of analysis has been produced. The narrative part includes also background information on the history and development of Ukrainian law as well as on socio-economic conditions under which it operates. This is important for the theoretical part, where different approaches to law reform and to legal strategies are analysed. This part is important, as it provides an analytical framework explaining choices made with regard to the proposed solutions. The self-enforcing model of corporate law has been chosen and adapted to the conditions of Ukrainian legal and institutional setting, ownership structure and legal heritage. The result of the Study is a comprehensive overview of Ukrainian company law, corporate governance, accounting and auditing indicating internal (intra-systemic) and external (*vis-à-vis EU Acquis*) inconsistencies as well as providing recommendations for reform. Given the complexity of the fields covered by the study, specific areas will require further elaboration. These areas include in particular: (i) reform of the takeover law, (ii) reform of the law on private limited liability companies, including focus on small business, family business and enterprise succession, (iii) reform of the investor protection in listed companies, in particular in a cross-border setting, (iv) use of alternative dispute resolution in company law, in particular arbitration of corporate disputes. Thus, in addition to proposing ready-to-implement solutions, the Study seeks to provide a roadmap for further actions. It would be wise to consider further studies, seminars and other actions in the aforesaid areas. Recommended actions include also to set-up a panel or expert group bringing together local and international experts so as to work out model laws and other non-binding reference works that based on the authority of experts involved and on the support of the European Union could be internalised by the addressees of this works and be voluntarily implemented as laws or standards in Ukraine and other transitional economies.

2. BACKGROUND AND GEOPOLITICAL SETTING

2.1. BRIEF HISTORICAL SURVEY: UKRAINE ON ITS WAY TOWARDS EUROPEAN INTEGRATION

With the declaration of sovereignty and independence in early 1990s, Ukraine's law system began a period of intensive development. Obviously, it has been formed under certain historical, geopolitical and economic conditions (path dependent). It should be taken into account that throughout its history Ukraine had existed for centuries as an independent state (Kievan Rus'), then was fragmented into separate kingdoms, entered the various states, in particular, the Grand Duchy of Lithuania and Kingdom of Poland, afterward the Russian and Austro-Hungarian empires, and eventually the Soviet Union.

The collapse of the Soviet Union led to a new stage in the development of Ukrainian law. The previous public ownership model of self-model socialism and the collective administration of the economy were abandoned, and a complex process of economic, legal and political reforms began. In 1992 the processes of privatization and denationalization started and Ukraine adopted the first acts of the national company legislation, based on which further reform of the economic system was carried out and the foundations for a market economy were laid.

Despite often being described as a "border country" which simultaneously experiences a number of influences (namely European, Russian and before Asian), Ukraine since gaining its independence in 1991 has sought to deeper its economic and political ties with the European Union (hereinafter - the EU) and regularly expressed its willingness to obtain membership of this international organization. Evidently, the approximation of Ukrainian legislation with *Acquis Communautaire* is one of essential preconditions for forging closer links with the European Community.

It is worth mentioning that the need and necessity of harmonization of the Ukrainian law with the European *Acquis* was declared at the beginning of the reconstruction of Ukrainian state. Ukraine signed the Partnership and Cooperation Agreement (hereinafter – the PCA) with the EU in 1994 which, inter alia, promoted trade, investment and harmonious economic relations between the Parties, provided a basis for mutually advantageous and fruitful cooperation, and supported Ukrainian efforts to complete the transition into a market economy.

In its turn, the Association Agreement between the European Union and its Member States of the one part, and Ukraine, of the other part (furtheron referred to as "the Association Agreement") has renewed the EU-Ukraine common institutional framework and strengthened economic integration between the EU and Ukraine. It covers among others the approximation of the EU and Ukraine on the grounds of common values, the creation of a unified legal environment for market relations and an enhanced economic cooperation by establishing a deepened and strengthened free trade area.

The special interest is paid to the approximation of company, corporate governance, audit and accounting legislation which sets the foundation for encouraging the business community of EU Member States to work actively in Ukraine. Their presence is supposed to

contribute to Ukraine's economic development and bring foreign investments to its economy. Therefore, the legal alignment with *acquis communautaire* objectively accelerates the integration with the European Union and that is why it is of key priority to Ukraine.

It should be admitted that the system of Ukrainian laws is complicated and unstable, with specific legislative provisions being discrepant with each other and in some cases also arguable. Further development of Ukrainian company legislative base should be founded on an extensive systematic study of Ukrainian laws and consideration of the regulation mechanisms of corporate relations based on the example of foreign experience, careful analysis of the weaknesses and benefits of already existing mechanisms.

2.2. OBLIGATIONS RESULTING FROM THE 2014 ASSOCIATION AGREEMENT BETWEEN THE EU AND UKRAINE IN THE FIELD OF COMPANY LAW AND CORPORATE GOVERNANCE

The Commission's "White Paper on the preparation of associated countries of Central and Eastern Europe for integration into the internal market of the Union" prompts associated countries to adopt internal market legislation and to establish structures to support the economic reform process¹. At the same time, the EU's Copenhagen criteria (Accession criteria) require a new Member State to preserve political stability (including institutions guaranteeing democracy and the rule of law), economic efficiency (existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union), and to accept the Community *Acquis*².

Ukraine as a priority partner country within the European Neighborhood Policy (ENP) and the Eastern Partnership initially based its relationships with the EU on the previously mentioned PCA which provided for a gradual economic integration and deepening political association. Over time, as the relations and ties between the EU and Ukraine became closer and deeper, the negotiations on a new EU-Ukraine Association Agreement were launched. It took from 2007 to 2012 to negotiate and prepare its provisions. Meanwhile, in 2009 the EU and Ukraine adopted the EU-Ukraine Association Agenda, which aimed at preparing for and facilitating the entry into force of the EU-Ukraine Association Agreement. As a result of the foregoing, on June 27 of 2014 the Association Agreement was signed³. It replaced the PCA and foresees a legal obligation of Ukraine to approximate its legal system with the European Union *Acquis Communautaire*. Moreover, the Association Agreement contains a number of binding deadlines for bringing the Ukrainian legislation in line with the requirements of the EU law.

¹ COM (95)163 final, Brussels 3 May 1995

² European Union Press Release of 22 June 1993 (DOC/93/3)

³ The political provisions of the Association Agreement were signed on 21 March 2014

Under Article 387 of Chapter 13, Title V of the Association Agreement the Parties, recognizing the importance of an effective set of rules and practices in the areas of company law and corporate governance, as well as in accounting and auditing, for creating a fully-functioning market economy and for fostering trade, agree to cooperate:

(a) on the protection of shareholders, creditors and other stakeholders in line with EU rules in this area;

(b) on the introduction of relevant international standards at national level and gradual approximation to EU law in the field of accounting and auditing;

(c) on further development of corporate governance policy in line with international standards, as well as gradual approximation to the EU rules and recommendations in this area.

Therefore, according to Annexes XXXIV, XXXV and XXXVI of the AA, Ukraine undertakes to gradually approximate its legislation to the relevant EU legislation in the areas of company law, corporate governance, accounting and auditing within the stipulated timeframes, which are shown on the following table:

| EU legislation | Timetable |
|---|--|
| <p>First Council Directive 68/151/EEC of 9 March 1968, as amended by Directive 2003/58 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community</p> | <p>The Directive's provisions shall be implemented within 2 years of the entry into force of the Association Agreement⁴</p> |
| <p>Second Council Directive 77/91/EEC of 13 December 1976, as amended by Directives 92/101/EEC and 2006/68/EC on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent</p> | <p>The Directive's provisions shall be implemented within 2 years of the entry into force of the Association Agreement</p> |

⁴ The Association Agreement will enter into force after its ratification by all the EU Member States. Provisional application of particular Chapters from Titles III, V, VI and VII, and the related Annexes and Protocols of the Association Agreement which came into force as of 1 November 2014 does not cover Chapter 13, Title V of the Association Agreement.

| | |
|---|--|
| <p>Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies, as amended by Directive 2007/63/EC</p> | <p>The Directive's provisions shall be implemented within 3 years of the entry into force of the Association Agreement</p> |
| <p>Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, as amended by Directive 2007/63/EC</p> | <p>The Directive's provisions shall be implemented within 3 years of the entry into force of the Association Agreement</p> |
| <p>Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State</p> | <p>The Directive's provisions shall be implemented within 2 years of the entry into force of the Association Agreement</p> |
| <p>Twelfth Council Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies</p> | <p>The Directive's provisions shall be implemented within 3 years of the entry into force of the Association Agreement</p> |
| <p>Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids</p> | <p>The Directive's provisions shall be implemented within 4 years of the entry into force of the Association Agreement</p> |
| <p>Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending - Directive 2001/34/EC</p> | <p>The Directive's provisions shall be implemented within 4 years of the entry into force of the Association Agreement</p> |
| <p>Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market</p> | <p>The Directive's provisions shall be implemented within 4 years of the entry into force of the Association Agreement</p> |

| | |
|--|--|
| Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies | The Directive's provisions shall be implemented within 3 years of the entry into force of the Association Agreement |
| Fourth Council Directive of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC) | The Directive's provisions shall be implemented within 3 years of the entry into force of the Association Agreement |
| Seventh Council Directive of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (83/349/EEC) | The Directive's provisions shall be implemented within 3 years of the entry into force of the Association Agreement |
| Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards | The Regulation's provisions shall be implemented within 2 years of the entry into force of the Association Agreement |
| Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC | The Directive's provisions shall be implemented within 3 years of the entry into force of the Association Agreement |
| OECD Principles on Corporate Governance | - |
| Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies (2004/913/EC) | - |
| Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC) | - |

3. THE COURSE OF ANALYSIS

The purpose of this Report is to present and discuss issues of approximation of Ukrainian company, corporate governance, accounting and auditing legislation to European Union standards and practices, provide an update of the main changes in the respective sectors in 2014, as well as review the overall picture of company law framework in Ukraine, e.g. its path dependence, judicial interpretation and application, both strengths and weaknesses with indications for further reflections.

The analysis takes the following course. The general characteristics of Ukrainian company law, namely its system and sources, foreign inspirations and their impact on its formation are discussed in Chapter 4. Chapter 5 is designed to present the analysis of Ukrainian company and corporate governance legislation: its current status, assessment of the compliance with EU legislation, practices and standards, recommendations for its further alignment with *acquis communautaire*. The areas of Ukrainian law corresponding with or covered by the EU directives are discussed separately in order to clearly assess their compatibility status and point out the best ways of bridging the gaps. Besides, the chapter describes the Ukrainian model of corporate governance as a significant factor for successful operation of companies in a market economy. Subsequently, a list of inconsistencies between the Law On Joint Stock Companies (hereinafter – the Law on JSC) and other legal acts regulating the operations of JSC is delivered.

In the further course of this report Chapter 6 examines the current status of accounting and auditing legislation in Ukraine and provides recommendations for its further harmonization with that of the EU. The special emphasis on problems which arise not from the lack of proper legal provisions but from the lack of their proper application is put in Chapter 7. Moreover, a "self-enforcing" approach to drafting company law for emerging capitalist economies as a strategy for protecting investors is discussed in Chapter 8. Finally, Chapter 9 concludes the analysis and provides an outlook for further development and research.

Relative tables of approximation, the list of stakeholders and minutes from the seminar presenting results of the assignment are included as appendices to the report. The approximation tables play a crucial role in this report as they clearly and demonstrably illustrate the compliance status of Ukrainian company, corporate governance, accounting and audit legislation to the EU requirements and provide proposals for overcoming the inconsistencies.

4. GENERAL CHARACTERISTICS OF THE COMPANY LAW IN UKRAINE

4.1. COMPANY LAWMAKING IN UKRAINE: FORMATION, SYSTEM AND SOURCES

When modeling the future system of Ukrainian company law the issue about its national historical and civilizational origins could not be ignored. Identification of these sources is intended to outline genetic line of national legislation, its so-called path dependence. This will help to determine the measure of its identity and distinctiveness, as well as the limits of possible use of other countries' experience.

It is a deep mistake to believe that Ukraine in the distant past was a legislative desert. Its company law has not evolved in isolation, but in close interaction with socioeconomic conditions and politics, as well as other parts of the legal system.

Developed trade relations in ancient Kievan Rus' caused the creation of the „Rus'ka Pravda”⁵ – the largest ancient legal source of Medieval Europe. Over the following centuries, that source had a significant impact on the both within and outside borders of Rus'. Its rules, for example, were included to another well-known source of law – the Lithuanian Statutes (of 1529, 1566, 1588)⁶.

Despite all the vicissitudes in historical and political destiny, Ukraine's legal environment was developing continuously during the years. Another important chapter in the development of Ukrainian legal culture was the Magdeburg Law⁷ which is interesting, inter alia, because of its regulations of market relations in the medieval cities of Europe. The Magdeburg law regulated commerce activity, crafts, activities of workshops and merchant guilds, property relations and taxation. A number of rules was devoted to the organization of the municipal government and judiciary. As it is pointed out, the Magdeburg Law had successfully filled the legal gap, which was formed on Ukrainian lands after the demise of Kievan Rus'⁸. Despite the fact it was applicable only in Western Ukraine (mainly in Galicia), all official and private codification of the laws in Ukraine in XVII-XIX centuries were carried out by using the rules of the Magdeburg Law⁹. When a part of Ukrainian territories was under the rule of the Austrian Empire, the main act which had the influence on codifications of private law was Austrian *Allgemeines Bürgerliches Gezetzbuch* (General Civil Code, hereinafter – ABGB). At the same time, the Russian Empire borrowed from the German regulations of those times at a large scale.

⁵ The „Rus'ka Pravda was created in the Kievan Rus' in the XI-XII centuries on the basis of common law

⁶ The Statutes of the Grand Duchy of Lithuania were a XVI-century codification of all the legislation of the Grand Duchy of Lithuania and its successor, the Polish-Lithuanian Commonwealth

⁷ The Magdeburg Law (German: *Magdeburger Recht*), formed in XIII century in Germany and named after the German city of Magdeburg, was a set of town privileges which regulated the degree of internal autonomy within cities and villages, granted by the local governor. Many Ukrainian cities received Magdeburg Rights in XIV-XV centuries, e.g. Lviv (1356), Gorodok (1389), Luck (1432) etc.

⁸ Znamenskij G. L., *Hoziaystvennoje zakonodatelstvo Ukrainy: formirovanie i perspektivy razvitija* (Знаменский Г.Л. *Хозяйственное законодательство Украины: формирование и перспективы развития*), К.: Naukova dumka, 1996, p.11

⁹ *Ibid.*, p. 12

After the establishment of the Soviet Union the Ukrainian private law system was no longer part of the circle of continental European legal orders and became an integral part of the legal circle of socialist countries. The main features of the legal system at that times were collective social ownership and a planned economy. As a result, many traditional legal institutions and principles of private law were distorted and many classic company law rules were revoked or modified at a grand scale.

Fundamentals of new company legislation of Ukraine were established after the adoption of the Declaration of State Sovereignty of Ukraine¹⁰ and the Law On the Economic Independence of the Ukrainian SSR¹¹ in 1990, while Ukrainian SSR was still a part of the Soviet Union. With a background of quantity based planned economy and with no experience in market relations among firms, suppliers and customers, Ukraine after achieving its independence in 1991, had the task of reforming its legal system to meet the challenges of the new socio-economic order and to establish the framework for a market economy by replacing the previous Soviet laws that no longer served for the purpose¹². In the early independence period there were still legislative acts from the former USSR in force in Ukraine, in particular the Civil Code of the USSR from 1963. Actually, even now there are still some acts in force which were adopted during the Soviet times, for example, the Housing Code of the Ukrainian SSR from June 30, 1983, the Labour Code from December 10, 1971, the Decree of Presidium of the Supreme Council of the USSR from March 7, 1990 "On strengthening the responsibility for trading violations and speculation", Article 4 of the Law "On Entrepreneurship" from February 7, 1991 and others.

Therefore, the new legislative measures started with the adoption of normative regulations in areas that previously had no documented laws and by codifying all other areas of law¹³. Thus, in 1992 the Resolution of the Verkhovna Rada of Ukraine On the Concept of Judicial Reform¹⁴ was adopted which launched the process of codification of private law in Ukraine. A Parliamentary Assembly's decree entrusted the „Legislative Research Center" with the task of drafting bills necessary for a complex reform of the judiciary¹⁵.

At that years, a series of basic laws on business activities was adopted, namely the Laws of Ukraine "On Entrepreneurship", "On Property", "On Securities and Stock Exchange", "On Business Associations". The adoption of these regulations laid the legal foundation for the development of market relations in Ukraine as for the first time there were defined the members of such relations - entrepreneurs and enterprises of different organizational forms, including companies. The laws of Ukraine "On Privatization of State Enterprises", "On Privatization of Small State-Owned Enterprises (small privatization)," "On Privatization Securities", adopted in 1992, heralded and facilitated the beginning of privatization of state property and the creation of large public companies based on the former state property enterprises. Development of corporate structures during the next years was carried out under the influence of privatization and corporatization, activity of investment intermediaries, such

¹⁰ The Declaration of State Sovereignty of Ukraine from July 16, 1990 passed by the Verkhovna Rada of the Ukrainian Soviet Socialist Republic

¹¹ The Law On the Economic Independence of the Ukrainian SSR from August 3, 1990 passed by the Verkhovna Rada of the Ukrainian Soviet Socialist Republic

¹² Dennis Campbell, Christian T. Campbell, International liability of corporate directors – 2nd edition, Huntington, NY : Juris Publishing 2013, Chapter "Ukraine" written by Anna Tsirat and Gennady Tsirat, p. 95

¹³ *Ibid.*

¹⁴ The Resolution of the Verkhovna Rada of Ukraine No 2296-XII On the Concept of Judicial Reform from April 28, 1992

¹⁵ This decree is published in FBIS Report. Central Eurasia 104 (September 1992)

as insurance companies, investment funds and banks. After the adoption of the Constitution of Ukraine in 1996¹⁶, the following provisions became the bases for commercial law regulations: article 42 of the Constitution, which stipulates the right of every person to entrepreneurial activity that is not prohibited by law; the rules defining the fundamental provisions concerning the right to ownership (Articles 13, 14, 41) and non-material relations (Articles 21, 23, 24 27, 28).

What was important during Ukrainian Soviet past is that in 20-30 years of the XX century Soviet scientists developed the concept of single economic law, the essence of which laid in the fact that in a socialist planned economy both horizontal (among entrepreneurs) and vertical (between entrepreneurs and the government) relationships should be regulated exclusively by economic law¹⁷. In other words, under this theory all property relations (including "purely" civil) were to be governed by sole economic law, which was considered as a specific form of the proletarian state policy in the field of economic management, with its main source - the Economic Code. Actually, the very idea was perceived differently during the existence of the Soviet Union and had both its advocates (V.V.Laptev, V.K.Mamutov, H.M.Sverdlov, V.S.Tadevosyan et al.) and opponents (O.S.Ioffe, S.M.Bratus et al.). After the Union's collapse, the idea was rejected by many former republics including Russia. Surprisingly, in Ukraine it found its rebirth, and several scientists in 1992 began to prepare the draft of the Economic Code. At the same time the work on the preparation of the Civil Code had started as well.

Both Civil Code and Economic Code were dated 16 January 2003 and became effective on 1 January 2004. As a result, there is a dual system of regulation for private relationships in Ukraine. The main purpose of the new Civil Code was to establish and protect private non-property and property rights on the basis of legal equality, the free declaration of intent, and the economic independence of the participants of legal relationships. The structure of the Civil Code is mainly influenced by the Roman and Germanic legal traditions. The Civil Code has a pandect structure and consists of six books. Contrary to this, the Economic Code partially remains rooted in the philosophy of the *ancien régime*, in spite of its pedigree. Nonetheless, the Economic Code attempts to provide legal framework regulating the legal status of legal entities, including companies, enterprises and other forms of business associations and organisation. The Economic Code also addresses basic principles of business competition and commercial activity with an international extend, regulation of capital investments and the basic aspects of bankruptcy. The main arguments of the apologists of the Economic Code boils down to referring to the example of some European countries (notably Germany and France) that continue sticking to the coexistence of commercial codes and civil codes (dual systems). By the same token, the adoption of the Ukrainian Economic Code is viewed by its supporters as a step towards approximation of Ukrainian legislation to that of the leading countries of the European Union. However, nothing could be more wrong. Not only is the dual model becoming obsolescent in the majority of European jurisdictions, in particular those of modern date, but also – and most importantly – the Ukrainian Economic Code is not the Ukrainian equivalent of the respective European commercial codes. This is due to its internal inconsistency between private and administrative laws which, in turn, is unlikely to regulate either private or administrative relations in a proper way. The Ukrainian Economic Code does not include provisions that one would find in an authentic commercial code, such as: general provisions on the status of merchant (germ.

¹⁶ The Constitution of Ukraine from June 28, 1996 of No. 254k/96-BP

¹⁷ *Supra* note 8

Kaufmann), on the commercial procurator (germ. *Prokura*), on the firm names (germ. *Firma*) and their legal protection (germ. *Firmenschutz*), on the palette of available legal forms of business activity, special provisions that are applied to commercial activities, including special contract types and commercial transactions (germ. *Handelsgeschäfte*); provisions which regulate internal procedures of companies; sometimes also rules on mergers, divisions etc. Moreover, commercial codes in the developed European countries have quite different meaning – they supplement the regulations of the civil codes and companies acts with comprehensive focus on private law relations concerning the activities of the partnerships and companies.

Thus, from the 1st of January 2004 Ukraine has created what some have called a 'duality' of private law. Ukrainian Economic Code intentionally mixes private law and public commercial law¹⁸. For several years Ukrainian and foreign experts and expert groups (i.e. numerous reports by the OECD¹⁹, the Blue Ribbon Commission²⁰, the EBA²¹) have therefore been demanding that the Economic Code should be abolished and the Civil Code with some modifications should be declared the underlying codification of private law²², giving common ground to special branches of private law legislation, such as company law.

As is evident from the foregoing, legislation is the primary source of Ukrainian company law. Corporate legislation of Ukraine consists of a large array of more or less transparently interrelated legal acts of different legal force. Taken together, these regulations constitute a system of company legislation. This legislation is founded on the Constitution of Ukraine, two Codes (the Civil Code and the Economic Code), separate laws dedicated to various special areas of company law or forms of business associations (the 1991 "Law on Business Associations", the 2008 "Law on Joint-Stock Companies", the 2003 "Law on State Registration of Legal Persons and Individual Entrepreneurs", the 2006 "Law on Securities and the Stock Market"), a significant number of regulations, ordinances and resolutions (of the President of Ukraine²³, of the Cabinet of Ministers of Ukraine²⁴, of ministries, of state committees²⁵, of the NCSSM²⁶), and the 2014 "Principles of Corporate Governance"²⁷ which represents the soft law

¹⁸ Knieper, Rolf, *Rechtsreformen entlang der Seidenstraße: Aufsätze und Vorträge während der beobachtenden Teilnahme an einem gewaltigen Transformationsprozess* Berliner Wissenschafts-Verlag 2006, p. 153-155

¹⁹ The Organisation for Economic Cooperation and Development, established in 1961 with aim to promote policies that would improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. As for now, Ukraine is not a member of the OECD, but maintains close cooperation with it, *inter alia*, in the area of improving legislation framework.

For detailed information See OECD Report 2004, *Legal Issues with Regard to Business Operations and Investment in Ukraine* from October 2004; OECD Report, *Economic Assessment of Ukraine* 2007 from September 2007.

²⁰ An independent and exclusive commission of nonpartisan statesmen and experts formed to investigate some important governmental issues.

For detailed information See Blue Ribbon Analytical and Advisory Centre, *Policy Recommendations on Economic and Institutional Reforms* from November 2007

²¹ The European Business Association is a [Ukrainian](#) not-for-profit association of businesses established in 1999 which provides a forum in which members can discuss and find solutions to common problems affecting business in Ukraine. See the EBA Report *On Barriers to Investment in Ukraine* (2007)

²² Schauer, Martin, Lawrenjuk, Anna, *Ukrainian company law between modernization and post-Soviet tradition - the joint stock company as an example* [in:] Besters-Dilger, Juliane (ed.), *Ukraine on its way to Europe. Interim results of the Orange Revolution*. Frankfurt am Main, Berlin, Bern, Bruxelles, New York, Oxford, Wien, 2009, p. 125

²³ For example, the Decree of the President of Ukraine *On Holding Companies, Set Up in the Process of Corporatization and Privatization* of May 11, 1994

²⁴ For example, the Resolution of the Cabinet of Ministers of Ukraine No 526 *On Measures to Streamline the Licensing of Commercial Activity* from May 21, 2009

²⁵ For example, Letter of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship "On registration of representative offices of foreign business entities" No.4636 from June 26, 2007

²⁶ For example, NCSSM Decision *On Procedure of Increase (Decrease) of Share Capital of Public or Private Joint-*

regulations (best practices code) and aims at reinforcing transparency and disclosure of listed companies, improving the communication between companies and investors, and enhancing protection of shareholders' rights, including those not regulated by "hard" law.

Among company law sources there are also international treaties (universal, multilateral, bilateral) to which Ukraine is a party, upon their duly ratification by the Parliament of Ukraine²⁸.

The legal definition of the customs (customs of commerce or trade usages) as a source of civil (and company) law is enshrined in Art. 7 of the Civil Code of Ukraine, which stipulates that civil relations may be regulated by the customary law, in particular, the business-dealing practice. Practice is a rules of conduct not established by civil legislation acts but applied to a certain sphere of civil relations. Special provisions indicate for the necessity of taking into consideration the practice when doing business in Ukraine, e.g. certain legal rules are often referred to "trade and other fair practices" (Art. 32 of the EC), "professional ethics" (Art. 38 of the EC), "the conditions necessary for contracts of this type" (Art. 638 of the CC), "types of the security obligations, which are commonly used in commercial (business) circulation" (Art. 199 of the EC), "accepted level of quality" (Art. 268 of the EC), "the purpose for which goods of such kind are usually used" (Art. 673 of the CC), and others.

Moreover, in Ukraine, judicial practice (case-law), *de jure*, does not represent a source of law. But some mechanisms exist within the Ukrainian legal system to ensure the harmony of the case-law. Thus, still, even though the decisions of the higher courts do not formally bind lower courts besides the given proceedings, the lower courts in Ukraine, as a rule, follow the legal rulings adopted by the higher courts. Moreover, the Highest Commercial Court of Ukraine analyzes court statistics, generalizes court practice, and issues on these basis resolutions and clarifications which *de facto* are binding, and in such a way provides the lower commercial courts with recommendations on how to solve cases within their jurisdiction²⁹. In addition, the Supreme Court of Ukraine as the highest judicial body in the system of courts of general jurisdiction reviews cases regarding unequal application by courts (court) of cassation of the same rule of substantive law in similar legal relations and in such a form ensures the uniform interpretation and application of the law. Besides, the decisions of the Constitutional Court of Ukraine concerning the unconstitutionality of laws and other legal acts in force as well as its official interpretation of the Constitution and laws of Ukraine have direct, mandatory and general effect.³⁰ It should also be taken note of a few cases brought to the European Court of Human Rights where in company law settings the Court found violations of property rights (art. 1 of the Protocol No 1 to the ECHR) or the right to a fair trial (art. 6 of the ECHR).³¹

Stock Companies No 822 from May 14, 2012

²⁷ The Principles of Corporate Governance adopted by the Resolution of the NCSSM from July, 22, 2014 (the updated version of 2003)

²⁸ According to Art. 9 of the Constitution of Ukraine international treaties, that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine

²⁹ For detailed information, see Chapter 8

³⁰ For example, The Constitutional Court Ruling No 1-pr/2013 from February 5, 2013 in the case upon the constitutional appeal of the "Lichtner Beton Lviv" L.L.C. concerning the official interpretation of the provisions of Articles 58.4, 64.1 of the Law of Ukraine "On Business Associations"

³¹ For example, Judgment of the ECHR of 25 July 2002 – case of Sovtransavto Holding v. Ukraine, (Application No. 48553/99); Judgment of the ECHR of 14 September 2009 - case of Kooperativ Kakhovskiy-5 v. Ukraine (Application No. 20728/04); Judgment of the ECHR of 8 March 2012 - case of Agrokompleks v. Ukraine, (Application No. 23465/03)

It should be emphasized that nowadays Ukrainian company law is at an important and at the same time difficult stage of its development. On the one hand, there are new and updated laws like the “Law on JSCs” which is, in general, based on modern European patterns, on the other hand – many laws of artificial nature, which ignore the contemporary experience of legal regulations, global trends in company law reforms, with ambiguous and mutually contradictory rules as well as discrepancies. Moreover, on the top, there is a willingness of Ukraine to accept the *Acquis* of the EU in order to improve its legislation, make it attractive for international investors, and establish a good ground for future membership in the Union.

Overall, Ukraine has made significant progress in introducing and enhancing its company law framework. It took more than a thousand years for the Ukrainian state to gain independence and now Ukraine is considered to be a civil law country with an emerging economy. Ukrainian company law functions in an environment which has all classical negative features of a country in transition, such as dominance of self-dealing majority shareholders extracting private benefits of control, severe asymmetry of information with limited enforcement of information rights by investors, corrupted and malfunctioning courts, poorly developed capital markets and weak self-regulatory institutions. In circumstances of such underdeveloped market and legal infrastructure, the development of company law in Ukraine is highly important with its specific set of goals to become a “protective mechanism” for businesses, investors and commercial activity in Ukraine.

4.2. FOREIGN INSPIRATIONS AND THEIR IMPACT – THE UKRAINIAN EXPERIENCE WITH LEGAL TRANSPLANTS

4.2.1. SOURCES AND TRACES OF FOREIGN INSPIRATION IN UKRAINIAN COMPANY LAW

When taking up the challenge to establish a national legal system, it would not be superfluous to look back in order to clarify guidance how to move forward. The issue of transplantation of foreign law has been of remarkable topicality at all times. Basically, the term legal transplant indicates the moving of a rule or a system of law from one country to another³². It is the transfer of laws and institutional structures across geopolitical or cultural borders that can be imposed or voluntary encompass complex legal acts or particular legal institutions and integrate similar or different cultures³³. This type of mixing and intertwining of different legal cultures can be explained by the natural tendency of human societies to seek understanding for each other, cooperation and connection at different levels.³⁴

Legal transplants are as old as the law is³⁵. Earlier legal transplants are well known due to the reception of Roman law in Europe. With time, the processes of legal borrowing and transfer that occurred in the 19th and early 20th centuries replaced all earlier transplants which no

³² Watson, Alan, *Legal Transplants: An Approach to Comparative Law*, Edinburgh: Scottish Academic Press, 1974, p. 21

³³ Gillespie, John, *Transplanting Commercial Law Reform*, Hampshire, UK: Ashgate, 2006, p. 3

³⁴ *Supra* note 32

³⁵ *Supra* note 29

longer meet the requirements of economic and social activity. Most modern contemporary legal systems are derived either from the English common law, the German civil law or the French civil law (questionable – the Scandinavian civil law) which could be characterized as “origin” legal families³⁶. For many countries, including Ukraine, borrowing of legal institutes of foreign company laws represents the major method of the development of company law in order to reassure the social needs of a society and keep up with the development of economy. Moreover, legal institutions of company law were also incorporated into European Company Law acts, mainly directives and regulations. Hence, legal transplants and the influence of main legal systems on systems of other countries may be analyzed on two levels: primary (i.e. direct reception of particular legal institutions) and secondary (i.e. reception of certain institutions by implementing European law, which was directly influenced by those institutions). Currently, Ukraine is not a member of the EU, but is involved in close cooperation with it and makes considerable efforts to adapt its company law to European Union's *Acquis*.

Thus, foreign inspirations have played an important role in setting the legislative foundations of Ukrainian private law which roots could be traced back to the Roman Empire. Ukrainian legal system by its nature belongs to the Romano-Germanic legal family (the continental law system). Taking this into consideration, the main sources and inspirations for Ukrainian company law should be sought in the legal systems of Germany, Austria and France. Some traces of the Dutch influence could be found in Ukrainian corporate law as well. But the impact of foreign legislation other than that of Germany appears not to be significant.

After gaining its independence in 1991 and obtaining the status of “country with transition economy”, Ukraine had to disassemble its previous economic and legal institutions, which were based on centrally planned regulations. Feeling the strong need to fill the gap left by the previous Soviet experience as well as the pressure from supranational organizations and international financial institutions and taking into consideration the very fact that in the transition process transplantation is unavoidable, Ukraine, when creating a new legal system, relied heavily on the foreign technical assistance that arrived with ideas for “legal surgery”³⁷. As a result, a series of fundamental laws on business regulation was adopted, namely the 1991 “Law on Enterprises in Ukraine”, the 1991 “Law on Property,” the 1991 “Law on Securities and the Stock Market”, the 1991 “Law on Business Associations” etc. Therefore, the process of “wholesale” reception of Western legal institutions by Ukraine has started, even though some of the aforementioned acts contained specific provisions influenced either by the former regulatory philosophy or by the need to cope with the inherited role of the state as business actor, whose role remains significant despite progress of ownership transformation and privatization. It should be noted that even during the Socialist era Western models were borrowed by the Soviet Union in general and separate republics in particular. Legal norms formulated in accordance with German pattern were transmitted into socialist civil law of Soviet Russia in the early 1920s. Codification of civil law that took place in the USSR during the following years continued this approach and many rules of RSFSR Civil Code (1964) showed remarkable resemblance to their prototypes in German Civil Code, in particular, with regard to basic legal concepts, notions and institutions of civil law, such as transactions, legal

³⁶ Zweigert, Konrad, Kötz, Hein, *An Introduction to Comparative Law*, Oxford University Press 1998, 714 pp.

³⁷ Loukas A. Mistelis, *Regulatory Aspects: Globalization, Harmonization, Legal Transplants, and Law Reform -- Some Fundamental Observations*, *International Lawyer*, 2000, pp. 1055-1069

persons, subjects and objects of rights, law of obligations, specific contracts³⁸. But the scale of this phenomenon was slight, if compared to situation after the collapse of the Union.

It should be emphasized that there is no single act (code) that would constitute a comprehensive piece of legislation embracing all types of commercial partnerships and companies along with framework for their reorganisations (mergers, divisions and transformations). The regulations are scattered among several acts of different legal hierarchy: codes, laws, ordinances etc. This is not unique by international comparison - e.g. Germany has a similar structure of multiple sources of company law legislation, each separately yet consistently with the other acts, covering different corporate transactions or companies' types.

Significant traces of German and French law one could find in the new Civil Code of Ukraine (hereinafter – the CC) which was prepared in accordance with recommendations of German, Dutch, Swiss, and American experts and came into force on January 1, 2004. In terms of legal technique, the new Ukrainian Civil Code was primarily drafted along the lines of the continental legal traditions. As a matter of fact, starting from the period of Magdeburg law, civil law legislative practice and legal doctrine in Ukraine developed under the influence of German law. For the first time art. 83 of the CC defined that legal entities may be created in the form of partnerships, institutions and other forms established by the law. This initial separation made at the level of private entities reflects the classification provided by the German Civil Code *BGB*, which divides the legal persons into partnerships, institutions and legal persons of public law.³⁹ The typology of business associations and the two-tier system of corporate governance were derived from the German law and *Allgemeines Bürgerliches Gesetzbuch* of Austria as well.⁴⁰ Likewise in the business reality, a typical *tov* (limited liability company) is a closed company with a few shareholders who often work for the company and are involved in managing its affairs, similar to the typical German GmbH. Provisions of the CC devoted to the persons' rights and legitimate interests (including legal persons') were borrowed from the French regulations. At the same time, consumer rights protection as well as provisions on liability without fault were inspired by the Dutch Civil Code.

However, despite the strong resemblance to German sources, in Ukraine establishment of the supervisory board in a private limited liability company is not foreseen by the law and is questionable in practice. Moreover, in contrast to the German law, in Ukraine the audit commission is a separate body, rather than a subunit of the supervisory board, and the supervisory board in the small joint stock companies (with less than ten shareholders) is not obligatory. There is no clear legislative division of business associations between partnerships ("personal companies" – germ. *Personengesellschaften*) and corporations ("capital companies" – germ. *Kapitalgesellschaften*), no provisions on company in the organization (germ. *Vorgesellschaft*), no minimum share capital for limited liability companies, and no mandatory representation of employees in the supervisory board (worker co-determination, germ. *Mitbestimmung*).

³⁸ Komarov A., *Development of Private Law on Contracts in the Russian Federation [in:] Private Law in Eastern Europe. Autonomous Developments or Legal Transplants?*, Ed. by Christa Jessel-Holst, Rainer Kulms and Alexander Trunk, 2010, p. 74-77

³⁹ Kucherenko I.M., *Організаційно-правові форми юридичних осіб приватного права (Організаційно-правові форми юридичних осіб приватного права)*, К.: IDIP, DP "Juridyczne Wydawnictwo "Asta", 2004. p. 9

⁴⁰ *op. cit.*, p. 9

French lawyer G. Ryperta once said: "The law on joint stock companies in each country is created by united efforts of all countries"⁴¹. Accepting this statement as a general trend in the field of commercial law, it should be pointed out that for a long time the main source of legal regulation of joint-stock companies remained the law of Ukraine "On Business Associations", passed in December 1991. Actually, the draft of the law on Business Associations was already started during Soviet times. According to a member of the working group, German legislation on commercial association was used as a basis for this law. As the work proceeded, elements from the Anglo-American legislation were also integrated into it.⁴² In our opinion, it is how it always work with legal transplants: the closest legal system forms the backbone ("the spine") of the new law, and then, taking into consideration certain problems which the country in question faces, other solutions ("the spine's nerve endings") from different legal systems are sought for patching the loopholes and completing the construction of the body of the law. Moreover, it is of extremely importance to balance legal transplants with each other and with "the spine" *per se*.

At those times, the necessity of the law On Business Associations seemed evident to everybody, so it was passed in 1991 almost unanimously without long debate. It was the first law for the new economic market and also the first of its kind in the countries of the former Soviet Union. In Russia and neighboring countries, laws on commercial associations were passed only several years later⁴³.

As a matter of fact, the law On Business Associations despite being revolutionary in 1990s after a few years began to show its inefficiency and weakness. The definition of the closed stock company was not satisfactory as there were no restrictions concerning the number of its shareholders. Moreover, there were no effective mechanisms of protection for minority shareholders. Therefore, the law has not met the requirements of the market despite being amended many times. Focusing on Western legislation, the new law on JSC that came into force on 29 April 2009, though far from being perfect, has brought significant improvements to the corporate law system.

Notwithstanding the dominant influence of German patterns on the new Ukrainian law on JSC, there are some obvious transplants from Anglo-American legal system. Actually, those changes were inspired by real-life problems Ukraine actually had faced, in particular, corporate raiding. This Ukrainian version of hostile takeovers that according to one experienced Western investor in Ukraine is the simple act of "stealing somebody's business"⁴⁴. Pursuant to the Resolution of the Cabinet of Ministers "On Approval of the Declaration of Objects and Missions of the Budget for 2008" a "raider attack" was defined as "disposal of state-owned property and corporate rights other than following privatization proceedings, or (by) illegal seizure of a company."⁴⁵ It is "an organized attack on a company, organization or an institution with the purpose of its seizure that resulted in disruption of its ordinary course of

⁴¹ *op. cit.*, p.10

⁴² Kysil, V. Zakon "Pro hospodars'ki tovarystva" vzhe ne vidpovidaie vymoham chasu, odnak isnujut' al'ternatyvy", *Yustinian*, No 2/2002, <http://www.justinian.com.ua/article.php?id=424>

⁴³ *Supra* note 21, p. 126

⁴⁴ Interview with Natalie Jaresko, Kyiv, Ukraine, May 17, 2013. See also Rojansky, Matthew, Corporate Raiding in Ukraine: Causes, Methods and Consequences, *Academic journal*, Vol. 22, No. 3 /2014, p. 415

⁴⁵ The Resolution of the Cabinet of Ministers of Ukraine No 316 from March 1, 2007 "On Approval of the Declaration of Objects and Missions of the Budget for 2008"

business"⁴⁶. Because of this phenomenon the provisions on the acquisition of a substantial interest in a company were adopted, according to which a person or jointly acting persons intent on purchasing shares, which, taking account of the number of shares held by the entity in question and entities affiliated therewith, will account for 10 and more per cent of ordinary shares in the company (the substantial interest), must submit a notice of its intent in writing to the company and publish the same not later than 30 days prior to the date of the acquisition of the relevant interest. The said notice shall be published by means of the submission thereof to the National Commission for Securities and Stock Market, each exchange, where the company has been listed, and the publication thereof in an official printed bulletin⁴⁷. Thus, as for now the acquisition of the significant stake in the company's capital shall be transparent.

Moreover, having been influenced by the French and UK models as well as the EU 13th Company Law Directive (2004/25/EC) Ukraine has enshrined in its JSCs Law the provisions on mandatory takeover bids (offer). So as of today, compared to other shareholders, the controlling ones who has acquired more than 50 per cent of common stock are obliged to make an irrevocable offer to all remaining shareholders to purchase their common shares. In addition, outside directors may now be involved and there is a possibility to have a right of first refusal with respect to shares of such JSC offered for sale by a shareholder.

Besides, the mechanism of cumulative voting was transplanted into Ukrainian law on JSC from the USA legislation. In Delaware, for example, it became optional since 1917⁴⁸. Cumulative voting is a voting mechanism during election of company's bodies when the total number of votes of a shareholder is multiplied by the number of members of a joint stock company's body being elected, and a shareholder has the right to cast all votes calculated in this way for one candidate or distribute them between several candidates⁴⁹. It is worth mentioning that this mechanism allows to protect interests of minority shareholders due to the possibility of election of their representative into the Supervisory Board. Also, the institutions of "non-arm's length transactions" (related party transactions) and "significant deals" (fundamental transactions) were borrowed from the American law as well in order to preserve company's assets from unjustified erosion and curb expropriation of minority investors through extensive extraction of private benefits of control by the majority. At the same time, the mechanism of convening of the general shareholder meeting in the form of absentee voting stipulated by the art. 48 of the JSC law has obvious British origin (the so-called "written resolution").⁵⁰

One should not assume that all the rules of Ukrainian company law were borrowed, transplanted or transmitted. Some of them have been evolved autonomously, sometimes

⁴⁶ From the draft law "On Entering Amendments and Additions into Some Legislation Acts Related to Initiation of the Criminal Prosecution for Seizure of Companies and Enterprises"

⁴⁷ Article 64 of the Law of Ukraine On JSCs No 514-VI from September 17, 2008

⁴⁸ For the history of cumulative voting rules see Jeffrey N. Gordon, *Institutions as Relational Investors: A New Look at Cumulative Voting*, 94 Colum. L. Rev. 124, 142-60 (1994). His detailed analysis of the introduction of cumulative voting in two waves (at the turn of the century, and again after World War II), and their reversal (in the mid-1950s many states that had made cumulative voting mandatory first, relaxed this to opt-in provisions), documents that legal change is often not a one-way road, but quite a dynamic process

⁴⁹ Article 2 of the Law of Ukraine On JSCs No 514-VI from September 17, 2008

⁵⁰ In cases covered with a charter of the joint stock company with not more than 25 shareholders, it shall be permitted to make decisions by means of polling. In this case, the draft decision or the voting issue shall be sent out to shareholders that own voting shares; the shareholders must provide a written notice of their opinion on the issues within five calendar days of receipt of the relevant draft decision or the voting issue. All shareholders that own voting shares must be notified in writing by the chairman of the meeting about the decision made within 10 days of receipt of the notice from the last shareholder that owns voting shares. The decision shall be deemed made if supported by all shareholders that own voting shares (art. 48 of the JSCs Law).

changing their shape in order to make it consistent with Ukrainian realities. For instance, the provision stipulating that the maximum number of participants of a limited liability company is 100 or that all shares in Ukraine are registered and exist only in a non-documentary form. Another original regulations - the requirement of compulsory listing of shares of public JSCs or the requirement for mandatory conclusion of transactions involving the shares of public JSCs on the stock exchanges - the measures that aim to increase the supply of quasi-liquid instruments on stock markets. It seems that Ukrainian "traces" could be found wherever the top-down method of prescriptions and prohibitions is used in order to overcome the existing problems. These and similar regulations underline the peculiarities and to a certain extent originality of Ukrainian company law, which, along with the desire to borrow all the most advanced standards, continues to struggle with its own unique challenges.

Overall, without doubts, the primary source of inspiration for Ukrainian company law was German law. And thanks to this fact, it is much easier for Ukraine today to approximate its corporate legislation to the *Acquis*, where German law played a role of a transmitter. This follows from the fact that the German legislator had first to digest the European legislation and then transpose it in a fitting way to its existing national company law. By borrowing from Germany, Ukraine is thus consciously yet indirectly approximating its company law with the European standards. At the same time, the influence of common law system is continuously increasing⁵¹. Moreover, with progressing legal borrowing, internalisation of business and in particular through European harmonisation, the differences between the Continental and Anglo-Saxon systems here and there become blurred. And nowadays vivid discussions are ongoing about transplantation of the "derivative action" mechanism, provisions on independent members of the supervisory board, "squeeze-out" and "sell-out" rules into Ukrainian company law. Because, "the transplantation of foreign legal institutions is not a matter of nationality, but of usefulness and need. No one bothers to fetch a thing from afar when he has one as good or better at home, but only a fool would refuse quinine just because it didn't grow in his back garden".⁵² Introduction of widespread and internationally acknowledged regulatory models backed by functioning law enforcement is more capable of attracting foreign investors than mere international treaties on the promotion of investment, special economic zones and territories of priority development. Participation in business entities (either through fully controlled subsidiaries or joint-ventures) is one of the most popular forms of foreign investments in Ukraine and foreign investors should be able to operate on the familiar rules and standards which are common throughout the western world.

4.2.2. SUCCESSFUL AND PROBLEMATIC TRANSPLANTS IN UKRAINIAN COMPANY LAW: INDICATION FOR FURTHER REFLECTION

⁵¹ Besides, the Law of Ukraine "On Restoring the Solvency of the Debtor or Recognizing its Bankruptcy" from May 14, 1992 was substantially amended in 2011 taking inspirations from the Anglo-American system, namely from the provisions of the US Insolvency Code (Chapter 11) concerning the applicability of reorganization procedures to insolvent companies

⁵² Jhering, Rudolf, *Geist des römischen Rechts*, Part 1, 9th ed., 1955, p. 8

Two decades after the end of socialist law, legal transplants are commonplace for comparative lawyers who reflect on the trajectory of legal and economic change in transformation countries⁵³. Actually, given limited resources, such as human capital and efficient institutions (courts and academia) on the one hand, and growing demand from the business environment for an adequate legal framework – on the other, the import of legal concepts and institutions proved to be the most cost-effective and sometimes the only affordable way of reducing existing discrepancies in legal sophistication in order to address the needs of the transforming economy.⁵⁴ Consequently, international donors provided numerous experts to help the country in transformation to identify, adapt, and transplant best practices from a number of successful models. But it is recognized that even in cases where a written statutory law (institution, legal concept, or structure) is the same within two countries, its judicial interpretation may well differ because of the divergence in legal tradition and legal thought in each country. The same factors are also valid with regard to legal transplants being successful or not.⁵⁵

As it was already noted, Ukrainian company law modernisation has been to a considerable extent advanced by borrowing from German law. Yet with the progress of recent company law reforms in Europe triggered by the phenomenon of regulatory competition and based on the achievements of modern corporate finance, company law of Ukraine has been amended by some important regulations of common law origin.

It is worth to be mentioned that most borrowings that were transplanted into Ukrainian soil of company law especially those included to the Civil Code and the Law On JSCs that were mentioned in the previous paragraph turned out to be accommodated reasonably well. An added value *per se* may be seen in the fact that before their implementation there were severe gaps in pre-existing Ukrainian company law that urgently needed to be filled. This generally positive assessment shall not extend to the provisions of the Economic Code which are based on socialist law practice and could be defined as largely outdated in the light of contemporary conditions, so even if its enactment was accompanied by references to the western legal systems it does not correspond to its substance which remains anachronistic. However, in general, not every transplant survives on the grounds of Ukrainian law. For instance, in the civil law sphere the institution of trust, which was borrowed from the British law, has not taken root in Ukraine. Despite the fact it was transplanted into various civil law systems, like Quebec, Scotland, Japan, Liechtenstein etc., the Ukrainian one rejected it: mechanisms of dual property, formal ownership and beneficial interest were too foreign bodies to become settled in and widely accepted by business practice in Ukraine. In the sphere of corporate law some transplants could be labeled as questionable. For example, the provisions on a quorum of 60% of total shares at the GHM of LLCs and JSCs, or payment of dividends upon ordinary shares only under the resolution of the GHM regardless of how big profit the company has received in a given year. Ukraine has not changed such a high quorum requirement since 1991, although in other developed countries it was significantly

⁵³ Pistor, Keinan, Kleinheisterkamp, West, Evolution of Corporate Law and the Transplant Effect: Lessons from six countries, *The World Bank Research Observer* 18 (1) (2003), p. 89 et seq.

⁵⁴ Oplustil, K, Radwan A., *Company Law in Poland: Between Autonomous Development and Legal Transplants* [in:] Jessel-Holst, Christa, Kulms, Rainer, Trunk, Alexander (ed.), *Private Law in Eastern Europe. Autonomous Developments or Legal Transplants?*, Hamburg 2010, p. 466

⁵⁵ Galinou, Eirini Elefthenia, *Legal Borrowing: Why Some Legal Transplants Take Root and Others Fail*, In: *Comparative Labour Law and Policy Journal*, Vol. 25, 2004, p. 391-422

reduced. It hinders the company's activity and very often creates "deadlock" situations when the GHM cannot be convened at all.

Sometimes, Ukrainian lawmaker when borrowing legal institutions, transplants only a part of the foreign regulation. For example, the provisions on the exclusion of a participant from the limited liability company. Under Ukrainian legislation, a participant of a limited liability company which systematically ignores its duties or fulfils them not in a proper way, or else interferes with reaching the aims of the company with his actions can be excluded from the company on the ground of a decision supported by participants owning more than 50 per cent of the total number of votes of the company's participants⁵⁶. Following exit of a participant from the LLC the latter must pay the value of the part of company's assets proportionally to the participatory interest of the exiting participant in the charter capital. Moreover, the exiting participant is paid his share in the income gained by the company in the year of exit⁵⁷. In other words, even whether a participant is excluded from the company for the debts or other failures, the latter still is obliged to pay him his stake in the company's assets. This causes many problems in practice. For comparison, according to German regulations, which served as a source for the Ukrainian ones, in case of exclusion from a LLC for the debts, the participant loses the right to his share. He is not entitled to recovery of his payments made in favor of company as well. Another example - Britain's rules on the possibility of conveying the general shareholder meeting in the form of the absentee voting under Ukrainian law are applicable only to joint-stock companies with less than 25 shareholders and not to limited liability companies.

It should also be stressed that some transplanted provisions are hardly or rarely used in practice, even though they seem to be fitting well into Ukrainian law and provide workable solutions. This subcategory of failed transplants embraces discrepancies between what is prescribed by the law (Law on Books) and what exists in reality (Law in Action). These applies to the outside members of the supervisory board (previously, only company's shareholders could be elected to the board), the supervisory board committees (apart from banks, other JSCs practically do not foresee them in their governing structure), the institute of corporate secretary which aims at providing the communication between the company and its shareholders and investors. In our opinion, the problem which impedes the development of such legal institutes is caused not by the problematic transplant or unsuccessful transplanting *per se*, but lies in peculiarities of management and activities of joint stock companies. To understand the situation and the underlying mechanisms, one needs a more detailed analysis of governing processes with focusing on ownership and feedback between the company and its shareholders, which will be discussed in the next chapters. Besides, it is needless to say that in the beginning, every new solutions seem strange and unclear, and are associated with additional costs and efforts. Thus, the pressure should be put on an information campaign, directed both at the company and the shareholders.

It is worth paying attention to the next transplant borrowed from the common law countries – the institute of shareholder agreements. In our opinion, this transplant could take roots in Ukraine and be quite successful, but, at present, it fails to do so due to improper, poor and inconsistent legal regulation provided for by the Ukrainian legislator. Pursuant to the Art. 29 of

⁵⁶ Article 64 of the Law of Ukraine "On Business Associations" from September 19, 1991. In this case this participant (or representative) does not participate in voting

⁵⁷ Article 54 of the Law of Ukraine "On Business Associations" from September 19, 1991

the Law on JSCs⁵⁸ the company charter may provide for the possibility of the conclusion of a shareholder agreement vesting shareholders with additional duties, such as the duty to take part in the general meeting and envisaging liability for the failure to abide thereby. That is the only rule that regulates the institute of shareholder agreements in the Ukrainian legislation. There are no provisions on their nature and place, applicability and enforceability. Moreover, according to Art. 116 and Art. 117 of the CC, Articles 25, 29 of the JSC Law, Articles 10, 11 of the Law of Ukraine "On Business Associations" only legislative acts and articles of association are indicated as sources which may establish rights and obligations for the shareholders. To make the application of the shareholder agreements (and what is the more important – the execution of liability under such agreements) even more contradictory, the Resolution of On Practice of Consideration of Corporate Disputes by the Courts of 2008⁵⁹ stipulates that activity of joint stock company and relations between shareholders are governed exclusively by laws and other normative and legal acts of Ukraine. Thus, as for now, the nature of the shareholder agreements under Ukrainian legislation is unclear and blurred what prevents them from being widespread and serving as an effective tool for self-enforcing regulations of the company's internal affairs as well as for reduction of risks connected with changeability of Ukrainian regulations. Besides, there is no possibility the shareholder agreements are to be governed by foreign law so the shareholders shall apply solely the provisions of Ukrainian legislation to regulate the relationships between them.

Moreover, currently, there are ongoing heated debates in Ukraine regarding the introduction of the derivative suits⁶⁰ into Ukrainian company law. One should mention that in countries of Anglo-American legal system, shareholders have traditionally had access to judicial recourse to defend their rights⁶¹, often strengthened by favorable rules on costs. Continental law countries, on the contrary, tended to limit the scope of derivative suits, e.g. by imposing capital thresholds and other procedural requirements, although this approach has been gradually changing over the last years. As was noted by L.A. Ostrovska, "countries with sufficiently developed stock markets recognize in one form or another the institution of derivative suits, regardless to what legal family their legal system belongs"⁶². In Ukraine, the shareholders are entitled to defend their rights and interests in court only when these rights and interests were violated directly. No derivative suits are provided. And it is very questionable whether or not to grant the shareholders the right to appear before the court on behalf of the company, bearing in mind current political and economic conditions, the following possible abuses of this right which would probably cause additional opportunities for "raiding". The fact is that many attacks of raiders in Ukraine begin with the minority shareholder bringing a claim against a company for matters either immaterial or deceitful. Due to these mechanisms the company is involved in several litigation processes (often simultaneous) aimed at wasting the time and money, as well as its distraction and blocking of company's activity. Thus, one could hypothesize that expanding the grounds for filing a claim

⁵⁸ In Ukraine the participants of a LLC are not entitled to enter into similar agreements

⁵⁹ Resolution of the Plenum of the Supreme Court of Ukraine of 24.10.2008 No. 13 "On the court practice of consideration of corporate disputes"

⁶⁰ A derivative suit means a lawsuit brought by a shareholder on behalf of a **company** against a third party. Frequently, the third party is an insider of the corporation, such as a manager (director) or member of the supervisory board.

⁶¹ Art. 118 Law No. 66-537 of July 24, 1966 (revising the Code de commerce), J.O. 26 Juill., p. 6402 (1); BLD 1966, 353-404 (Fr.) (Law of July 24, II). For detailed information see Pistor, Katharina, Keinan, Yoram, Kleinheisterkamp, Jan, West, Mark, The Evolution of Corporate Law: a Cross-Country Comparison, University of Pennsylvania Journal of International Economic Law, 2002

⁶² Ostrovska L.A., Nepriami (pohidni) pozovy: mizhnarodnyj dosvid ta zakonodavstvo Ukrainy, avto-ref. dys. kand. Juryd. Nauk, Odes. Nac. Juryd. Akad., Odessa, 2008, 19 p.

due to the derivative action introduction would cause an increase in a number of false court processes and, consequently, of raider seizures. In order to find an answer to this dilemma as well as to others concerning transplants the issue about reasons, necessity and effectiveness of legal transplanting should be discussed. It was obvious that in the post-communist period of Ukraine's development company laws needed to be rewritten, replaced, or reformed to unbind market forces for development and growth. Nowadays, willingness to borrow is explained through the prism of prestige and political opportunity as it is often advocated in the literature⁶³ and because of the society's demands as well. In short, for law to be effective, a demand for law must exist in a particular country. That would cause the law to be used.⁶⁴ It is needless to say that till now Ukraine continues to struggle with internal and external demand for competitive business environment, foremost legal and institutional framework, capable of efficiently accumulate domestic and attract foreign capital. This should be seen as trigger of conscious borrowing of legal and institutional solutions, in particular in the realm of corporate law. Nevertheless, it should be remembered that almost every legal mechanism from the exporting jurisdiction reflects some elements of the legal culture, traditions, and history of that system. The process of transplantation of legal rules or institutions from foreign legal systems do not mean simply copying a legal institution or sets of rules from the exporting into importing jurisdiction. So the degree of socio-economic development as well as the general and organizational culture of the country where the transplanted legal rules or institutions are meant to function need to be considered. These circumstances create special conditions of legal development referred to as path dependence. Risk of malfunctioning of the transplanted rules is particularly significant if they are placed in institutional vacuum or confront the inertia of pre-existing practices.

5. COMPANY AND CORPORATE GOVERNANCE LEGISLATION IN UKRAINE FROM THE EU ACQUIS PERSPECTIVE

5.1. CURRENT STATUS OF UKRAINIAN COMPANY AND CORPORATE GOVERNANCE LEGISLATION

5.1.1. GENERAL OVERVIEW

The contemporary company and corporate governance legislation of Ukraine may be characterized as a controversial conglomerate of legal rules haphazardly scattered across several key sources⁶⁵. The basic rules underpinning issues such as the formation, operation and winding-up of legal entities in Ukraine are governed by the Civil Code of Ukraine⁶⁶ and

⁶³ The report: "Shaping a Market-Economy Legal System. A Report of the EC/IS Joint Task Force on Law Reform in the Independent States," in *European Economy*, no. 2, 99ff. (1993). See also Gianmaria, Ajani, *By Chance and Prestige: Legal Transplants in Russia and Eastern Europe*, *The American Journal of Comparative Law*, Vol. 43, No. 1, 1995

⁶⁴ Berkowitz, Daniel, Pistor, Katharina, Richard Jean-Francois, *Economic Development, Legality and the Transplant Effect*, William Davidson Working Paper Number 410, September 2001

⁶⁵ „Konceptija rozvytku korporatyvnogo zakonodavstva Ukrainy" zatv. Rishenniam Rady Komitetu korporatyvnogo prava Asociaciji pravnykiv Ukrainy z 03.10.2007 r.

⁶⁶ The Civil Code of Ukraine from January 16, 2003 of No. 435-IV

by the Economic Code of Ukraine⁶⁷, by the Laws of Ukraine "On Business Associations"⁶⁸ and "On Joint Stock Companies"⁶⁹. The disclosure requirements, regulations on securities issuance and conduct of professional activities in the stock market are provided by the Law "On Securities and the Stock Market"⁷⁰. The Law "On the Depository System of Ukraine" determines legal norms for functioning of the depository system of Ukraine, establishes procedure of registration and confirmation of rights in eligible securities and their entitlements within the securities depository record-keeping system. Relations which arise in the sphere of state registration of legal entities are regulated by the Law of Ukraine "On state registration of legal entities and natural persons - entrepreneurs"⁷¹.

Both the Civil and the Economic Code regulate all types of business entities, i.e. private limited liability companies (LLC), joint stock companies (JSC), additional liability companies (ALC), general partnerships and limited partnerships. Besides, the Economic Code of Ukraine distinguishes another type of business entity, namely an enterprise which under provisions of other legislative acts (the Civil Code) is considered to be an object of legal relations (as property complex), not the subject. Even though this dualism between subjective and objective notion of an enterprise exists in many European jurisdictions as well, it remains a doctrinal concept rather than a distinct legal form. Hence the comparison between Civil Code and Economic Code reveals some confusion and the definition from the Economic Code (enterprise as legal subject) appears superficial if not misleading. This is just one example of a broader phenomenon. Nothing to be surprised with: numerous conflicts, inconsistencies, gaps, and overlaps exist between many provisions of the Civil and Economic Codes that seek to regulate the same issues. The Economic Code has a tendency towards rebuilding a command economy, for example, it accredits the authorities to dictate the actions of companies and to deprive them from different benefits and privileges when they do not meet government's requirements. In this regard, this „descendant of the Soviet-era" appears to present an obstacle to the development of a functioning free market in Ukraine and, in our opinion, should be abolished. The analysis of the most obvious inconsistencies in the Ukrainian company legislation is presented in paragraph 6.2 as well as in Attachment No. 1 to this Report.

Despite there is no systematic division into personal and capital companies in Ukrainian legislation, one could distinguish such differentiation based on their characteristics. This study focuses on LLCs and JSCs as the most popular corporate forms in Ukraine and those covered by EU secondary legislation.

On 17 September 2008 the Parliament of Ukraine approved the law "On Joint Stock Companies". This event became a sensation because during the last eight years the Parliament seven times rejected similar bills. This law has brought significant improvements into the corporate governance system and legal status of minority shareholders. Meanwhile, there is no separate legal act that would cover LLCs and ALC in a similar manner as the aforementioned law of 2008 does for Joint Stock Companies. Regulations provided by the Codes (Civil Code and Economic Code) are very general in nature and lack detailed and specified provisions concerning all peculiarities of different forms of company.

⁶⁷ The Economic Code of Ukraine from January 16, 2003 of No. 436-IV

⁶⁸ The Law of Ukraine "On Business Associations" from September 19, 1991 of No. 1576-XII

⁶⁹ The Law of Ukraine "On Joint Stock Companies" from September 17, 2008 of No. 514-VI

⁷⁰ The Law of Ukraine "On Securities and the Stock Market" from February 23, 2006 of No. 3480-IV,

⁷¹ The Law of Ukraine "On the Depository System of Ukraine" from July 6, 2012 of No. 5178-VI

5.1.2. LAWS REGULATING OPERATION OF LIMITED LIABILITIES COMPANIES

Private limited liability company (*tzov*) is widely considered to be the most attractive business vehicle in Ukraine. This is due to its specific characteristics - limited liability, separate personality, absence of minimum share capital and straight-forward procedures. Notwithstanding the proliferation of *tzov*, its legal status reveals some manifest shortcomings with regard to regulatory technique and ambiguity as well as gaps and omissions. Regulations on general aspects of its activities are provided by provisions of the Civil Code and the Economic Code of Ukraine. But the main source of legal regulation of limited liability companies remains the law of Ukraine "On Business Associations", passed in December 1991. Unfortunately, not all aspects of LLC are regulated in any of the three laws. Each of these laws contains regulations pertaining to certain areas, sometimes an aspect is regulated in all three laws, sometimes in two and sometimes only in one⁷², hence overlaps and contradictions. One can rarely reliably assume if certain aspects are exhaustively regulated in one law or if there may not be another pieces of legislation that need be considered as well. Thus, the rules on limited liability companies demand urgent reform in Ukraine.

Shortcomings of current Ukrainian legislation on limited liabilities companies could be summed to unnecessary and practically burdensome requirements for items to be included in the company's charter (mandatory indication of the percentage of interests of each participant in the share capital, any change in which is connected with the long procedure of making amendments to the statutes); insufficient protection of shareholders' rights, including with regard to lack of adequate unfair prejudice and *abus de majorité* remedies; excessive powers of the executive body without sufficient oversight and monitoring mechanism, e.g. lack of regulation on the supervisory board, even optional; cumbersome and imperfect procedures for convening the general shareholders meeting; insufficient regulation procedures for withdrawal and exclusion from the company.

Nevertheless, in light of the systematic economic reforms needed in Ukraine and an on-going sharp increase in foreign and domestic capital, it is of key importance to ensure that Ukraine's legal system is prepared to serve as a modern and adequate legal basis for the economy⁷³. Thus, among the recent improvements that have been introduced into current regulations, one could indicate the possibility to dismiss a director without giving specific reasons for the decision, subject to payment of 6-month salary⁷⁴, possibility to temporary suspend a director from the office at any time and introduction of unrestricted personal liability of the directors for the damages caused by them to the company. But because there are no legislative provisions concerning both the derivative suits and the supervisory board in a LLC, the practical enforcement of these provisions (on director's liability) is uncertain and hindered.

⁷² Schauer, Martin, Lawrenjuk, Anna, Ukrainian company law between modernization and post-Soviet tradition - the joint stock company as an example [in:] Besters-Dilger, Juliane (ed.), Ukraine on its way to Europe. Interim results of the Orange Revolution. Frankfurt am Main, Berlin, Bern, Bruxelles, New York, Oxford, Wien, 2009, p. 129

⁷³ Irina Paliashvili, Summary update on legal framework for business operations in Ukraine, available at: http://www.rulg.com/documents/USUBC_3Jan08_Paliashvili_Summary_Legal_%20Business_Climate.doc

⁷⁴ Unlike German model, the Ukrainian law is less strict on differentiating between organisational ties and employment relations.

At the same time, problems that arise from the absence of specified law on limited liability companies still persist and should be resolved as soon as possible. Hence, since 2012, an adoption of the Law of Ukraine On Limited Liability Companies and Additional Liability Companies has been vividly discussed and would be one of the most awaited changes in corporate legislation. There are two competing drafts - No. 2011 and No.2011-1. The next step is acceptance of one of them by Verkhovna Rada of Ukraine for consideration and its further adoption. In spite of uncertainty with regard to the timing of its eventual enactment, it is quite important to consider the substantive provisions of the drafts and analyze their influence on company law framework in Ukraine.

Actually, the draft No. 2011 does not depart much from the status quo and adheres to the same principle of unlimited domination of controlling shareholder as the current law "On Business Associations" does. Merely the introduction of possibility to establish a supervisory board as optional organ (art. 38) and the proposal to reduce the quorum requirement for the general shareholders meeting from 60% (under the current law) to above 50% of company's capital (art. 33 § 4) in order to avoid the obstruction and hence blackmail from the minority could be mentioned as the draft's novelties⁷⁵. Such a high quorum often creates the so-called "deadlock" situations when there is impossibility to reach it and in consequence the normal activity of company is hindered.

Therewith, the draft sets forth that all details regarding the competence of the supervisory board and the rules on its formation shall be prescribed in the company's statutes. For the minority shareholders, this means a need to take care of their interests in advance during the development of the statutes. Moreover, they should take into account the risk of possible cancellation of the relevant provisions by future amendments of the statutes.

Besides, under the provisions of draft No. 2011 the minority shareholders are not granted access to financial documents of the company (unless the statute stipulates otherwise) (art. 7 § 1), and their right to sell shares to third parties may be revoked under provisions of the statute (art. 18 § 2). Minority shareholders shall not be able to bring company officials to responsibility for the damages caused by them to the company without the support of the majority shareholders. Furthermore, there are neither rules on significant transactions and non-arm's length transaction nor provisions on affiliates. All this means that in the case of adoption of this draft in the current version the minority shareholders will remain powerless hostages of controlling shareholders.⁷⁶ As a result, limited liabilities companies will not be able to enhance their capabilities to collect equity capital from smaller investors, nor seem they well equipped to serve as an efficient legal form for venture capital undertakings.

In turn, the competing project, i.e. the draft law No. 2011-1 takes much more progressive approach. Its main innovations embrace:

- removal of the obligation to specify the list of shareholders and information on the size of their share in the company's statute (the relevant data will be stored exclusively in the Unified State Register);
- establishment of requirements to the share transfer transactions (only in written form with notarial certification);

⁷⁵ Yefimenko A., Zakon pro tovarystva z obmezhenuju vidpovidalnistiu, available at: <http://gazeta.dt.ua/business/zakon-pro-tovarystva-z-obmezhenoyu-vidpovidalnistyu-vibir-mizh-ekonomikoyu-rozkradannya-ta-shansom-na-zrostannya-.html>

⁷⁶ Ibid.

- monitoring of the engagement into a significant transaction and a non-arm's length transaction;
- possibility to conduct the general meeting with the use of electronic communication means;
- provisions on voting by correspondence;
- possibility to establish a supervisory board in a LLC (through the method of cumulative voting);
- possibility to conclude shareholders' agreements;
- restriction of the withdrawal right of the shareholder that owns more than 50% of the share capital of the company (such withdrawal is possible only under the consent of all remaining shareholders);
- lessening the quorum of the general shareholders meeting from 60% to above 50% of company's capital.

Moreover, the draft No. 2011-1 is expected to endow all shareholders with the right of unlimited access to all company documents (art. 19). The only exception is the court decision concerning the shareholder who might be interested in the transmission of confidential information to company's competitors. Besides, having relationships with competitors of the company may also be a reason for compulsory shareholder's exclusion (art. 13).

Special attention should be paid to the regulation of shareholder agreements as an effective and attractive tool for planning and coordination of company policy in the medium term. The draft No. 2011-1 stipulates some restrictions on entering into such agreements, e.g.: the prohibition against payment under the agreement in order to prevent bribery; the prohibition of agreements of indefinite duration; the duty to inform other shareholders about concluded agreement (Art. 20). The draft contains several provisions that provide an opportunity for the creditors to foreclose on personal property of the executives on the basis of their vicarious liability for the company's obligations incurred as a result of improper performance of their duties.

The draft No. 2011-1 deals with unification of legal forms of business entities as well. Under its regulations, private enterprises, enterprises with foreign investment and foreign enterprises shall be deemed limited liability companies and should be renamed and function under their regulations. It is important to note that there are no restrictions on the number of participants in a LLC according to this draft proposal (under the current law and the draft law No. 2011 the number of participants may not exceed 100 persons). Actually, this is not a priority, since statistically the number of shareholders in Ukrainian LLCs does not exceed 10 persons.

Another significant step is the introduction of a new minority protection mechanism – a derivative action. The aforementioned draft law No. 2011-1 as well as the relatively new draft law No. 2013a On Amending Certain Laws of Ukraine Regarding Protection of Investors' Rights which was registered in Verkhovna Rada of Ukraine in September 2013 and is now pending legislative process, provide for its implementation into the Ukrainian legal system. However, none of them have yet been adopted and several changes are currently discussed. According to the Draft Law No. 2013a, the rules on derivative action should empower a member (shareholder) of a business entity to bring an action on behalf of that entity against its officials, in case such officials caused damages by their illegal actions or their failures to duly act in their capacity as corporate officials. According to the Draft Law, a derivative suit

could be brought by shareholder(s) and participant(s) holding individually or collectively five or more percent of equity interest (shares) in the share capital of the company.

Overall, regulations concerning LLCs in Ukraine required to be significantly modernized. The situation when provisions governing activities of LLCs are included into three different legal acts and are overlapping with each other is incompatible with EU practices and standards. A new law On LLCs should be enacted as soon as possible and consequently the overlapping provisions from the Civil Code and the Law on Business Associations should be abolished.

5.1.3. JOINT-STOCK COMPANIES LAW

The activities of joint-stock companies in Ukraine are regulated by the Civil Code, the Economic Code and the Law of Ukraine "On joint-stock companies". The latter is the main source of legal regulation which sets out the procedure of the establishment, the operation, the termination, the spinoff of joint-stock companies, their legal status, rights and duties of shareholders. Before its adoption in 2008, these issues were laid down in the law "On Business Associations", which actually was not keeping pace with the development of economic relations in Ukraine because of lack of precise notion about the nature of joint-stock company and its place in the market⁷⁷.

The necessity to adopt the Law on JSCs was caused by the requirements of the Civil Code, which contains provisions governing JSCs, but does not describe in detail the procedure for their application and contains a number of explicit references to a special law⁷⁸, whereas it may be assumed there exist tacit references as well, whenever the regulation of the Civil Code is merely rudimental. So in 2008 the new law was passed which became a significant step forward towards modernization of Ukrainian company law, enhancement of corporate governance, improvement of investor protection and approximation to EU standards. Besides, the Law of Ukraine "On securities and stock market" regulates relations which appear during placement of and trading in securities as well as conducting professional activity on stock markets. Moreover, the new Depository System Law was adopted in 2012. According to its provisions, the All-Ukrainian Securities Depository lost its license and was supposed to transfer the global certificates of all securities issues handled by it to the Central Depository which now is defined as "sole" player⁷⁹ (along with the National Bank of Ukraine) in the field of depository services.

As it was already mentioned, the Law on JSCs that came into force on 29 April 2009 has brought substantial improvements into the company and corporate law system and legal status of shareholders. A two-year transitional period was commenced in 2009, during which all existing joint stock companies were to be brought into compliance with the new Law. During the transitional period, two parallel sets of laws were in force: the old framework (the Law "On Business Associations") continued to fully apply to existing joint stock companies, while the JSCs Law was applicable to all newly established joint-stock companies and to

⁷⁷ According to Section VII "Final and Transitional Provisions" of the Law On JSCs of 17.09.2008 "Two years from the date of this Law coming into effect, Articles 1-49 of the Law of Ukraine "On Business Associations" shall cease to be in force in the part related to joint stock companies"

⁷⁸ Ivasiv, I. (2008). Corporate governance issues in Ukrainian banks. *Journal of European Economics*, 2, p. 232-241.

⁷⁹ Sayenko Kharenko, New Depository System Law, available at: <http://www.sk.ua/news/new-depository-system-law>

those from among existing joint-stock companies that voluntarily shifted to the new regime ahead of the stipulated transitional period, by having complied with the new Law⁸⁰.

Under the new Law, JSCs can be public (Public JSCs, corresponds to “listed company” by the terminology used i.a. by the HLG Report⁸¹) or private (Private JSCs, corresponding to the “open company” in the meaning of the HLG). The number of shareholders in a private joint stock company may not exceed 100. A public JSC is obliged to go through a procedure to list and join a stock registry on at least one stock market. The shares of private JSCs cannot be traded on the stock market, except for the sale through auction. Public JSCs can make both private and public placements of shares when private JSCs - only private placements. When the company opts for a public offer of shares, its type must be changed from private to public. The following table is provided as a guide for better overview of the differences between the two types of JSCs.

| Type of JSC | Public | Private |
|---|---|---|
| Number of shareholders | Unlimited | up to 100 persons |
| Requirements for the issue of shares | public and private placements of shares | only private placements |
| The circulation of securities | mandatory listing and joining the stock registry on at least one stock exchange | shares cannot be traded on the stock market, except for the sale through auction |
| Terms of trading | no pre-emptive rights of shareholders to acquire the existing shares offered to third parties by its shareholders. Shareholders may sell their shares without the consent of other shareholders | If the statutes provide so, shareholders have the pre-emptive right to buy existing shares offered to third parties by its shareholders |
| Pre-emptive right in case of issue of new shares by a company | applies only to the private issues | mandatory |
| Decision making process | - a simple majority - in certain cases - 3/4 of | the statutes may provide for a greater majority of votes than |

⁸⁰ Section VII “Final and Transitional Provisions” of the Law On JSCs of 17.09.2008:

Two years from the date of this Law coming into effect, Articles 1-49 of the Law of Ukraine “On Business Associations” shall cease to be in force in the part related to joint stock companies.

See also EBRD “Country Strategy for Ukraine” (2011-2014), available at: http://www.ebrd.com/downloads/country/strategy/ukraine_draft.pdf

⁸¹ Report of the High Level Group of Company Law Experts on Issues Related to Takeover Bids, Brussels, 2002

| | | |
|--|---|--|
| | shareholders' votes registered to participate in GSM | a simple majority or 3/4 of shareholders' votes registered to participate in GSM, and/or other cases to be decided by more than a simple majority, except the cases stipulated in art. 42 § 2 and § 3 |
| Notice of holding a GSM | <ul style="list-style-type: none"> - written notification (not later than 30 days before the date of GSM) - notification of the stock exchange on which the company has been listed - publishing a notice in an official press edition - notification on a web page | written notification (not later than 30 days before the date of GSM) |
| Voting methods | only with the use of voting ballots | not only (open voting is permitted) |
| Disclosure | obligation to have own website in the Internet | - |
| Appointment of the Supervisory Board members | exclusively by cumulative voting ⁸² | on the principle of proportionality of representatives of the shareholders in it in accordance with the number of the voting shares belonging to the shareholders, or by a cumulative vote (a specific method shall be specified by the statute) |
| Requirements for external audit | mandatory audit of the annual financial statements by an independent auditor | - |

The major changes in the new JSCs Law relate, inter alia, to the possibility of private trades in the shares in public JSCs, possibility for a legal entity shareholder to be elected onto the supervisory board of a JSC, providing detailed regulations for cumulative voting rules at election of JSC's governing bodies⁸³. Among other advantages of the JSCs Law one should

⁸² Cumulative voting – voting during election of company's bodies when the total number of votes of a shareholder is multiplied by the number of members of a joint stock company's body being elected, and a shareholder has the right to cast all votes calculated this way for one candidate or distribute them between several candidates

⁸³ The election of members of the Supervisory Board in public JSCs is mandatorily by cumulative voting.. In private JSCs the appointment is through cumulative voting or in accordance with the principle of proportionality. The

mention such extremely important mechanisms of shareholders rights' protection as (i) appraisal rights – a dissenters' right to demand from a company to buyout their shares in the case if he voted against separate resolutions on significant questions (fundamental changes) adopted by the general meeting, (ii) regulation of procedures of approving significant transactions and related party transactions, (iii) cumulative voting rule for election of a supervisory board and an audit committee, (iv) the right of a minority shareholder to sell shares to a purchaser of a controlling stake at a fair market price (exit in cases of control transactions), etc. All of these were long-awaited steps towards a modern company law framework in Ukraine. The next stage is to further approximate these regulations to the *Acquis Communautaire* as well as to implement additional rules and standards so as to achieve the required level of alignment with EU company laws and regulations.

It is deserved to be mentioned that through the new 2008 act, Ukrainian legislation concerning joint-stock companies has reached a good level of compliance with EU standards and practices. Requirements about minimum value of the charter capital, the charter of a joint-stock company, issue and pricing of shares, annulment of shares, dividend payments, payment for shares by founders, determination of the market value of the property, convening of the general meeting, representation of shareholders and others are met. Obviously, there are issues that still require reform in order to be in accordance with the EU directives (see Appendices to this Report).

The JSC Law provides shareholders with pre-emptive rights to acquire newly issued, privately placed shares (art. 15 par. 3, art. 27 JSCL). There is, however, no similar provision for publicly issued shares, even though the Capital Directive (Directive 2012/30/EU, art. 33) does not allow for such a differentiation. The Ukrainian law, as it currently stands, mandates pre-emptive rights for owners of common stock and provides an option for the company to provide such rights to the owners of preferred stock by providing them in the company charter. Here again there is no space for such a differentiated approach under the Directive. Prior to any private placement of newly issued shares, a company is required to provide to shareholders a thirty-day notice including information on the number of shares, their price, rules for determination of the number of shares to which shareholders have preemptive rights, as well as time period and procedure to exercise such right. The company must also publish notice informing shareholders that they can exercise their preemptive rights. In turn, the requirement of the Directive 2012/30/EU is quite different, i.e. pursuant to art. 33 of the said Directive all the shareholders of listed and non-listed joint stock companies alike, shall have the pre-emptive right whenever the share capital is increased by consideration in cash. Thus the Directive has a broader scope, unlike Ukrainian law (art. 15 par. 3 JSCL) it mandated pre-emptive rights for publicly issued shares as well. Even if under the Capital Directive shareholders enjoy pre-emptive right in all cases, whenever charter capital is increased by means of contributions in-cash, many Member States go beyond this requirement. Company laws of e.g. Germany, Austria, Poland, Croatia (different approach, i.e. granting pre-emptive right restricted to in-

Management Board is as a matter of principle elected by the Supervisory Board. But if there is no Supervisory Board, as may be the case for JSCs, with 9 or less shareholders the power to elect executive directors remains with the General Shareholders Meeting. Besides, the General Shareholders Meeting is the highest body among the company's bodies which can resolve any matter of the company's business and its decisions override decisions of the supervisory board, Therefore, theoretically it is not forbidden though not mandated, to foresee in the articles of association (statute) that shareholders will elect the directors by cumulative voting.

cash contribution, take e.g. France, Italy, the Netherlands). The Directive provisions on pre-emptive rights are understood as protective and they set a minimum standard that can be increased by member states. It is recommended for the Ukrainian reform to embrace in-kind contributions as well, so that pre-emptive right is granted regardless of the contribution brought by investors to pay up new shares. The reason behind this recommendation: pre-emptive right is a clear-cut rule capable of protecting minority shareholders from dilution of their stock, both in terms of voting rights and value of investment. In a transitional jurisdiction with not yet sufficiently established standards of fiduciary duties and deficits of their proper enforcement, clear-cut rules prevail over open standards. As mentioned, pre-emptive right should be granted to shareholders in private and public JSC companies alike (see Annex I to the Capital Directive). Pre-emptive right should be given to shareholders of ordinary shares as well as to holders of preferred shares. This should be designed with a view of the underlying assumption that pre-emptive rights should allow to maintain a *status quo* in the company both in terms of influence (voting rights proportions) and value (protection against stock dilution as a step-by-step expropriation technique). Whenever possible, the new issue should reflect the pre-existing structure of shares and their classes. Undoubtedly, attention of Ukrainian legislator is needed to bring the current pre-emptive right regime in line with the requirements of the Capital Directive.

Still relatively much needs to be revised and supplemented in Ukrainian legislation with regard to reform of shareholders' decision making rights and legal and institutional guaranties thereof. This mostly results from the binding guidelines as set forth in the Directive 2007/36/EC (the so called 'Shareholders Rights Directive' - SRD). Firstly, provisions about participation in the general meeting by electronic means as well as on voting by correspondence shall be implemented in the Law on JSCs pursuant to art. 8 and art. 12 SRD. Besides, provisions on documents to be provided to shareholders and documents with which shareholders may familiarize themselves during the preparation for the general meeting (art. 5 SRD) require some changes in Ukrainian law. The Ukrainian JSCs Law, as it currently stands, does not comply with the aforementioned Directive 2007/36/EC as it fails to prescribe the list of documents, companies should make available to its shareholders on its Internet site in order to guarantee their right to information, in accordance with the standard of the directive.

It is recommended to review and further extend the catalogue of events that should trigger appraisal rights (art. 68 JSCL) borrowing from Italian, Spanish, German and Japanese law. In particular Spanish and Italian laws contain a list of appraisal rights codified in a transparent way within few provisions of the code. In addition, the supervisory board should be made mandatory for all JSC, as Ukraine belongs to the jurisdictions adhering to the two-tier governance system. Provisions on board committees should be reconsidered, in particular concerning the audit committee. The threshold allowing shareholder to require special audit of a JSC should be lowered to 5% (from 10% as it is under current regime) in order to improve the level of protection of minority shareholders, at least in public companies. We also propose to eliminate the provision that the number of shareholders of a private joint stock companies may not exceed 100 shareholders. The exclusive criterion of division into public and private joint stock companies shall be public placement of the shares. Moreover, separate regimes for private and public JSCs is required e.g. to better accommodate changes needed in the sphere of shareholders rights in listed companies, without overly burdening non-listed JSCs. Besides, the very terminology with regard to the public-private dichotomy should be revisited. The notion "private" may be misleading as it is likely to bring about confusion with private limited liability company. It could be wise to stick to the terminology proposed by the High

Level Group: listed companies (=currently public JSC), open companies (=currently private JSC), closed companies (=limited liability companies). Alternatively "private" with regard to the JSC could be replaced by "non-public", as the Polish company law legislation does. The issue concerning the group law requires additional attention to be devoted. It is recommended to incorporate the French Rosenblum doctrine into Ukrainian company law (taking into consideration the recent Czech example), according to which the parent and dependent companies should not be regarded in isolation from the group and shall be guided by the common interest aiming at achieving the maximum effect from the perspective of the group as a whole, not separate companies.

Further analysis on the conformity of Ukrainian JSC law with the EU standards will be discussed in next chapters concerning, inter alia, capital requirements, mergers and divisions, regulations on takeovers, corporate governance system in Ukraine, transparency requirements, etc. The list of inconsistencies between joint-stock companies law and other legal acts regulating operations of joint-stock companies is presented in paragraph 5.2. of this Chapter as well as in Attachment No. 1 to this Study.

5.1.4. CAPITAL REQUIREMENTS

The Second Company Law Directive (2012/30/EU, also called the "Capital Directive") is a European Union Directive concerning the capital requirements of joint stock companies operating within the European Union. One should mention that, in general, Ukrainian law on JSCs meets the requirements of the aforementioned Directive, though with some exceptions of varying weight.

Thus, the issues on determination of market value of the property, payment for shares by founders of the joint-stock company, dividend payment procedure and restrictions related to it, regulations on buy-out own shares by a joint stock company and limitations imposed on it, price for shares are in accordance with the relevant Directive's provisions. It should be noted that Ukrainian law does not provide for shares with no par value and joint stock companies do not have the right to place shares at a price lower than their par. All shares of the JSCs in Ukraine shall be registered and exist only in a non-documentary form (dematerialization).

The minimum value of the charter capital of a joint stock company in Ukraine is amounted to 1,250-fold of the minimum salary⁸⁴ amounts on the basis of the minimum salary level being in effect as of the establishment (registration) of the joint stock company. By the date of this Report it would amount to UAH 1,626.250 = approx. EUR 87,050.66, a way above the minimum threshold set by the directive (EUR 25,000 – see art. 6 of the Directive). The general provisions on increasing and decreasing of the charter capital are prescribed in the Law on JSC. But the peculiarities are stipulated by the Order of the NCSSM, namely, the Decision of the NCSSM On Increasing (decreasing) of the charter capital of the private and public JSC of 2013⁸⁵. The annulment of shares is regulated by the Decision of the NCSSM of 2013 On approval of the procedure for cancellation of the shares redeemed by joint-stock company without change of the size of the authorized capital⁸⁶. Despite these provisions are not enshrined in the law on

⁸⁴ From the 1st October 2014 the minimum salary in Ukraine is 1,301 UAH = approx. EU 70

⁸⁵ The Decision of the NCSSM On Increasing (decreasing) of the charter capital of the private and public JSC No 822 from May 14, 2013

⁸⁶ The Decision of the NCSSM No. 1415 On approval of the procedure for cancellation of the shares redeemed by

JSCs but are provided for in by-laws of the NCSSM, all substantial requirements prescribed in the Directive 2012/30/EU are met. However, doubts remain on the procedural side. It is a settled case-law of the European Court of Justice that proper transposition of the directives requires certain formal conditions to be met. These conditions may be summed up under following criteria: (i) legal certainty of must be assured; (ii) the national legal act must be binding; (iii) the legal act in question has been duly promulgated (iv) parties can rely on the implementing act of national legislation as being enforceable before national courts; (v) the pertinent act should have at least the same significance as the legal acts normally used by the Member State when legislating on a given matter (see ECJ Judgment C-102/79, 10).

Some problems exist with the pre-emptive right of shareholders to take up newly issued shares, which have already been discussed before (see paragraph 5.1.3.). Pursuant to the Art. 33 of the Directive, whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares. The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. So, in order to approximate its legislation with the Capital Directive, Ukraine should amend the JSCs law with the provision on granting pre-emptive rights to acquire shares placed by the company in proportion to the percentage of shares held to shareholders of public JSCs both during the public and private placements of shares. Thus, it should be laid down that the pre-emptive right in question may be restricted or withdrawn by the decision of the general meeting and the management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. Moreover, the prohibitions on capital increases in cases whenever (i) the value of its equity is lower than the value of its charter capital; or (ii) such an increase would be designed to cover losses of the company appears inefficient and hindering corporate restructuring. It is recommended that the prohibitions would be eliminated.

5.1.5. MERGERS AND DIVISIONS

According to Ukrainian legislation, mergers and divisions count as forms of legal entity reorganization. The Civil Code of Ukraine, the Economic Code of Ukraine, the Law "On Business Associations" stipulate that a legal entity could be terminated through reorganization or liquidation. In turn, reorganization may be executed through the following means: the merger, the affiliation, the division, the spin-off and the transformation. While liquidation means termination of a business activity without succession, so that the remaining assets, upon paying up corporate creditors, are distributed among shareholders, reorganization, in turn, embrace termination of a legal entity as a result of the transfer of all or parts of its property, rights and obligations to other entity or entities (successor/s). Under Ukrainian law on JSCs, a joint stock company may be terminated as a result of the conveyance of its entire property, rights and duties to other business corporations succeeding the company (by means of the merger, the affiliation, the division, the transformation) or as a result of the liquidation.

joint-stock company without change of the size of the authorized capital from August 6, 2013

The JSCs law regulates separately each form of reorganization as well as spin-off and liquidation of the company. The law is applicable both to public (listed) and private (non-listed) joint-stock companies.

European standards for domestic mergers and divisions of companies are set out in the following legislative acts:

- Directive 2011/35/EU (former Third Company Law Directive) on mergers of public limited liability companies ('Merger Directive')
- Sixth Company Law Directive 82/891/EEC, on division of public companies, amended by 2007/63/EC and 2009/109/EC.

The Directives apply to joint stock companies only, but Member States are not precluded from extending their regime to private limited liability companies as well, and in fact some Member States do so. When it comes to regulatory philosophy, the Sixth Directive is designed to be a mirror reflection of the Merger Directive.⁸⁷

The Merger Directive regulates two kinds of mergers: mergers by the formation of a new company (*per unionem*) and mergers by acquisition (*per incorporationem*). The Directive also distinguishes mergers by acquisition of one company by another which holds 90% or more of its shares (short-form merger). The Sixth Directive lays down rules for division by acquisition, division by the formation of new companies and division under the supervision of a judicial authority. According to art. 25 of this Directive a Member State may permit the division of company without the company being divided ceasing to exist. Under Ukrainian legislation this latter form of division is known as the spin-off of a company⁸⁸ and is regulated in JSCs law as well.

It should be noted that Ukrainian definition of merger does not correspond to that of the Directive. Under Ukrainian JSCs law, the emergence of a new successor joint stock company with the conveyance of all property, rights and duties of two and more joint stock companies simultaneously with their termination on the basis of deeds of conveyance shall be deemed to be the merger of joint stock companies. Thus, only mergers by the formation of a new company are considered to be 'the mergers' according to Ukrainian law. Moreover, mergers by acquisition are referred to affiliation of a joint-stock company⁸⁹ and are regulated under separate provisions. The same applies to the division of a JSC. When the Sixth Directive distinguishes divisions by acquisition and divisions by the formation of new companies, the JSCs law of Ukraine lays down that only conveyance of property, rights and liabilities to more than one new successor of joint stock companies on the basis of the distribution balance sheet shall be deemed to be the division of a joint stock company. Obviously, these terminological inconsistencies should be overcome for the purpose of approximation of

⁸⁷ Opalski A., *Europejskie prawo spółek*, Warsaw 2010, p. 411

⁸⁸ The establishment of one or several joint stock companies with the conveyance of a part of the property, rights and liabilities of the joint stock company, from which the spin off takes place, on the basis of a distribution balance sheet without the termination of such a joint stock company shall be deemed to be a spin-off of the joint stock company (Art. 86 of the JSCs law)

⁸⁹ The termination of a joint stock company (several companies) with the conveyance of all their property, rights and liabilities to another successor joint stock company under a deed of conveyance shall be deemed to be the affiliation of a joint stock company (Art. 84 of the JSCs law)

Ukrainian legislation to the EU *Acquis* and the definitions of mergers and divisions from the relevant Directives shall be implemented into Ukrainian legal system.

Pursuant to the Merger Directive and the Sixth Directive, certain steps should be taken in order to make the merger or division effective. It should be emphasized that the JSCs law of Ukraine practically meets the requirements of those Directives. The very procedure of mergers and divisions as well as protection of creditors under Ukrainian law are in accordance with the European *Acquis*. Some discrepancies are concerned the data in documents which are to be prepared for mergers or divisions (e.g. the date from which the holding of acquired shares entitles the holders to participate in profits and any special conditions affecting that entitlement; the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company should be added to the contents of the draft terms of mergers or divisions). Besides, the rule about right of inspection of the documents by shareholders at the registered office at least one month before the date fixed to the general meeting should be implemented to the JSCs law as well. It should be emphasized that on the contrary to the aforementioned Directives in the Ukrainian legislation there are no special rules governing the civil liability of members of the management bodies of a company being acquired or divided towards the shareholders of that company as well as the experts responsible for drawing up on behalf of that company the reports related to mergers and divisions in respect of the misconduct in the performance of their duties during preparing and implementing the merger or division. And it would not be superfluous to foresee as it is required by the Directives a limit on the cases in which nullity of conducted mergers or divisions can arise by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced. That will ensure certainty in the law as regards relations between the companies concerned, between them and third parties, and between the shareholders, and will contribute to legal clarity and to the efficiency of the entire procedures of mergers and divisions.

With regard to minority protection, Ukrainian law on mergers goes in certain respects a way beyond the standard set by the directives. This holds true for appraisal rights. The Merger Directive (2011/35/EU) is silent on appraisal rights except for in short-form merger (intra-group transaction on simplified terms), where member states are allowed to opt out certain formalities, provided, i.a. they offer to the dissenting minority a right of withdraw from the company by acquisition of their shares by the company (buy-out – see art. 28 (a) of the Merger Directive). Other than that, the merger does not trigger appraisal rights. Most of European jurisdictions either do not foresee exit rights in a merger context or restrict it to special situations such as merger resulting in change of corporate form, in reduction of shareholders special rights or outbound cross-border merger. Quite differently the US, where merger constitutes the primary trigger of appraisal rights. So a clear inspiration by the US approach is visible in the Ukrainian law (see art. 68 par 1.1 JSCL). When it comes to divisions, Ukrainian law is similarly generous with granting the shareholders appraisal rights whenever the company is subject to division, spin-off or the so-called affiliation (see art. 68 par 1.1 JSCL). Here again the Ukrainian law exceeds the standard as set by the Directive, pursuant to which the exit right may be provided whenever the division results in affecting shareholder's rights (see Directive 82/891/EEC, art. 5 par. 2., art. 13, similarly e.g. Polish law).

A general note may be made, outside the mere harmonisation context – from the efficiency and legal certainty standpoint, enactment of a new, separate law on corporate

transformations (see German or Spanish examples), embracing all transformations of all companies' types and including rules on domestic as well as cross-border mergers and divisions should be considered. This could provide legal certainty and reliable framework for mergers and divisions involving different corporate forms, and possibly also partnerships. The new law should be free of gaps but also of overlaps resulting from possible collisions with provisions on transformation contained in other laws.

5.1.6. TAKEOVERS

The European standards and practices concerning takeover issues are based on the Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids which provides for rules concerning the regulation of takeovers of listed companies whose shares are traded on a regulated market.

As it was already mentioned in this Report, the Law of Ukraine "On Joint Stock Companies" that came into force in 2009, envisages a modern approach to public companies and its novelties relevant for the topic of this paragraph include a variety of exit rights as a means of protection of minority investors financial interest. These exit rights are granted in view of important corporate changes, such as control transactions (takeovers) and fundamental transactions, in particular corporate reorganisations. The said exit (withdrawal) rights are provided by the establishment of a mandatory bid rule backed by, provisions defining the market value of the shares relevant for setting the minimum bid price (art. 65 JSCL). Additionally, Ukrainian law provides ample appraisal rights, i.e. dissenters' exit rights through a, mandatory buy-out of minority shares by the pertinent company in connection with fundamental changes or other significant occurrences defined by law (see art. 68 JSCL). Actually, such rules have never existed in the Ukrainian legislation before. A clear influences of British (mandatory takeover bid rule) and American (appraisal rights) patterns are visible here. Currently, there are on-going debates in Ukraine regarding implementation of squeeze-out and sell-out rights of shareholders. The main issues to be considered include the regulatory framework, legal thresholds, and fair price evaluation.

Article 65 of the Law on JSC introduced mandatory bid rule. According to this rule, the shareholder who obtained the controlling block of common shares (at least 50%) is obliged to propose to all other holders of common shares to buy out their shares at a price that should not be lower than the market price defined by the Law on JSC. Holders of minority shares, in turn, may refuse to sell their shares, regardless of their motives of such a refusal. Market price of the share is defined as the amount of money that can be obtained from the selling of the share at the stock market. Market price should be approved by the supervisory board of the company. The law, however, gives no guidance to the supervisory board with respect to the determination of appropriate market price so long as it is above the price established at the stock exchange). It is also unclear whether shareholders can agree in advance on a procedure for determination of the buy-out price. Currently, a new Draft law No 4534a from August 22, 2014 on Amending Certain Legislative Acts of Ukraine Regarding Improvement of Corporate Governance in Joint Stock Companies proposes to establish two thresholds for the mandatory bid obligation – 50% and 75%. This approach, apparently modeled after Polish law⁹⁰ is dubious from the European law perspective and should not be recommended.

⁹⁰ A similar double-threshold approach has been taken by the Polish legislator and is strongly and rightly criticized for

Instead, a transposition of the Takeover Directive is recommended, with its guidelines regarding minimum price to be offered and price adjustments in exceptional circumstances, as well as post adjustments if further transactions follow the bid. These measures, as defined in the Directive, should be introduced into Ukrainian law, as a means of assuring equal treatment of all shareholders, which is also the underlying principle of the Directive. Also the break-through rule (art. 11 XIII Directive) and rules on board's information duties and neutrality (art. 9 XIII Directive) need to be introduced within the discretionary scope as set out in the Directive. Additionally rules on squeeze-out and sell-out in the aftermath of a successful bid need to be implemented (art. 15 and 16 of the XIII Directive respectively).

One could argue that mandatory bid rule is a logical precondition for a squeeze-out⁹¹, at least in its capital market setting, where the latter facilitates bids and enhances the market for corporate control by curbing the hold-up strategy by rent-seeking shareholders. The existence of such a precondition in the Ukrainian legislation in form of a mandatory bid rule, as imperfect, as it currently stands, nonetheless makes the implementation of squeeze-out and sell-out rights easier as they are likely to settle in a familiar regulatory environment. However, as it was already said, for now there has been no squeeze-out and sell-out rules in Ukrainian law. Their introduction should be combined with the overhaul of the mandatory bid regime. It would be wise to consider introducing squeeze-out and sell-out rules outside of the takeover setting as well, as a part of minority protection in a group law context. However, it should be emphasized, that squeeze-out and sell-out rights of shareholders have controversial nature due to the fact they are connected with the coercion of shareholders to act without their consent. In 2010 there were introduced draft amendments to the Law on JSCs that for the first time provided for the squeeze-out right. However, President of Ukraine vetoed those amendments on the unconstitutionality grounds. The reason for veto was the alleged violation of the Article 41(4) and 41(5) of the Constitution of Ukraine⁹².

The explanatory note to the Draft law No 4534a states that implementation of squeeze-out rule will allow to reduce the risk of hostile takeovers ("raiding") over the company⁹³, will simplify and cheapen corporate governance for majority shareholders through reducing the costs of holding the general meetings and allow public companies to go private. The draft provides for a single threshold at 95% of the company's shares. The squeeze-out procedure could be initiated by any shareholder who reached the threshold and only subsequent to a successful takeover bid⁹⁴. Safeguarding a fair (equitable) price for withdrawing shareholders is one of the most important issues of squeeze-out procedure. According to the Draft Law, the price should not be lower than par value, nor lower than the highest price the offeror has

being contrary to the requirements of the Thirteenth Directive – see K. Oplustil, M. Bobrzyński, Europejskie prawo przejęć spółek publicznych. Trzynasta dyrektywa UE z zakresu prawa spółek i jej implikacje dla prawa polskiego, *Studia Prawnicze*, Nr 1/2004, p. 47-70; K. Oplustil, Harmonizacja przepisów o wezwaniach w publicznym obrocie papierami wartościowymi z prawem europejskim. Uwagi de lege ferenda, *Przegląd Legislacyjny*, Nr 3-4/ 2005; T. Regucki, O potrzebie zmian regulacji wezwań do zapisywania się na sprzedaż lub zamianę akcji – uwagi na podstawie analizy struktury własności polskich spółek giełdowych, *TPP* Nr 3/2012, p. 69.

⁹¹ Bergstorm et al. The Optimality of the Mandatory Bid Rule, *Journal of Law, Economics and Organization*, 1994, p. 433-451.

⁹² Article 41 of the Constitution of Ukraine: No one shall be unlawfully deprived of the right of property. The right of private property is inviolable. The expropriation of objects of the right of private property may be effectuated only as an exception for reasons of social necessity, on the grounds of and by the procedure established by law.

⁹³ This is a dubious assumption, as the opposite is true and should be taken as a natural consequence of having squeeze-out rules in place, namely the emergence of a more favourable environment for hostile takeovers, which in turn are seen as a mechanism for disciplining managers through a functioning market for corporate control

⁹⁴ The provision on mandatory preliminary offer shall not apply to the person (persons acting jointly) that already owns a relevant stake (50%, 75%, 95%), given the number of shares owned by it and its affiliates.

paid for the targeted shares within the six months before the squeeze-out offer, and the price the offeror purchased the shares during the mandatory bid procedure. Moreover, the price of the squeeze-out should be adopted by the supervisory board and after that – by the general shareholder meeting. Payment for the shares shall be conducted exclusively in cash. Thus, one could conclude that such a proposal stands along with the Directive and provides majority shareholders with an effective mechanism to acquire full control over the company. However, the Draft Law provides that only general shareholders meeting shall adopt a decision giving a right to the shareholder, holding 95% and more of the capital of the JSC, to require all other holders of the remaining securities to sell their securities at a fair price. The requirement of holding a general meeting to approve “final handshake” with the minority shareholders does not follow from the Directive and should be regarded superfluous. According to the Draft Law, the General Meeting shall pass a resolution by a supermajority of 95% of the votes. Although this provision does not jeopardize rights of the majority shareholder for squeeze-out, it makes the procedure costly, complicated and lengthy. In particular, the company would have to call an additional general shareholders meeting in order to adopt a decision on squeeze-out. As mentioned, the Takeover Bids Directive does not foresee such a burdensome procedure. It empowers the shareholder, holding at least 90% of the capital of the JSC, to require all other holders of the remaining securities to sell him/her those securities at a fair price - directly. So, the Ukrainian lawmakers should take this into account during the further consideration of the Draft⁹⁵. Moreover, the squeeze-out procedure should not be limited to mandatory takeover bids and be allowed at least for voluntary bids as well, if not, as we recommend, to all cases whenever the threshold has been reached, irrespective of how it occurred. Also referring to the par-value is irrelevant and this factor appears arbitrary in a secondary market trading.

As it is often pointed out, the sell-out right „is quid pro quo for the minority shareholder of the squeeze-out right for the majority shareholder”⁹⁶. Whenever the majority shareholder owns more than a certain amount of shares (under the Directive, the threshold can vary from 90% to 95%⁹⁷), the minority shareholders can compel the majority shareholder to buy out their shares. The reasons for implementing sell-out provisions are the reverse arguments for squeeze-out rules. Pursuant to the explanatory note to the Draft law No 4534a, about 90% of all corporate claims derive from the most vulnerable layers of the population (pensioners, the poor, the disabled etc.), that during the privatization have acquired the shares of various public companies. Typically, these individuals have small stakes (about 0.0001 - 0.01%) of the company's share capital. From their perspective, sell-out right would be of high importance, especially for those minority shareholders who are not getting any dividends and suffer other abuses from the side of major shareholders. Due to its unilateral nature and detachment from whatever reasons to justify the withdrawal by means of sell-out (sell-out right depends solely on capital requirements, it is a special exit right at will – *ad nutum*) it fits well into the paradigm

⁹⁵ The draft seems to be inspired by Polish and German approaches to squeeze out procedures, as these jurisdictions are comparatively unique to require shareholder meeting for squeeze-out, however and solely for non-listed companies; see critique by A. Radwan, “Squeeze-out? Tak!, ale nie tak - kilka uwag na temat planowanej nowelizacji art. 418 k.s.h.”, *Prawo Spółek*, Nr 4/2003, p. 48 et seq.; A. Radwan, “Aktualna i przyszła regulacja przymusowego wykupu akcji drobnych akcjonariuszy w polskim i europejskim prawie spółek”, *Przegląd Legislacyjny*, Nr 6/2003, p. 29 et seq.

⁹⁶ G. Ferrarini, K.J. Hopt, J. Winter, E. Wymeersch. *Reforming Company and Takeover Law in Europe*. Hardback, 2004, p. 756

⁹⁷ The Takeover Directive, in Article 16 (2) regarding sell-out, refers to the same thresholds which are applied to the squeeze-out under the Article 15 (2)

of self-enforcing company law⁹⁸, reducing the transaction costs and limiting the necessity and scope of involvement of the judiciary.

It should be stressed that the Draft law No 4534a represents a misconception of the „sell-out rule" due to its – as may be assumed – improper understanding of its nature. The mechanism which under the Draft law (actually, according to the explanatory note) is called as „sell-out" is generally accepted worldwide, including the EU, as mandatory bid rule. As it was previously stated, mandatory bid rule is already foreseen in the Law On JSCs. But accordingly to the drafters of the bill in question, it is exactly what sell-out rule stands for. The sell-out in sense stipulated by the Directive is not provided in the Draft.

One should understand that in accordance with the legislation of EU countries both procedures of "mandatory takeover bid / offer "and "mandatory redemption (sell-out)" are used. The times of applying these two options is different. The sell-out right can be applied only when the takeover is completed whereas the mandatory bid rule applies before the completion of takeover⁹⁹. The mandatory bid rule enables all shareholders to sell their shares while squeeze- and sell-out rights grant this option only if the majority shareholder owns 90 (95) percent following the takeover¹⁰⁰. Besides, the initiative to purchase shares during the mandatory offer comes from the major shareholders, when during the sell-out – from the minorities.

Member States should take the necessary measures to afford any offeror the possibility of acquiring majority interests in other companies and of fully exercising control of them. To that end, restrictions on the transfer of securities, restrictions on voting rights, extraordinary appointment rights and multiple voting rights should be removed or suspended during the time allowed for the acceptance of a bid and when the general meeting of shareholders decides on defensive measures, on amendments to the articles of association or on the removal or appointment of board members at the first general meeting of shareholders following closure of the bid. Where the holders of securities have suffered losses as a result of the removal of rights, equitable compensation should be provided for in accordance with the technical arrangements laid down by Member States.

Thus, in order to be in compliance with the EU standards and practices, the JSC Law of Ukraine should be amended with articles providing for the squeeze-out and sell-out rules: right of a shareholder or a consolidated group of shareholders, holding or acquiring 95% or more JSC shares, to initiate compulsory sale of the shares held by minority shareholders at fair market value (squeeze-out) and vice versa (sell-out).The lack of such procedures has a negative impact on the functioning of JSCs as such and complicates the exercise of the rights and interests of majority and minority shareholders and upsets the balance of their interests.

A glance should again be taken at the aforementioned desirability of squeeze-out and sell-out outside of the takeover setting. As it was pointed out in the Winter Report (2002),¹⁰¹

⁹⁸ See Chapter 8

⁹⁹ Babak, Anton, Adoption Of Squeeze-Out And Sell-Out Rights Of Shareholders In Ukraine On The Basis Of A Comparison Of EU, Germany And USA, Central European University, 2012, p. 11

¹⁰⁰ Burkhart, Mike, Panunzi, Fausto, Mandatory Bids, Squeeze-Out, Sell-Out [in:] Ferrerini G et al. (ed.), Reforming Company and Takeover Law in Europe, p. 756

¹⁰¹ Report of High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, Brussels, November 2002

regardless of whether a takeover is taking, the shareholder may be tempted to abuse his dominate position in a company or the market price of shares could be inappropriate and inadequate. In such cases, the squeeze-out and sell-out rights seem to be the relevant solution in order to overcome the expropriation problem of the controlling shareholders as well as the problem of illiquid market. Thus, one could conclude that the shareholders should be granted the right to increase their stake up to the level the squeeze-out is allowed outside the scope of takeover regulations. Moreover, the former is true in respect to the application of both rights to the non-listed companies as well. Private companies may be interested in the change of ownership structure not less than public ones. That will allow to reduce administrative costs within the company as well as to establish a single strategy of company's development and achieving its goals. Thus, we propose, in addition to takeover-related squeeze-out and sell-out, introduce squeeze-out and sell-out for all JSCs, including the private ones.

5.1.7. CROSS-BORDER MOBILITY

The possibility for LLC to merge across borders within the geographical area of the European Union is prescribed in the Cross Border Mergers Directive of LLC No. 2005/56/EC dated 26 October 2005 and in the Draft of the Directive on the cross-border transfer of a company's registered office (14th Company Law Directive). The creation of such a possibility is of crucial importance to the free flow of labour and capital across Member States. In short, transferring a company's corporate seat to the EU can be done by either (i) a merger with EU company or (ii) by the formation of the *Societas Europaea* (SE).

While discussing the issue about transferring a company's corporate seat it should be noted that the prevailing doctrine in Ukraine is doctrine of incorporation. Contrary to the real seat doctrine, the incorporation doctrine views the law of the State where a company was founded as the applicable law, not the law of the state where the company has its corporate seat. Such provisions are prescribed in the art. 25 of the Law of Ukraine "On Private International Law" dated 23.06.2005 № 2709-IV. It is important to note provisions of the Civil Code of Ukraine (art. 93), Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" (art. 1), according to which the seat of the legal entity is the actual place of business or office location, from which daily management (mostly the seat of management body), governance and accounting are conducted. In fact it means the registered seat shall coincide with the seat where the management of the company is located. Otherwise, in case of difference between the referred seats the company can be recognised by competent authorities (usually by the Tax Militia) as absent at its registered address. As matter of practice, the company is deemed to be situated at the address which is included into the Unified State Register. This information is deemed to be trustworthy and can be reliable for third persons.

Furthermore, according to the article 5 of the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs", the state registration of legal entities shall be conducted by the department of the State Registration Office as per the seat of such a legal entity. Notably, the Unified State Register of Legal Entities and Individual-Entrepreneurs contains information exclusively about legal entities incorporated upon Ukrainian laws.

At the same time article 2 of the Law of Ukraine "On Business Associations" prescribes that the seat (location) of the company shall be in Ukraine.

Thus, the applicable laws do not set forth a possibility to register any foreign legal entity (i.e. entity whose *lex societatis* is foreign corporate law jurisdiction) or its branch / representative office in the Ukrainian Unified Register neither by initial incorporation nor by merger or any other corporate transformation.

Based on provisions above the real corporate seat of Ukrainian company shall be in Ukraine and can't be moved to another country in compliance with Ukrainian legislation. The same refers to the foreign companies which cannot be transferred to Ukraine directly, but have to register either a daughter company or open a representative office.

Due to the fact that Ukraine is not a member of the EU and according to the doctrine of incorporation in Ukraine, there is no possibility to merge with any EU company or to register European Company (*Societas Europaea*, SE) in any EU member state as prescribed in the abovementioned Directives and in the Council Regulation on the Statute for a European Company 2157/2001. The given impossibility of cross-border merger, which is extended not only to the companies registered in the EU, but also in any other company of the world, follows from the direct prescription to have a registered seat in Ukraine (art. 2 of the Law of Ukraine "On Business Associations") as well as from the complex analysis of the legislative provisions and their application by the state registrars.

In face of the above, Ukrainian law, in order to be brought into compliance with the EU *Acquis*, should be reformed by implementation of the Cross Border Mergers Directive No. 2005/56/EC. It is recommended, it would be brought about along with the wholesale overhaul of Ukrainian law on mergers, divisions and transformations. As explained elsewhere in this Report [see [5.1.5.], it would be worth considering to have a separate complex legislation dedicated to corporate reorganisations, modelled after German (*Umwandlungsgesetz*) or Spanish (*Ley 3/2009 sobre modificaciones estructurales de las sociedades mercantiles*) patterns.

5.1.8. SINGLE-MEMBER COMPANIES

The tendency towards recognition of business entities with only one member¹⁰² was caused in Ukraine by the development of a market economy and sharp concentration of ownership. Some provisions of the EU Directive on single-member private limited liability companies, which was adopted in 1989 and codified in 2009 (Directive 2009/102/EC), have found their reflection in the Ukrainian legislation.

Under the Directive in question, which purpose is to create a legal instrument allowing the limitation of liability of the individual entrepreneur within the European Union, a company may have a single member by virtue of its being formed, or by virtue of all its shares coming to be held, by a single person (single-member company). In Ukraine, provisions relating to single-member companies are included in the Civil Code of Ukraine, the laws of Ukraine "On Joint-Stock Companies" and "On Business Associations", and the Economic Code of Ukraine.

¹⁰² Business entities with one participant appeared only in the second half of the twentieth century: in German law such company is called "Einmangesellschaft", in France - "la societe unipersonnelle", in English law - "one man company" (See Dornseifer, Frank (ed.), *Corporate Business Forms in Europe: a Compendium of Public and Private Limited Companies in Europe*, Aktuelle Beiträge zum Wirtschaftsrecht Publication, 2005)

However, the latter two contain only one provision concerning the possibility to establish (the Economic Code, actually, uses the term “to operate”¹⁰³) a company by a single entity, which becomes the sole participant thereof.

The Civil Code of Ukraine, which entered into force on 1 January 2004, for the first time laid down that “a company may be organized by one person unless otherwise established by the law”¹⁰⁴, “a business entity, other than a full liability partnership and a limited partnership, may be created by one person, who becomes its single member”¹⁰⁵. Thus, the possibility of single membership in Ukraine is provided for limited liability companies, additional liability companies and joint stock companies. This is consistent with the Directive which allows to apply its provisions to public limited companies as well, in case a Member State enables them to be single-membered.

Article 153 of the Civil Code as well as art. 6 of the JSCs law *expressis verbis* provide that a joint stock company may be not only established by one person but also may be comprised of one person in case of the acquisition of all shares in the company by the same shareholder. The relevant information must be registered and published for the general public in accordance with the procedure prescribed by the National Commission on Securities and Stock Market. Regarding the limited liability or additional liability companies, the Civil Code refer exclusively to the foundation of such companies by one person. Taking into consideration the fact that both Civil and Economic Codes do not prohibit the possibility of concentration in one hands of all shares of limited (additional) liability companies, one could conclude that these types of business companies may (like joint-stock companies) comprise only one member in case when all their shares come to be held by a single person. But, obviously, necessary amendments should be added in order to approximate Ukrainian regulations to the European one.

According to the Directive, Member States may lay down special provisions or penalties for cases where a natural person is the sole member of several companies, or a single-member company or any other legal person is a sole member of a company. Ukrainian legislation provides such restrictions, namely: (i) a limited liability company cannot consist of sole participant – a business company consisting of one participant, and (ii) a person can become a participant of only one limited liability company consisting of one participant.¹⁰⁶ These provisions are applicable to additional liability companies as well, unless otherwise established by the company’s charter or the law.¹⁰⁷ The JSCs law stipulates that a joint stock company may not have another business corporation owned by a sole participant as a sole participant, as well as may not have only legal entity shareholders, in which the same party is the sole participant.¹⁰⁸

The single member exercises the powers of a general meeting of the company. Decisions taken by the single member and contracts between him and his company as represented by him must be recorded in minutes or drawn up in writing (Art. 4 of the Directive). Contracts between the sole member and his company as represented by him shall be recorded in

¹⁰³ Article 79 of the Economic Code of Ukraine

¹⁰⁴ Article 83 of the Civil Code of Ukraine

¹⁰⁵ Article 114 of the Civil Code of Ukraine

¹⁰⁶ Article 141 of the Civil Code of Ukraine

¹⁰⁷ Article 151 of the Civil Code of Ukraine

¹⁰⁸ Article 153 of the Civil Code and Article 4 of the JSCs Law

minutes or drawn up in writing. Member States need not apply paragraph 1 to current operations concluded under normal conditions (Art. 5 of the Directive). It should be noted, that Ukrainian legislation does contain such rules regarding LLCs and ALCs: there are no foreseen specifics about their bodies and activities. This means that single-member LLCs and ALCs are subject to the provisions provided for business entities in general and business companies in particular. Obviously, this situation causes some problems in practice.

A different situation is in the case of joint-stock companies. The new law on JSCs from 2008 lays down that in a single-member joint stock company, the single shareholder shall exercise all rights of the general meeting. Moreover, where all the shares of the company are held by a single shareholder or the single shareholder and the company, the declaration of will of such shareholder addressed to the company shall be made in writing, or else it shall be invalid, unless the law provides otherwise. The provisions in respect of the procedure of convening and holding the general meeting of a joint stock company shall not apply to a company with a single shareholder. Thus, the specific features of a single-member company are taken into consideration with respect to the JSCs. The powers of the general meeting of the company and the internal documents of the company shall be exercised by the shareholder unilaterally. Moreover, the decision of the shareholder on issues that fall within competence of the general meeting shall be executed thereby in writing (in the form of a decision) and authenticated with the company seal, or notarised. The election of members of the supervisory council, the examining commission (if any) shall take place without cumulative voting.

Thus, Ukrainian legislator has set forth the ability to establish single-member companies, but at the same time has not provide relevant provisions under which they could effectively operate taking into account their specific features. The appropriate rules were formed by themselves in practice during company's operating and require their appropriate consolidation.

Therefore, in the light of the EU standards some amendments should be added to the existing legislation, namely, stipulation that a limited (additional) liability company may have a sole member when all its shares come to be held by a single person; the sole member of the limited (additional) liability company shall exercise the powers of the general meeting of the company.

The last but not least what should be mentioned is the new proposals about changing the Directive 2009/102/EC. There exist many opinions that the Directive does not address some key issues such as formation, registration requirements, creditors' protection or minimum capital requirements. These issues are left to the national discretion of each Member State¹⁰⁹. Thus, it is proposed to provide an EU-wide set of harmonized rules for single-member private limited liability companies which would in practice replace the existing Directive. Under the proposal there would be in each Member State a national company law form called SUP (*Societas Unius Personae*) with the same requirements across the EU as regards, inter alia, registration (with possibility of completing the whole registration process electronically), uniform template of articles of association, minimum capital requirement of €1 and adequate protection of creditors¹¹⁰.

¹⁰⁹ MEMO 14/274 Proposal for a Directive on single-member private limited liability companies – frequently asked questions

¹¹⁰ Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies, COM (2014) 212 final, Brussels, 2014, available at:

5.1.9. DISCLOSURE AND TRANSPARENCY REQUIREMENTS

The disclosure requirements for foreign branches (established by the Eleventh Company Law Directive (89/666/EEC) render to disclose a number of particulars and documents when they open a branch in another Member State. Furthermore, the Eleventh Company Law Directive prescribes a list of information companies have to register when they create a branch in another Member State.

In general, Ukraine fulfils the requirements of the Eleventh Company Law Directive, when prescribing in the Instruction on the Procedure for Registering Representative Office ("RO") of Foreign Business Entities in Ukraine, approved by the Order of the Ukrainian Ministry of Foreign Economic Relations and Trade No. 30 dated 18 January 1996, to provide the registration authority – the Ministry of the Economic Development and Trade of Ukraine – with the following information:

- The name of parent company
- State of parent company's registration
- Registered address of parent company
- Post address of parent company
- Telephone number, fax number
- Date of the of parent company establishment
- Legal form of parent company
- Employees number in parent company
- Bank in which parent company's account is opened and bank details
- Business sphere of parent company
- The purpose of opening and line of business of RO, information about business ties with Ukrainian partners and prospect of cooperation development
- Place where RO will be opened
- Number of the foreign citizens, which will work in RO.

At the same time the referred Instruction No. 30 is the only legal act partially regulating the activity of the representative offices. Therefore, parent companies face a lot of problems while operating RO in Ukraine. RO does not have a separate legal personality and consequently any legal capacity, i. e. is not entitled to acquire rights or bear obligations on its own behalf, while a parent company is fully responsible for its activity. RO capacity is determined in the RO internal Regulation and a power of attorney issued by the parent company to the Head of the RO. As a result, the RO may perform activities only, expressly provided in the said Regulations and the PoA.

Applicable Ukrainian laws distinguish two types of the RO of foreign legal entities:

- The permanent (commercial) RO with the right of execution of business activity in Ukraine;
- The non-commercial RO with the functions of representation the parent company in Ukraine only.

http://ec.europa.eu/internal_market/company/docs/modern/cgp/smcd/140409-smcd_en.pdf

In this respect, the functions of the latter are limited to the auxiliary activity, representation and protection of the parent company's interests in Ukraine and are usually limited to the promotion and related marketing affairs (preconditioning that these are not the core activities of the parent company). Thus, this type of RO is not supposed to operate commercial activities or generate income. Incidentally, in case when some activity requires a license, neither the RO, nor its foreign parent company will be able to obtain it. Provided that a need exists to carry out the commercial activity which is subject to licensing, the RO would have to contract Ukrainian intermediary with the respective license.

It is worth noting that foreign investors are allowed to avail themselves of another form of establishment, namely creation of subsidiaries operating under domestic law of Ukraine, either as single-member companies or as joint-ventures with local investors.

Due to the fact that Ukraine is not a member of the EU, there is no possibility to register European Company (*Societas Europaea, SE*) in any EU member state as prescribed in the Council Regulation on the Statute for a European Company 2157/2001.

Ukraine fulfils the requirements of the Directives regarding disclosure and transparency as well. However, some changes are still to be introduced to the Ukrainian applicable laws. The disclosure and transparency requirements are set in the following acts:

| | |
|---|---|
| Law of Ukraine On Joint Stock Companies" (Article 78) dated 17 September 2008 | Joint stock company information disclosure |
| Law of Ukraine On state registration of legal entities and natural persons - entrepreneurs (Articles 17, 20, 22, 28) dated 15 May 2003 № 755-IV | Information disclosure in the State Register of Legal Entities and Natural Persons – Entrepreneurs with respect to legal entities and their branches and representative offices |
| Law of Ukraine On Securities and Stock Market (Section V) dated 23 February 2006 | Disclosure of annual, quarterly and special information on the stock market |
| Law of Ukraine On State Regulation of Securities Market in Ukraine (Article 11) dated 30 October 1996 | Issuer's responsibility for the failure to meet legal information disclosure requirements |
| SSMSC Resolution No. 2826 dated 3 December 2013 On Approval of the Regulation on information disclosure by securities issuers | Structure, procedure and the timeline for disclosure in the stock market of regular, special information and the information on mortgage securities, certificates of funds of real estate operations and information in the notice on general meeting of securities issuers |

Notably, information about RO and/or branches of the Ukrainian legal entities is included to the State Register of Legal Entities and Natural Persons – Entrepreneurs, whereas information about RO of the foreign legal entities is not included therein and published by other means. There is no special Law devoted to RO of foreign legal entities and disclosure of its

information. Besides, requirement of publication of state registration/termination of legal entity in the print media should be supplemented or replaced by publication in electronic platform (according to the art. 3 par. 5 of the Directive 2009/101/EC, Recommendations of the SLIM Group).

It should be noted that a lot of legislative initiatives in 2014 focused on harmonizing Ukrainian corporate legislation with *Acquis Communautaire*. For example, on 14 October 2014 the Law of Ukraine "On Amending Certain Legislative Acts Related to Identification of Ultimate Beneficiaries of Legal Entities and Public Officials" No. 1701-VII was adopted. All Ukrainian companies will be required to identify their ultimate beneficiaries, maintain and regularly update their records of ultimate beneficiaries, and report to the authorities any changes in their ultimate beneficiaries. The ultimate beneficiary information will have to be disclosed to the State Registrar by 25 May 2015.

Beneficiaries shall be disclosed not only at the registration stage of the company but also if changes take place in the information about ultimate beneficiaries. The Ukrainian Unified State Register will, once the law takes effect, include passport details of any individual being a founder of the company, details of ultimate beneficiaries of the company (including details of their passports) and information about the ownership structure of legal entities being founders of the company to identify individuals holding a material interest (i.e. 10% or more of all shares or votes held directly or indirectly) in those legal entities (including the details of their passports).

Ukrainian companies are obliged to identify its ultimate beneficiaries within six months from the moment of entry into force of the referred law. Failure to comply with the disclosure obligations may cause imposing a fine in amount of UAH 5.100,00 – 8.500,00 (approx. EUR 282,00 to 470,00) on the director of the company.

5.1.10. THE SYSTEM AND DETERMINANTS OF UKRAINIAN CORPORATE GOVERNANCE

Nowadays, the question of corporate governance is a topic of significant interest worldwide. Renowned international bodies, including the OECD, the IMF, the EBRD, the World Bank etc. have devoted much attention to the issue of corporate governance and put it at the top of their agendas. And Ukraine is not an exception. Moreover, the notion of corporate governance in Ukraine is enshrined in several legal acts, namely, in the Laws "On Financial Services and State Regulation of Financial Services"¹¹¹, "On State Regulation of Securities Market in Ukraine"¹¹² and in three by-laws¹¹³. The Ukrainian legislation determines corporate governance as a system of relations which defines the rules and procedures for making decisions concerning the company's activities, control and allocation of rights and duties

¹¹¹ The Law of Ukraine "On Financial Services and State Regulation of Financial Services" No 2664-III from July 12, 2001

¹¹² The Law of Ukraine "On State Regulation of Securities Market in Ukraine" No 448/96-BP from October 30, 1996

¹¹³ Resolution of the Board of the National Bank of Ukraine No 104 of 15 March 2004 „Guidelines for the inspection of banks. „Risk assessment system”

Resolution of the Board of the National Bank of Ukraine No 361 of 2 August 2004 „On the approval of the Methodological recommendations on the organization and functioning risk management systems in banks”

Resolution of the Financial Services Market Regulation Commission No 5207 of 27 December 2005 "On Approval of methodological recommendations for management system and information disclosure by financial institutions”

between the company and its stakeholders during managing the company. The main objective of corporate governance is to ensure fair and transparent business, responsibility and accountability of all parties involved therein.

In Ukraine, joint-stock companies were established in a specific and unorthodox way: state-owned companies were turned by law into private joint stock companies by issuing certificates to every citizen above 18 years of age entitling them to exchange those for shares.¹¹⁴ As it is pointed out in the literature, the privatization has rarely led to effective corporate governance mechanisms. Stiglitz has argued that the long "agency chains" implicit in mass privatization - the many links that separate the citizen who receives a privatization voucher from a company manager - cannot provide appropriate incentives for corporate governance. Voucher privatization usually led to ownership structures that were highly dispersed.¹¹⁵ Indeed, according to Art. 15 of the Law On Privatization of State-Owned Enterprises¹¹⁶, state-owned companies could only be turned into open joint stock companies. And this provision led to the fact that at the beginning of the 1990s the majority of the Ukrainian population were shareholders by law.¹¹⁷ This trend has kept its actuality over the years and at present there are several million of shareholders-natural persons in Ukraine. Thus, Ukraine combines two paradoxically coexisting features: extremely high concentration of ownership and a significant proliferation of popular shareholding leading to ubiquity of dispersed investors. Another problem connected with mass privatization lies in the fact that the new owners of JSCs have not passed a difficult path of forming the company and raising its capital through the capital markets. They received capital from the state and even till now have not learned how to use investment instruments and corporate governance possibilities for increasing shareholders' value.

Corporate governance in Ukraine is in early development stage. Corporate governance regulations include a complex network of mandatory law, voluntary codes of conduct and manifestations of shareholder activism, mainly through litigation. The EBRD's 2007 Corporate Governance Sector Assessment assessed the quality of corporate governance legislation in force in November 2007. According to the results of the assessment, Ukraine was in "very low compliance" with the OECD Principles of Corporate Governance, showing a framework in urgent need of reform in all sectors under consideration. According to another research conducted by the Ukrainian investment company "Concorde Capital" in 2007 corporate governance has been assessed as fully consistent to international principles only in 7 domestic companies out of the 118 largest ones, mainly because of: high level of concentration in the ownership of companies (majority shareholders own 40–99 % of shares), limited availability of information about their activities (banks provide only 42 % of the required data), an impact of real owners on the supervisory boards and the executive body, as well as imperfect and superficial legislation in this area.¹¹⁸ However, the most recent Report

¹¹⁴ *Supra* note 22, p. 121

¹¹⁵ Estrid Saul, *Competition and Corporate Governance in Transition*, William Davidson Working Paper Number 431, 2001, p. 14

¹¹⁶ The Law of Ukraine On Privatization of State-Owned Enterprises from March 9, 1992

Besides, The Law „On Privatization securities" from March 6, 1992 gave each citizen of Ukraine the right to open an individual non-negotiable privatization account (later transformed into privatization certificates). The certificated could be used for acquiring shares in enterprises of choice and the face value of the certificate was equivalent to 1/52, 000, 000th of the total book value of assets privatized (See Pivovarsky, Alexander, *How does Privatization work? Ownership Concentration and Enterprise Performance in Ukraine*, IMF Working Paper, 2001)

¹¹⁷ *Supra* 22, p. 121

Methods of privatization that were used in Ukraine: vouchers, management employee buyouts

¹¹⁸ Corporate governance in Ukraine, Report prepared by Ukrainian investment company "Concorde Capital", 2007

of "Concorde Capital" has shown significant improvements in corporate governance in Ukraine as the number of companies demonstrating high standards of corporate governance has grown. Thus, 15 companies out of the 123 gained the quality mark (Q) and 16 – the above average mark (AA).¹¹⁹

Actually, Ukraine has recently made various efforts to improve its corporate governance environment in order to bring it into compliance with international standards and to overcome the existing inconsistencies. In particular, in 2003 Securities and Stock Market State Commission (now: The National Commission on Securities and Stock Market – NCSSM¹²⁰) adopted the Principles of Corporate Governance (hereinafter - the Principles) as recommendations for, but not exclusively, listed joint-stock companies traded on the stock market. In 2008 the new Law on Joint-stock companies was enacted and the Principles were revised in order to make them compatible with new requirements. And on July 22, 2014 the NCSSM updated the Principles once more and adopted the newest version of them¹²¹.

The corporate governance system denotes the entire range of mechanism and arrangements that shape the way in which key decisions are made in large companies.¹²² Ukrainian model of corporate governance has been formed under certain historical, political, legal, economic and social circumstances that have determined its peculiarity. The Soviet legacy and oligarchic ownership structure have had a decisive influence on it. The main features of corporate governance model in Ukraine could be summarized to the following:

- The two-tier ("dual") board system of German origin with two boards – management board and supervisory board; Supervision is separated from the management, board members may not be members of the supervisory board;
- Supervisory Board in the small JSCs is not obligatory;
- Concentrated ownership structure with large number of small shareholders as a result of mass privatization;
- Large number of JSCs (but only "on paper", as many of them do not operate and conduct any activity¹²³);
- Horizontal and vertical agency conflicts, but the conflict "majority - minority shareholders" is sharper; conflicts between controlling shareholders and the state (officials);
- Undeveloped capital market (there are ten stock exchanges functioning on the territory of Ukraine), low free-float;
- Small role of institutional investors and strong position of banks in financing companies;
- No fixed relations between the JSCs and minority shareholders (as a rule);
- An audit commission is a separate company's body; No mandatory representation of employees in the supervisory board;
- Mergers and acquisitions are not widespread;

¹¹⁹ Corporate Governance in Ukraine, Report prepared by Ukrainian investment company "Concorde Capital", 2013
Note: the majority of "quality" issuers are debutantes. That is to say, the quality "breakthrough" is a result of the survey being replenished by newcomers

¹²⁰ According to the Law of Ukraine "On State Regulation of Securities Market in Ukraine" the NCSSM provides the state regulation of securities market. The NCSSM was established by the Presidential Decree Ukraine No1063/2011 dated of 23.11.2011 with the purpose of comprehensive regulation of relations arising at the securities market, protection of the interests of Ukrainian citizens and the state, prevention of abuses and violations within this area

¹²¹ The Principles of Corporate Governance adopted by the Resolution of the NCSSM from July, 22, 2014 (the updated version of 2003)

¹²² See, e.g., Shleifer, A., Vishny, R.W. A Survey of Corporate Governance, The Journal of Finance, No. 2, June 1997, p. 737

¹²³ Since recently, the NCSSM has become authorized to bring an action before a court in order to liquidate such "dead" companies

- Special “corporate conflicts” which are called as “raiding”.

Thus, one could argue that a mixed system of corporate governance has been formed in Ukraine: with strong resemblance to the German one but with some outsider features, i.e. the characteristics of the so called external CG system¹²⁴. Due to lack of incentives for companies to comply with the modern standards the level of corporate governance in Ukraine desires to be improved. The truth is that corporate governance really creates value for the company, even in countries with weak institutions like Ukraine where the choice of its quality remains in the hands of controlling shareholders.

Ukraine is an emerging country with a high number of more than 26,000 joint stock companies (JSCs). Surprisingly, only 24 JSCs have their own corporate governance codes. Foreign companies are actively expanding into the Ukrainian market over the last 10 years. The share of foreign capital exceeds 50 % in many sectors of the national economy, including banking. Therefore, the issue of the implementation of corporate governance principles to ensure the competitiveness of domestic companies is still urgent.¹²⁵

5.1.11. SELF- AND SOFT REGULATION – THE EMERGENCE AND RELEVANCE OF BEST PRACTICES CODE

As it was previously mentioned, Ukraine recently adopted the newest version of Principles of Corporate Governance (PCG). The purpose of the Principles is to lay down the principles and recommendations, based on international best practices of corporate governance and tailored to Ukraine's needs and experience, that are necessary for the development of good corporate governance in Ukraine. The essence of corporate governance, to which the PCG seeks to adhere, is described as a system of relations between the company's owners, management, and stakeholders aimed at ensuring the sustainable performance of the company and a balance of influences and interests of the parties to corporate relations.

It should be emphasized that the Principles of Corporate Governance in Ukraine are optional, not obligatory, i.e. companies are generally not required (but, obviously, encouraged) to implement the Principles or report on the extent to which they comply with them and the reasons for any deviations. The primary incentive for companies to follow the Principles is economic rationale and the demand for good corporate governance by capital markets when raising financing. Sometimes companies (mostly banks) include these provisions in their own statutes or adopt their own codes on corporate governance. In fact, observance of the codes of conduct marks a voluntary acceptance of industry standards. It evidences a

¹²⁴ According to the most common typology, there are two types of corporate governance system, the insider-controlled or closed system on the one hand, and the outsider-controlled or market-oriented system, on the other (See, e.g. Schmidt, R.H: *Corporate Governance in Germany: An Economic Perspective*, [in:] J.P. Krahenen, J.P./Schmidt R.H. (eds.), *The German Financial System*).

The typology of corporate governance systems on insider and outsider is based on a set of features and criteria, most importantly: the ownership structure prevailing in the majority of companies, the extent and liquidity of the capital market and its role in financing companies, the existence of markets for corporate control, the role of institutional investors, the shareholder or stakeholder-orientation of corporations, and the degree of minority shareholder and investor protection provided for in corporate and capital market law. (See, Oplustil K., *Instrumenty nadzoru korporacyjnego (corporate governance) w spółce akcyjnej*, C.H.Beck, 2010, pp. 962)

¹²⁵ Kostyuk, Aleksander, Stiglbauer, Markus, Velte, Patrick, Lapina, Yuliya, Riabichenko, Dmitriy, *Corporate Governance in Ukraine: Major Standards and Emerging Trends* [in:] Sabri Boubaker, Duc Khuong Nguyen (ed.), *Corporate Governance in Emerging Markets: Theories, Practices and Cases*, Springer, 2014, pp. 269-270

voluntary opt-out of the legal system in as far as there are no immediate legal sanctions for not observing industry codes, which are condoned by statutory law¹²⁶.

In general, the Ukrainian Principles of Corporate Governance are modeled on the OECD Corporate Governance Principles of 2004¹²⁷ and meet international standards. They include six chapters which cover the following aspects: goal of the company, shareholder rights, supervisory board and executive body, disclosure of information and transparency, overseeing the financial and business activity of the company, and, finally, the stakeholders.

According to the Principles, the company's goal is to maximize shareholder value as measured by the increasing market value of shares and the dividends paid to shareholders. Good corporate governance requires providing, within the corporate structure of the company, for an independent supervisory board and an efficient executive board (management), a rational distribution of responsibilities among the two governing bodies, and a proper system of accountability and control.

The special attention is paid to the issues of supervisory board's independence. Thus, the Principles recommend to ensure that at least one quarter of the supervisory board members are independent. According to the Principles, independence means the absence of substantial business, financial or personal relationship with the company or its management board, or its controlling shareholder(s). The factors that exclude independence (for example, a director owning more than 5% of the company's shares cannot be deemed independent) are provided in the act as well. Thus, the definition of independence is in compliance with the EC Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. The recommendation provides that the board should be organized in such a way as to allow a significant number of independent non-executive directors to play an effective role in the areas where conflicts of interests usually occur, thereby increasing the control of shareholders over the management. However, the provisions on directors' independence are not supported by any mandatory requirement and very few companies in Ukraine, if any, engage independent members, as that term is understood under the Principles.

Depending on the composition and duties of the supervisory board, the following supervisory board committees should be formed: (i) committees for preliminary consideration, analysis, and drafting of decisions on matters that are exclusive to the supervisory board; (ii) an audit committee and a committee for nominations and compensation, most of whose members should be independent (in accordance with the aforementioned Recommendation of the European Commission). Based on these provisions, the JSC Law from 2008 introduced rules regarding committees for the first time. Under its regulations, the supervisory board may form permanent or provisional committees from among its members to study and prepare matters within the board's competence as well an audit committee and information policy committee. However, these rules are not mandatory and, as a result, international board practice concerning establishing committees is still not widely spread in Ukraine¹²⁸.

¹²⁶ Makovskaya A., *Russian Company and Capital Market Law [in:] Private Law in Eastern Europe. Autonomous Developments or Legal Transplants?*, Ed. by Christa Jessel-Holst, Rainer Kulms and Alexander Trunk, 2010, p. 301-308.

¹²⁷ The OECD Corporate Governance Principles of 2004, available at: <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>

¹²⁸ Kostiyk, Alexander, *Board Practices: An international Review*, *Corporate ownership and control Journal*, vol. 1,

The company should provide for the oversight of its financial and business activity by an independent external auditor (audit firm) and by means of internal control. To assure shareholders, potential investors, creditors, and other stakeholders that the internal control system works well and to support financial information disclosed to the public, according to the Principles the company should arrange for an independent external audit by an auditor (audit firm) licensed to engage in auditing activity in accordance with existing legislation.

The attention is paid also to the legitimate interests of stakeholders (persons having a legitimate interest in the activity of the company). Companies are encouraged to active co-operation with them through adding value, creating jobs, and ensuring the financial stability of the company.

In short, the Principles of Corporate Governance in Ukraine are in accordance with EU and international requirements. But because any implementation of stated Principles has been neither required nor stimulated little changes have happen after their adoption. Nevertheless, no one would object: corporate governance is the question of the future. The creators of the OECD Principles have pointed out that there is no one correct model of good corporate governance, but the rich experience of many countries and many corporations permits to extract some common elements that characterize a good one.

In order however, to align Ukrainian legislation with the EU standards and by doing so, enhance corporate governance, it should be mandated by law that the companies disclose their policies with regard to adherence to corporate governance / best practices codes, such as the Ukrainian PCG. Pursuant to art. 20 of the Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports, (i.a.) companies listed on a regulated market shall include a corporate governance statement in their management report. That statement shall be included as a specific section of the management report and shall contain information on (i) the corporate governance code to which the undertaking is subject; (ii) the corporate governance code which the undertaking may have voluntarily decided to apply; (iii) all relevant information about the corporate governance practices applied over and above the requirements of national law. Where a company in accordance with national law, departs from a corporate governance code referred, an explanation by the undertaking as to which parts of the corporate governance code it departs from and the reasons for doing so ('comply or explain'). By this rule, the self-regulatory approach becomes rooted in the system of "hard law", without losing its "soft" nature.

5.1.12. DIRECTOR-SHAREHOLDER RELATIONS

A corporation consists of a dense nexus of relationships between persons - in the institutional economics' view, a nexus of contracts¹²⁹. Many scholars deepen the model of corporate law as a three-player contract among shareholders, managers and the board. It's a model that Frank Easterbrook and Daniel Fischel used in their book *The Economic Structure of Corporate*

2003, pp. 102-114

¹²⁹ Michael C. Jensen & William H. Meckling, Managerial Behavior, Agency Costs, and Ownership Structure, 3 J. FIN. ECON. 305 (1976). See Melvin Aron Eisenberg, The Limits of Cognition and the Limits of Contract, 47 STAN. L.REV. 211 (1995).

Law, which culminated and accumulated their work on the contractarian model of the corporate law.¹³⁰

Both the most important and the most problematic ones are the director-shareholders relations characterized by the agency-problem frequently aggravated by e.g., minority's rational apathy, directors' opportunism, asymmetry of information etc. In Ukraine JSCs are organized into a two-tier board structure which means that the management board conducts day-to-day business of the company and the supervisory board controls the executive body and also takes (approves) certain important decisions.

It needs to be emphasized that because of highly concentrated structure of ownership, controlling shareholders in Ukrainian companies are often managers by themselves (formal directors) or strictly control the executive body (shadow directors). As a result, there is no clear distinction between horizontal conflict of agency (i.e. between majority and minority shareholders) and vertical conflict (i.e. between managers of the company and shareholders) in Ukrainian JSCs. Putting it differently, the majority-minority conflict is not effectively mitigated by the executive board that often tends to be based on favour of the controlling majority.

Under the new JSCs law, the supervisory board is mandatory for JSCs with more than ten shareholders and optional for JSCs with smaller circle of shareholders. Moreover, a supervisory board member cannot be simultaneously an executive director (member of the management board), or a member of the internal audit commission or the sole external auditor of the company, and vice versa. It should be remembered that according to the law "On Business Associations" from 1991, creation of a supervisory board was not obligatory, the law didn't determine its authority and shareholders either avoided its creation or were tended to turn it into a solely decorative body. Thus, the management was provided with almost unlimited power over a company and almost unlimited possibilities for abuse in favour of the controlling shareholder. One could note that the law "On Business Associations" denied the formula of A. Berle and G. Means about corporation as an instrument that allows to separate ownership from control, replacing it with the principle "ownership is nothing, control is everything", "the one who loses control over property, loses ownership"¹³¹ This, combined with the rise of dispersed share ownership among wide population consequent to the mass privatization led to the creation of environment favorable to minority expropriation and extraction of private benefits of control on a huge scale. However, with the market development, new business players appeared and began to demand changes in the current system of governing. Therefore, the supervisory board of JSCs in Ukraine has passed a long way in its evolution – from an ornamental body with vague authority to a full-fledged player in the triangle of company's bodies with clear and effective competence for controlling the executives.

According to the JSCs law from 2008 all matters of daily operations of a JSC, except for those allocated to another JSC body pursuant to law, the charter, a resolution of the general shareholders' meeting, fall under the competence of the management board. Prior to adoption of the JSC Law, the involvement of outside directors (germ. *Drittorganschaft*) was impossible in Ukraine. The Law on Business Associations stated that only persons who were JSC employees could act as the head and members of the board. Consequently, labour law

¹³⁰ Easterbrook, Frank, Fischel, Daniel, *The Economic Structure of Corporate Law*, 1991

¹³¹ Yefymenko, Anatoliy, *Corporate Governance Under Ukraine's New JSCs Law*, SSRN 2009

inevitably overlapped with company law and employment relations governed what should be governed by organizational law, with all the drawbacks such as extensive protection of directors and labour-law types of limitations of their liability for misconduct, let alone enforcement of fiduciary duties and other standards. Now, the JSC Law stipulates that any person having full civil capacity, except the auditor or a member of the supervisory board, may be elected to the board. This has not fully eliminated the influence of the labour law, but the latter has been adjusted so as to better fit company law setting. The directors remain to be employees of the company. That is why, as it was pointed above, until recently, directors' civil liability was limited to the amount of their monthly average salary. This is a general cap imposed on liability of employees pursuant to the employment law of Ukraine. However, several amendments to the Labour Code of Ukraine from May 2014 introduced the full material responsibility of the directors for the damages caused by them to the company. Besides, since then it became possible to dismiss a director without stating a reason (at will) subject to payment of 6-month salary and temporarily suspend a director from the office at any time. So these changes were of significant impact on the corporate governance status of Ukrainian JSCs. According to art. 63 of the JSCL members of the management board shall act in the interests of the company, in compliance with the law and the company's charter and by-laws. Thus, the directors have a fiduciary duty towards the company "to work in a conscientious manner in the interest of the company, and not towards the individual shareholders"¹³². Actually, the fiduciary duty of the director requires stronger standards of observance than those imposed by an obligation emanating from the principles of good faith¹³³. It is acknowledged standard of modern corporate law theory that the directors need to subject their personal interests to the obligations owed towards the corporation, regardless of the origin of the potential conflict.¹³⁴ Besides, Ukrainian legislation does not foresee the business judgment rule as developed by US courts and codified in some European jurisdictions (e.g. Germany) that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company¹³⁵.

The management board comprises one or several individuals appointed by the supervisory board (as a rule) or by the general shareholders meeting. The number of members of the management board must be determined in the company's charter. Besides, shareholders can, and frequently do, restrict the management board's ability to enter into contracts of certain type or value but can also grant to the board all responsibility for the daily operations of the company. Such limitations are usually, but not always, recorded in the company's charter.¹³⁶ However, according to art. 92 CC in relations with third parties, the limitation of powers to represent legal entity shall be not effective except as when legal entity would prove that the third party knew about such restrictions or could not but know thereon. This is partially though not fully in line with art. 10 of the Directive 2009/101/EC.

Remuneration of the members of the management board is determined by the supervisory board. One should mention that compensation schemes, like options or shares, are used

¹³² Hicks A., Goo S. H., *Company Law*, Oxford, 2004, pp. 310-325

¹³³ Article 509 of the Civil Code states that obligations must be based on the principles of good faith, sense and justice

¹³⁴ Millstein M., Gregory H. J. , Altschuler A. R., *Fiduciary duties under US law*, 2004, pp. 14-18

¹³⁵ Oplustil, K, Radwan A., *Company Law in Poland: Between Autonomous Development and Legal Transplants* [in:] Jessel-Holst, Christa, Kulms, Rainer, Trunk, Alexander (ed.), *Private Law in Eastern Europe. Autonomous Developments or Legal Transplants?*, Hamburg 2010, p. 483

¹³⁶ Antonenko, Leonid, *Corporate Governance and Directors' Duties in Ukraine: Overview*, available at: <http://us.practicallaw.com/1-506-7476>

much less frequently in Ukraine than on the developed markets. This is actually due to an illiquid capital market where share price is not informative and highly depends on the external factors and thus poorly reflects the actual performance of the management board.

Due to the large number of small shareholders and rare practice of dividend pay-outs, the managers of Ukrainian JSCs practically do not bear any connections with minority shareholders and thereby only increase their rational apathy. The controlling shareholder's interests were and still remain central for directors of JSCs. All these underlines the importance of the supervisory board where thanks to cumulative voting the minorities' representation is possible.

5.1.13. RIGHTS AND REMEDIES OF SHAREHOLDERS

The principal EU act which deals with issues of shareholders rights is the Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (SRD). The Directive stipulates detailed minimum requirements for a certain number of shareholder rights with respect to the notice to be given of the general meeting, the information to be provided to shareholders, the right to ask questions and receive answers at meetings, the right to put items on the meeting agenda, voting procedures, proxy rights etc. Generally, the JSCs law of Ukraine meets the requirements of the aforementioned Directive with few exceptions which are discussed further below.

Under Ukrainian law, JSCs may issue shares of two types: ordinary and preferred shares. The holders of preferred shares have the primacy in receiving dividends and payments in case of company's liquidation. Voting at the general shareholders' meeting is carried out according to the "one share - one vote" principle, except for cumulative voting. Nevertheless, preferred shares holders have the right to vote on a very limited scope of matters related to the rights granted by preferred shares, unless the JSC charter of a private JSC stipulates otherwise. Shareholders that own ordinary shares may also have other rights envisaged by acts of the legislation and the charter of the JSC.

The scope of shareholders' rights according to Ukrainian legislation could be illustrated with the help of following table.

| Number of shares | Shareholder rights |
|-------------------------|--|
| Up to 10% | <ul style="list-style-type: none">- participate in the general shareholder meeting- vote in proportion to the shares held- make proposals of the agenda of the general shareholder meeting¹³⁷- receive dividends- receive a portion of the property or the value a portion of the property of the company in case of the liquidation of the company |

¹³⁷ Proposals of shareholders (a shareholder) that own 5 or more percent of ordinary shares in aggregate must be included into the agenda of the general meeting

- take part in the management of the joint stock company
 - challenge the decision of the general shareholder meeting
 - right to information about business activities of the joint stock company
 - pre-emptive right in proportion to the number of shares currently held¹³⁸
 - dissenter's right¹³⁹
- 10% and more
- control the registration of shareholders at the general shareholder meeting¹⁴⁰
 - call an extraordinary general shareholder meeting at any time and for any reason¹⁴¹
 - require to audit financial and economic activities of the company¹⁴²

As one may note from the table, the JSC Law represents a major improvement over the Law on Business Associations with regard to the protection of shareholders' rights due to introduction of a series of generally recognized legal instruments to protect minorities, like cumulative voting which gave minority shareholders an opportunity to get representation in a supervisory board, the right of minority shareholders to place items on the agenda of shareholder meetings and the right of dissenting shareholders to demand their shares be repurchased if they disagreed with fundamental corporate decisions. The special requirements to be met by the company to enter into significant transactions and transactions with affiliated parties are prescribed as well in the Law. Besides, the law contains the regulation on acquiring the substantial block of shares, which is known as a mandatory bid provision: pursuant to the Law, a person who has acquired more than 50 percent of common shares must make an irrevocable offer to all remaining shareholders to purchase their common shares. The detailed analyses of this regulation as well as proposals on implementation of squeeze-out and sell-out rules could be found in Paragraph 6.1.6. to this Chapter.

Transactions with related parties may cause prejudice to companies and their shareholders, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of shareholders' interests are of importance. The JSCL provides for special provisions concerning significant transactions and non-arm's length transactions (art. 70-71 JSCL), according to which a decision to engage into a significant transaction shall be made by the supervisory board, if the market value of the

¹³⁸ Pre-emptive right should be understood as:

- a priority right to take up the newly issued shares (in case of increase of the share capital)
- a priority right to acquire the shares offered to sale by other shareholder

Its execution depends on the type of JSC, more about this issue – see paragraphs 5.1.4.; 5.1.12

¹³⁹ The right of a shareholder to claim buyout of shares by a company in case of material changes related to the business of the company, including merger, take-over, demerger, transformation or spin-off of the JSC, or a change of its type; effecting of a significant transaction; or a change in the JSC's charter capital. The same rights are granted to the holders of preferred shares if they vote against the general shareholders' meeting's resolution on placement of a new class of preferred shares granting to their holders any preference in receiving dividends or payments on the liquidation of the JSC, or extension of rights of preferred shares holders who have preferences in ranking for receiving dividends or payments on the liquidation of the JSC.

¹⁴⁰ Shareholders (a shareholder) that own in aggregate 10 and more per cent of ordinary shares as of the date of the compilation of the list of shareholders eligible for the participation in the general meeting of the joint stock company, as well as the National Commission for Securities and Stock Market may appoint their representatives for the supervision of the registration of shareholders, the holding of the general meeting, the voting and the ascertainment of the voting results. The company shall be notified in writing of the appointment of such representatives before the commencement of the registration of shareholders

¹⁴¹ Shareholders calling a general meeting are obliged to cover all expenses connected with holding such meeting, but the general meeting of shareholders may decide to compensate to shareholders expenses connected with calling and holding a general meeting from a company's funds

¹⁴² Such an audit shall be performed at the shareholder or shareholders' own expense, but the cost may be reimbursed upon a general shareholders' meeting resolution

property or the services being the object thereof ranges from 10 to 25 per cent¹⁴³ or by the general meeting on the basis of a proposal by the supervisory board, if the market value of the property or the services being the object thereof exceeds 25 per cent of the value of assets according to the latest annual financial statement of the joint stock company¹⁴⁴. Rules on non-arm's length transactions foresee the obligation of a party interested in a transaction to inform the company of his (its) interest within three business days of the emergence of the interest on the party's part¹⁴⁵. If a non-arm's length transaction violates interests of the company, the supervisory board may prohibit its commission or present it for review by the general meeting.

With respect to aforementioned issues, the Proposal for a Directive amending Directive 2007/36/EC (SRD) should be taken into consideration as regards the encouragement of long-term shareholder engagement (Presidency compromise text of November 10th, 2014), motive No. 19 of the Preamble). It stipulates that Member States should ensure that related party transactions representing more than 5 % of the companies' assets or transactions which can have a significant impact on profits or turnover should be submitted to a vote by the shareholders in a general meeting. Where the related party transaction involves a shareholder, this shareholder should be excluded from that vote. The company should not be allowed to conclude the transaction before the shareholders' approval of the transaction. For transactions with related parties that represent more than 1% of their assets companies should publicly announce such transactions at the time of the conclusion of the transaction, and accompany the announcement by a report from an independent third party assessing whether the transaction is on market terms and confirming that the transaction is fair and reasonable from the perspective of the shareholders, including minority shareholders. Moreover, Member States should be allowed to exclude transactions entered into between the company and its wholly owned subsidiaries. Member States should also be able to allow companies to request the advance approval by shareholders for certain clearly defined types of recurrent transactions above 5% of the assets, and to request from shareholders an advance exemption from the obligation to produce an independent third party report for recurrent transactions above 1 percent of the assets, under certain conditions, in order to facilitate the conclusion of such transactions by companies.

¹⁴³ The charter of a joint stock company may specify additional criteria for the categorization of a transaction as significant. In case of the failure of the supervisory council to make a decision on the engagement into a significant transaction, the issue of such a transaction may be raised at the general meeting.

¹⁴⁴ A decision to engage into a significant transaction shall be made by the simple majority of votes of shareholders registered for the participation in a general meeting and holding shares that vote on the issue in question, if the market value of the property or the services being the object thereof exceeds 25 per cent and is lower than 50 per cent of the value of assets according to the latest annual financial statement of the joint stock company.

A decision to engage into a significant transaction shall be made by more than 50 per cent of the total number of shareholders, if the market value of the property, the work or the services being the object thereof equals or exceeds 50 per cent of the value of assets according to the latest annual financial statement of the joint stock company.

¹⁴⁵ An officer; his family member being a spouse, parents (adoptive parents), tutors (guardians), a brother, a sister, children and their spouses, a legal entity, in which the share held by the officer of bodies of the company or his family members accounts for 25 or more per cent; a shareholder, who owns 25 or more per cent of ordinary shares in the company personally or together with his family members shall be deemed to be a person interested in the performance of a transaction by a joint stock company, provided that the said person (persons, jointly or severally) meets at least one of the following criteria:

- 1) he (it) is a party to the said transaction or is a member of the executive body of the legal entity being a party to the transaction;
- 2) he (it) is remunerated for the engagement into the said transaction by the company (officers of the company) or a party to the transaction;
- 3) he (it) acquires property as a result of the said transaction;
- 4) he (it) takes part in a transaction as a representative or an intermediary (other than the representation of the company by officers).

Ukrainian law assigns a long list of decisions to the exclusive competence of General Shareholders Meeting (see art. 33 JSCL). This is one of the features typical of continental legal tradition. Consequently, the meeting becomes the forum for corporate disputes, that routinely unfold as disputes about the validity of shareholder meeting's resolutions. The JSCs law provides that if decisions of the general meeting or the procedure of making the decision in question violate the requirements of the Law On JSCs, other acts of the legislation, the charter or the general meeting policy of the joint stock company, the shareholder, whose rights and legitimate interests are violated with the said decision, may dispute the decision in question with court within three months of the decision date (art. 50). Besides, the NCSSM may appoint its representatives for the supervision of compliance with securities legislation and legislation on JSCs during the registration of shareholders (or their representatives) at the GHM, voting and summarizing of the results of voting on the SHM of the company.¹⁴⁶ Commission's representatives may be appointed at the request of the shareholder(s) (or their representatives), company's official(s), depository institution or the Central Securities Depository, or on the own initiative of the Commission and/or its local bodies. Such supervision of the NCSSM may be regarded as state interference into the internal affairs of the company in order to ensure the observance of shareholders' rights during the general meeting.

Taking into consideration this background as well the directive's provisions, it is possible to conclude that several changes should be introduced into Ukrainian legislation concerning shareholders rights' and remedies from the perspective of the Directive 2007/36/EC:

- SRD is applicable to listed companies only. As the Ukrainian law does not provide specific rules on listed companies, at least not with regard to the conveying of and participating in the General Meeting, the implementation of the Directive would make the rules that the Directive mandates, applicable to all JSC. This would be too costly for private JSC or even for some of the public companies, who are not regarded as listed companies in the meaning of the SRD. Therefore, introduction and further elaboration of the dual regime for private and public companies should be made. SRD should be implemented wholesale with regard to listed companies, whereas some other provisions may be extended to private JSC as well.
- It needs to be transposed into the Law on JSC, in particular it needs to be clearly stipulated that rights of a shareholder to participate in the GM cannot be limited by the fact that he/she sold the shares (even all the shares) before the general meeting, after the record date (see art. 7 par. 2 and 3 of the SRD). It means that shareholders who earned that right on the record date can fully participate in the GM even if they are no longer shareholders of that company on the day of the GM.
- Shareholders in Ukraine shall be permitted to participate in the general meeting by electronic means as prescribed by SRD. Reasonably it shall be allowed the shareholders to decide upon this issue at their discretion in the Company's statutory documents. SRD is facilitating and „prohibits prohibiting“., i.e. does not allow Member States to prohibit electronic voting if the company wants to have it in her corporate governance – such a voting needs to be allowed under the legal regime of any Member State.

¹⁴⁶ NCSSM Decision On Supervision of Shareholders Registration, General Shareholder Meeting and Voting, and Summarizing the Results of Voting on the General Shareholder Meeting No. 1518 of 25.12.2012

- The company shall make available to its shareholders on its Internet site at least the information that is prescribed in the art. 5 of SRD, for example: the documents to be submitted to the general meeting; the total number of shares and voting rights at the date of the convocation; draft resolution for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them etc.

Now the Law on JSC contains a possibility to make documents available on the Internet site only for companies with more than 100 shareholders. This option shall not be dependent on number of shareholders.

- The 30-days notification about convocation of the GM is in line with the SRD, in which the minimal period of 21 days is specified.

At the same time, the shortened notification period in case of voting by electronic means (see art. 5 para 1: not later than on the 14th days before the day of GM) is recommended to include after implementation of the procedure of voting by electronic means.

The JSC Law does not contain the conditions of SRD that the Company need not apply the minimum periods referred (i.e. 21 and 14 days respectively) for the second or subsequent convocation of a general meeting issued for lack of a quorum required for the meeting convened by the first convocation, provided that the convocation conditions have been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.

- The requirements to the GM notification of JSC Law do not comply in full with the SRD requirements. Upon SRD the notification shall additionally contain a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the GM. This includes information concerning:

- (i) the rights available to shareholders under Article 6 (Right to put items on the agenda of the general meeting and to table draft resolutions), to the extent that those rights can be exercised after the issuing of the convocation, and under Article 9 (Right to ask questions), and the deadlines by which those rights may be exercised; the convocation may confine itself to stating only the deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company;
- (ii) the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and
- (iii) where applicable, the procedures for casting votes by correspondence or by electronic means;

The notification shall indicate where and how the full, unabridged text of the documents and draft resolutions may be obtained; and indicate the address of the Internet site on which the information on GM will be made available. Notably that these items are relevant for public joint stock companies.

- The following documents and information shall be available to shareholders in the period between convocation and holding the GM
 - (i) the convocation (notification about the GM);

- (ii) the total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company's capital is divided into two or more classes of shares);
 - (iii) the documents to be submitted to the general meeting;
 - (iv) a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them;
 - (v) where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.
- Notably that SRD contains an exhaustive list of cases for restriction of exercising the shareholder rights through proxy holders. Among them are potential conflicts of interest between the proxy holder and the shareholder, in whose interest the proxy holder is bound to act.
 - One of requirements of SRD is to permit (i.e. not oblige, instead not prohibit) shareholders to appoint (revoke) a proxy holder by electronic means. Moreover, Member States shall permit companies to accept the notification of the appointment by electronic means, and shall ensure that every company offers to its shareholders at least one effective method of notification by electronic means.
 - The JSC Law shall permit companies (i.e. not oblige, instead not prohibit) to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.
 - Every shareholder shall have a right to ask questions related to items on the agenda of the general meeting and the company shall answer the questions put to it by shareholders in accordance with Art. 9 of the Directive.

Notably Member States apply the principle of free exercise of given rights within SRD's scope. As the result, companies are allowed to decide upon certain issues of the corporate governance upon their own discretion. At the same time SRD contains certain line which can be used by those companies preferring to follow defined concept of action.

It needs to be emphasized that the Directive should not be understood as mandating making the vote by electronic means accessible to all shareholders. The Directive merely requires that the MS allow for for the companies to introduce electronic voting if any given company wishes so (art. 8 SRD). In fact not a single MS has imposed on companies obligation to facilitate electronic voting, because it would incur to high organisational costs and security problems, especially for SMEs. At the current stage mandating of electronic voting would go against the general proportionality requirement, if it was to be imposed on every company. Instead, the Directive is facilitating and „prohibits prohibiting“, i.e. does not allow Member States to prohibit electronic voting if the company wants to have it in her corporate governance – such a voting needs to be allowed under the legal regime of any MS. It should be added that such information has to be displayed at the company's website for a continuous period until the GM is held, and including the day of the meeting (SRD art. 5 (4)).

Regarding the shareholders' right to information, it should be mentioned that realization of it under Ukrainian JSCs law includes the obligation of the supervisory and management boards,

internal audit commission or the auditor to report to the shareholders at least once a year at the annual general shareholders' meeting; guarantee of free access to quite a broad statutory list of documents on JSC activity which must be provided by a JSC to a shareholder upon his/her or its written request, obligation of a public JSC to have a dedicated website where all the publicly disclosed and other required statutory information shall be placed¹⁴⁷. Besides, the Securities Law and NSMSC regulations establish specific disclosure requirements related to a JSCs' regular and special information¹⁴⁸. But there is no clear provision granting shareholders right to ask questions directly at the general meeting and obligation of the managers to provide it.

Besides, there is a pending question concerning derivative suits in Ukraine. i.e. bringing a claim or claims in the interests of a company. However, in 2008, the Supreme Court of Ukraine only confirmed in its opinion that shareholders in Ukraine are not entitled to such type of claims¹⁴⁹. Under Ukrainian JSC law, shareholders are authorized to bring claims to courts only in cases of direct violations of their rights and legitimate interests. We believe that institution of derivative actions should be implemented into Ukrainian legislation, but in order to prevent its transformation into a "strike suit" the so-called «standing» should be introduced as well, which includes verification of the claiming shareholder for compliance with certain requirements, like with property qualification (a certain percentage of shares that would allow the shareholder (shareholders) to bring a derivative action before the court).

It should be emphasized that the draft law No. 2013a On Amending Certain Laws of Ukraine Regarding Protection of Investors' Rights was registered in Verkhovna Rada of Ukraine in September 2013. However, it has not yet been adopted and several changes are currently discussed. According to the Draft Law, derivative action empowers a participant (shareholder) of a business entity to bring an action on behalf of the entity against its officials, in case such officials caused damages by their illegal actions (failure to act). According to the Draft Law, the right to bring a derivative action could be applied by shareholder(s) and participant(s) holding five or more percent of equity interest (shares) in the authorized capital of the company.

5.2. INCONSISTENCIES BETWEEN JOINT-STOCK COMPANIES LAW AND OTHER LEGAL ACTS REGULATING OPERATIONS OF JOINT-STOCK COMPANIES

As could be seen from the previous sections, the development of a market economy has influenced the improvement of the company legislation of Ukraine. However, it still remains imperfect and differs from the corporate legislation of European countries, although many recurring attempts have been being undertaken by Ukraine in order to re-establish and improve its provisions. The system of national company law could be described as tangled and, at the same time, unstable, with specific legislative provisions being inconsistent with each other and in some cases also contradictory. The simultaneous coexistence of legal acts with different nature and background, different approaches and values they represent (like

¹⁴⁷ Article 78 of the JSCs law

For the details, see: *The Corporate Governance Review. – Law Business Research. – 2013. – p. 364-374*

¹⁴⁸ NSMSC Resolution No. 2826 dated 3 December 2013 On Approval of the Regulation on information disclosure by securities issuers

¹⁴⁹ *Ibid.*

the new JSCs Law, the Civil Code, the Economic Code, the Law on Business Associations) causes many problems in practice and put obstacles to the efficient development of companies and the investment potential of Ukraine. Moreover, the large number of legislative gaps in Ukrainian legislation gives broad grounds for regulatory agencies and courts to interpret the meaning of the laws and facilitates corruption among the regulators and unfair competition among business competitors.¹⁵⁰ The major inconsistencies exist between the Economic Code and other company law acts. As it was rightfully noted in the OECD Report, In this regard, the Economic Code appears to present an obstacle to the development of free market because its nature and methods of regulation do not support nascent market economy of Ukraine.¹⁵¹ That is why that since its adoption, there have been a lot of opinions that until of the Economic Code is abolished or substantially changed, progress in the development of company legislation and improvement of regulation in other spheres will be difficult to achieve. However, the contradictory of legislation appears not only in provisions of two Codes. The analysis of the most obvious inconsistencies in the Ukrainian corporate legislation is presented in Annex No.1 to the Report.

5.3. PENDING LEGISLATION: PLANNED REFORMS AND DRAFT LAWS

As may be concluded from the aforementioned, Ukrainian company legislation requires significant changes, not only because of the obligations undertaken according to the AA, but because of the necessity to improve existent business climate and difficult economic situation in Ukraine. Some steps have already been taken by the Ukrainian legislator and currently there are several important legislative initiatives concerning the area of company law.

Since 2012, an adoption of the Law of Ukraine On Limited Liability Companies and Additional Liability Companies has been actively discussed and would be one of the most awaited changes in corporate legislation. There are two alternative drafts - No. 2011 and No.2011-1. The next step would now be acceptance of one of them by Verkhovna Rada of Ukraine for consideration and its further adoption. However, the timing remains uncertain. For detailed information on these drafts, see paragraph 5.1.2.

Another significant step is the introduction of a new Ukrainian corporate protection mechanism - a derivative action. The draft law No. 2013a On Amending Certain Laws of Ukraine Regarding Protection of Investors' Rights was registered in Verkhovna Rada of Ukraine in September 2013. However, it has not yet been adopted and several changes are currently discussed. It is hoped that such a mechanism would be incorporated into Ukrainian legislation as soon as possible. For detailed information, see paragraphs 4.2.2; 5.1.2; 5.1.13.

Furthermore, Draft Law No. 4534a On Amending Certain Legislative Acts of Ukraine Regarding Improvement of Corporate Governance in Joint Stock Companies was registered in the Verhovna Rada of Ukraine in August 2014, recalled in November 2014 and expected to be submitted to the new Parliament in the nearest future again. The adoption of this Draft Law will be a step forward to the implementation of EU capital markets legislation, particularly

¹⁵⁰ The OECD Report 2004, available at: <http://www.oecd.org/cfe/leed/37074808.pdf>

¹⁵¹ Ibid.

Directive 2004/25/EC of the European Parliament and the Council of 21 April 2004 on takeover bids. For detailed information, see paragraph 5.1.6.

5.4. GENERAL ASSESSMENT OF THE STATUS AND THE ALIGNMENT LEVEL OF THE UKRAINIAN COMPANY LAW LEGISLATION WITH THE ACQUIS

In general, Ukraine has reached a good level of alignment with the *Acquis Communautaire*.

The Law On Joint Stock Companies is broadly aligned with the First Company Law Directive related to disclosure requirements, validity of obligations and grounds for nullity of public and private limited liability companies; with the Twelfth Company Law Directive on single-member companies; with the Second Company Law Directive as regards capital formation, issues on determination of market value of the property, payment for shares by founders of the joint-stock company, dividend payment procedure and restrictions related to it, regulations on buy-out own shares by a joint stock company and limitations imposed on it, price for shares, annulment of shares, the minimum value of the charter capital, its increasing and decreasing, protection of creditors. The very procedure of mergers and divisions as well as protection of creditors in case of the latter under Ukrainian law are in accordance with the Third and Sixth Company Law Directives. Provisions of JSCL concerning proposals for the General Meeting agenda are in compliance with SRD.

The Civil Code and the Law on Business Associations provide general rules on companies which in general do not conflict with the *Acquis*, but sometimes are overlapping with each other and do not provide exhaustive and comprehensive regulations for the limited liability companies' activity. Thus, the problem of absence of modern Law on Limited Liability and Additional Liability Companies remains and should be resolved as soon as possible. At the same time, the market-alienated Economic Code evidently does not fit into the European standards and practices of private law and should be abolished.

The main discrepancies are related to the rules of Takeover Directive, certain provisions of the Shareholder Rights Directive, Mergers and Divisions Directives, Tenth Company Law Directive regarding cross-border mergers of public limited liability companies, Directive on single-member private limited liability companies and Capital Directive (see the next paragraph).

5.5. RECOMMENDATIONS FOR FURTHER ALIGNMENT WITH THE EU LEGISLATION AND PRACTICES AS WELL AS FOR EFFICIENCY ENHANCEMENT OF UKRAINIAN COMPANY LAW

Our recommendations for further alignment of Ukrainian company and corporate governance legislation with the EU legislation and practices include:

- The outdated Economic Code should be wholly abolished;

- Overlapping provisions from the Civil Code and the Law On Business Associations should be eliminated; the same applies for the JSCL and for future special (and recommended) legal acts, i.e. the new law on private limited liability companies and on corporate reorganisations i.e. mergers, divisions and other transformations (see *infra*)
- The requirement of publication of state registration/termination of the legal entity in the print media should be supplemented or replaced by publication in electronic platform (according to the art. 3 par. 5 of the Directive 2009/101/EC);
- The limitation on legal actions prior to company's registration shall be removed as it violates the idea of the Directive 2009/101/EC, which implicitly allows for pre-registration activities of the company;
- Adjustments are needed so as to further enhance the reliance of third parties on unrestricted and generally unrestrictable power of the management board to act on behalf of the company;
- Legal framework for private limited liability companies should be put in place in form of a new law. This new law should increase the level of minority protection while at the same time leaving enough space for flexible arrangements that are needed in small and medium sized enterprises. This preserved flexibility should be one of the fundamental distinctions of the LLC vis-à-vis JSC. The law should allow for designing the company as a closed company, while at the same time exit rights should be allowed in order to avoid deadlocks and imprisonment of shareholders. Also access to information should be assured. Possibility to establish a supervisory board in a LLC shall be introduced. Derivative action should also be allowed under defined conditions. Legal capital should not be mandatory and non-par value shares should be considered. Abuse should be curbed by introduction of directors liability for acting at the expense of creditors (preferably a mix of German (*Insolvenzverschleppungshaftung*) and UK (wrongful trading) approach. Liability of de facto directors should be anchored in the law as well. The obligation to specify information on the size of the participants' share in the company's statute shall be removed (the relevant data should be stored exclusively in the Unified State Register);
- The provisions that a limited (additional) liability company may have a sole member when all its shares come to be held by a single person and the sole member of the limited (additional) liability company shall exercise the powers of the general meeting of the company should be implemented;
- Dual regime for listed and non-listed JSC should be introduced. This should allow for implementation of SRD, without burdening smaller, non-listed companies. The exclusive criterion of division into public and private joint stock companies shall be public placement of the shares (not a number of shareholders); the terminology of the JSCL should be reconsidered "private JSC", as it is currently used, seems to be an oxymoron;
- SRD should be implemented wholesale with regard to listed companies, whereas some other provisions may be extended to private JSC as well;
- The quorum for the validity of GM in JSC should be decreased to 50% and reduced even further or even abolished for certain issues to be decided by the GM (or reversely, the quorum to be maintained with respect to a number of significant issues). Alternatively, the quorum could apply for the first attempt and be eliminated or reduced for a renewed attempt;
- Pre-emptive rights to take up newly issued shares should be mandatory in all JSC companies and must be provided in the law (*ex lege*) and not merely in the charter;

- The list of triggering events for appraisal rights (art. 68 JSCL) should be reconsidered based on experiences made herewith so far. In the spirit of self-enforcing model of corporate law, the introduction of new exit rights in form of dissenters rights should be considered (see e.g. Italian, German, Spanish, Japanese and US examples);
- Rights of squeeze-out and sell-out shall be implemented to the Law on JSC according to the Directive 2004/25/EC. In addition to takeover-related, the squeeze-out and sell-out mechanisms shall be introduced for all JSC, also the private ones;
- Shareholder derivative action as a possible protection mechanism must be implemented; further thoughts should be given as to the auxiliary mechanism both, facilitating efficient litigation and curbing abusive suits. This could be done through favourable cost rules flanked by liability for strike suits;
- The threshold allowing shareholder to require special audit of a JSC should be lowered to 5% (from 10% as it is under current regime) in order to improve the level of protection of minority shareholders, at least in public companies;
- In the reporting requirements the statement on CG Code to which the listed company adheres shall be added and the 'comply or explain' principle shall be introduced;
- Takeover law should be reformed, i.a. through lowering the threshold triggering mandatory takeover bid, improving shareholders protection with regard to the bid price, implementing rules on board information duties and neutrality as well as possible deviation thereof, implementing of break-through-rule,
- The French Rozenblum doctrine should be incorporated into Ukrainian company law (e.g. taking into consideration the recent Czech reform). Approaches to group interest should be considered and possibly anchored in law applicable to companies group issues. Also safe harbors for directors of dependent companies (subsidiaries) should be considered in this connection. Appraisal remedy (exit right through shares buy-out) at the stage of group formation (see German example) or in cases of abuse of power by the parent company (see Italian example) should be introduced. We do not recommend comprehensive, German-style legislation on corporate groups;
- Enactment of special (separate) new law on corporate reorganisations (see e.g. German or Spanish models), embracing all kinds of reorganisations (mergers, divisions, spin-offs) and transformations of all companies types. For such a new law, the definitions of mergers and divisions from the Third and Sixth EU Directives shall be implemented into the Law of Ukraine. The documents which are to be prepared for mergers or divisions shall contain information as it is provided in the Third and Sixth EU Directives. The rule about right of inspection of the documents concerning merger or division by shareholders at the registered office at least one month before the date fixed to the general meeting should be implemented as well. Also, a limit on the cases in which nullity of conducted mergers or divisions can arise by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced. Special rules governing the civil liability of members of the management bodies of a company being acquired or divided towards the shareholders of that company as well as the experts responsible for drawing up on behalf of that company the reports related to mergers and divisions in respect of the misconduct in the performance of their duties during preparing and implementing the merger or division shall be introduced. Provisions to align with the Tenth Company Law Directive regarding cross-border mergers of public limited liability companies shall be introduced;

- allow for arbitration of corporate law disputes, at least for LLC and non-listed JSC. The arbitrability should include disputes concerning validity of general meeting resolutions.

6. ACCOUNTING AND AUDITING LEGISLATION IN UKRAINE IN LIGHT OF THE EU HARMONISATION REQUIREMENTS

6.1. GENERAL OVERVIEW OF ACCOUNTING LEGISLATION OF UKRAINE

Accounting and financial reporting requirements for enterprises in Ukraine are regulated by the Law "On Accounting and Financial Reporting" which came into effect on January 1, 2000. The Law of Ukraine "On Accounting and Financial Reporting" sets the legal framework for regulation, organization of accounting process and bookkeeping, as well as composing the financial statement in Ukraine. The Law applies to all legal entities established under the legislation of Ukraine disregarding the legal form of establishment and ownership as well as to representative offices of foreign legal entities which are subject to accounting requirements according to Ukrainian legislation. Following the ROSK 2002 and ROSK 2008 recommendations the following amendments have been introduced to accounting legislation during the last decade:

- Requirements for general purpose financial reporting have been differentiated from reporting for taxation purposes
- Due process for drafting Ukrainian National Accounting Standards have been established and issuing body (Ministry of Finance of Ukraine) capacity has been strengthened
- The application of International Financial Reporting Standards for public joint stock companies, banks, insurers and other enterprises defined by the regulator has been established by the Law of Ukraine "On Accounting and Financial Reporting"
- The requirement to publish annual financial statements and annual consolidated financial statements together with the auditor's opinion has been introduced for public joint stock companies, corporate issuers of mortgage bonds, mortgage certificates, corporate bonds and real-estate transaction fund certificates, as well as professional stock market members, banks, insurers and other financial institutions (by means of the placement thereof on their web site and the publication in periodical or non-periodical bulletins)
- The financial statements covering business activities comprising a balance sheet and an annual profit/loss account shall be submitted to the state registrar by all enterprises (other than budget-funded institutions)

Under the Association Agreement Ukraine undertakes to comply with the Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards. Generally the rules of the Law of Ukraine "On Accounting and Financial Reporting" comply with the requirements of the stated Regulation (in particular, in 2011 the Law "On accounting and Financial Reporting" was amended in order to establish the obligation of public joint stock companies, banks, insurers and other enterprises defined by regulator to compile financial statements and consolidated financial statements in accordance with international standards).

Further alignment with *Acquis Communautaire* in the field of accounting require implementation of the rules of Directive 2013/34/EU specially in part of simplifying the financial reporting requirements to small and medium sized entities. In Ukraine simplified financial reporting for the entities of micro and small enterprises, representative offices of non-residents etc. is regulated by national accounting standard (П(С)БО 25). Currently the form of abridged balance sheet for Ukrainian small and micro enterprises requires more detailed information re financial position of the entity than the Directive does. In addition, exemption from consolidation requirement for small groups of undertakings shall be established in Ukrainian legislation.

6.2. GENERAL OVERVIEW OF UKRAINIAN LEGAL FRAMEWORK FOR AUDITING

The main legal act in regulation of audit in Ukraine is the Law "On Audit Activity" adopted in 1993 and substantially amended in December 2006 (new edition). According to World Bank's estimation (ROSK 2008) the Law represents a significant step towards the adoption of international practices; it clarified and extended provisions related to the regulation of the audit profession and redefined the role and responsibilities of the Chamber of Auditors of Ukraine.

The key provisions of the Law are the following:

- The Law contains definitions of audit and audit activity, defines the entities subject to statutory audit.
- In particular, the open joint-stock companies, issuers of securities, professional participants of the stock exchange, financial organizations and other entities falling within the categories obliged to make their financial reports publicly available are required to have their entity and consolidated financial statements audited. The statutory audit requirement also applies to companies with foreign investments, insurance and holding companies, investment funds, trust institutions, other financial intermediaries as well as to the issuers of securities and derivative securities (derivatives), as well as to the companies applying for the license for the exercise of professional activities on the securities market.
- The Law stated the requirements to persons eligible to exercise audit activities (being qualified as auditor) and the procedure for professional certification.
- Besides, the Law establishes the legal framework for activity of the regulatory body for the Ukrainian audit profession (Chamber of Auditors of Ukraine (CoAU)). In order to establish the level of independence the composition of CoAU is the following: 20 permanent members (volunteers), including 10 representatives appointed by the state regulatory bodies including the Ministry of Finance, State Statistics Service, Ministry of Economy, the National Bank of Ukraine, the Ministry of Justice, state tax authority, and other State representatives

The further alignment of Ukrainian audit legislation to *Acquis Communautaire* requires the following steps:

- Defining 'public interest entities' (further 'PIE') in the legislation of Ukraine and stating the statutory audit requirement for all PIE, large and medium-sized enterprises and stating the obligation to publish their annual financial statements, audit opinion and management reports;
- Stating the requirement for all PIEs to apply International Financial Reporting Standards (according to ROSC 2008 Policy Recommendations);
- Developing specific requirements to the audit firms and auditors who are eligible to carry out the statutory audit;
- Developing the system of independent public oversight over statutory auditors and audit firms. Playing a role of supervisor over the processes of certification, standardization, quality assurance etc., and the public oversight body shall be independent from the entities directly reliable for these processes (currently, the Chamber of Auditors of Ukraine). Besides, the system of public oversight shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit. The State shall guarantee the establishment of the respective public oversight body at national level.
- Bringing the provisions on liability of corporative bodies for drawing up, submission and publishing of the (consolidated) financial report into conformity with the rules of the Directive 2013/34/EU;
- Stating the detailed requirements to statutory auditors and audit firms, compliance with ISA, qualification criteria and submission to quality control monitoring. The procedures relating to the appointment, dismissal and liability of practicing auditors also need to be clarified.

Besides, the Law states that audit standards shall be adopted on the basis of the Standards of Audit and Ethics of the International Federation of Accountants. The approval of audit standards shall be the exclusive right of the CoAU. Following the stated provisions of the Law International Standards of Audit have been adopted by the CoAU as the national auditing standards.

6.3. PENDING LEGISLATION: PLANNED REFORMS AND DRAFT LAWS

With the aim of bringing the Law of Ukraine "On Audit Activity" into conformity with EU Directive 2006/43/EC the Ministry of Finance has developed the Draft law suggesting the amendments to the mentioned Law.

The main purpose of the proposed amendments is to implement the principles of public auditor oversight and quality assurance system for audit services into Ukrainian legislation.

Due to the disparity of national legislation in the field of audit activities with Directive Commission Decision 2011/30/EC of 19 January 2011 Ukraine denied the regime transition in the national register of auditors and audit firms auditing domestic issuers whose securities are traded in the capital markets of the European Union.

According to the amendments to the Law of Ukraine "On Accounting and Financial Reporting" in 2011, developed and adopted to implement the program of economic reforms for 2010-2014 "Prosperous Society, Competitive Economy, Effective State" the public joint stock companies, banks are obliged to apply IFRS. However, in the point of view of Ministry of

Finance the effectiveness of this reform is reduced due to the mismatch of the system of audit regulation to European practice.

According to the program of economic reforms for 2010-2014 "Prosperous Society, Competitive Economy, Effective State", approved by the Decree of the President of Ukraine on March 12, 2013 № 128, Ukraine has undertaken to ensure the approximation level of audit regulation to the European legislation by, inter alia, establishing the operation of a public oversight over audit activity and quality assurance systems to guarantee the quality of audit services, direct application of ISA, the introduction of permanent certificate of the auditor, enhancing the role of civil society organizations of accountants and auditors, to avoid a conflict of interest in the auditor certification, inspection over quality of audit services and supervision of these processes etc.

In view of the Ministry of Finance of Ukraine a draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on performance auditing activities" aimed at bringing the Law of Ukraine "On Auditing and Financial Reporting" in accordance with the provisions of the Directive 2006/43/E.

The main provisions of the draft law are the following:

- Obligation of audit firms and auditors to apply ISA by in the course of their work;
- If the financial statements are composed according to IFRS the audit shall confirm that the financial statements are complainant not only with the National Standards of Accounting but also with IFRS.
- The draft law envisages public oversight of the audit profession.
- It is also proposed to improve the system auditor certification. In particular, to establish the unlimited validity of the auditor's certificate.

6.4. GENERAL ASSESSMENT OF THE STATUS AND THE ALIGNMENT LEVEL OF ACCOUNTING AND AUDITING LEGISLATION WITH THE *ACQUIS COMMUNAUTAIRE*

6.4.1. IN PART OF ACCOUNTING

In general, Ukraine has reached a good level of alignment with the *Acquis Communautaire*. The rules of the Law of Ukraine "On Accounting and Financial Reporting" comply with the requirements of the Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (in particular, in 2011 the Law "On accounting and Financial Reporting" was amended in order to establish the obligation of public joint stock companies, banks, insurers and other enterprises defined by regulator to compile financial statements and consolidated financial statements in accordance with international standards).

Further alignment with *Acqius Communautaire* in the field of accounting require implementation of the rules of Directive 2013/34/EU specially in part of simplifying the financial reporting requirements to small and medium sized entities.

6.4.2. IN PART OF AUDITING

Ukraine has reached a fair level of alignment with the *Acquis Communautaire*.

Further alignment requires stating the statutory audit requirement for all PIE, large and medium-sized enterprises and stating the obligation to publish their annual financial statements, audit opinion and management reports; ensuring the public oversight body for auditing activity; requirements to auditors and audit firms carrying out the statutory audit etc.

6.5. RECOMMENDATIONS FOR FURTHER ALIGNMENT WITH THE EU LEGISLATION AND PRACTICES

Further alignment with the *Acquis Communautaire* requires the following actions:

From the standpoint of law and regulatory acts:

- Defining 'public interest entities' in the legislation of Ukraine (the necessity of adoption of the mentioned definition has already been prescribed in Ukrainian regulatory acts, in particular, in the Law of Ukraine "On State Program of Adaptation of the legislation of Ukraine to the legislation of European Union" dated 18.03.2004; Concept of adaptation of Ukrainian legislation to legislation of European Union dated 16.08.1999);
- Stating and actual implementation of statutory audit requirement for all PIE, large and medium-sized enterprises and stating the obligation to publish their annual financial statements, audit opinion and management reports;
- Stating the requirement for all PIEs to apply International Financial Reporting Standards (according to ROSC 2008 Policy Recommendations);
- Simplifying the financial reporting requirements to small and medium sized entities. In Ukraine simplified financial reporting for the entities of micro and small enterprises, representative offices of non-residents etc. is regulated by national accounting standard (П(С)БО 25). Currently the form of abridged balance sheet for Ukrainian small and micro enterprises requires more detailed information re financial position of the entity than the Directive does. In addition, exemption from consolidation requirement for small groups of undertakings shall be established in Ukrainian legislation.

From institutional standpoint:

- Developing specific (more strict) requirements to the audit firms which can carry out the statutory audit;
- Developing the system of independent public oversight over statutory auditors and audit firms;
- Bringing the provisions on liability of corporative bodies for drawing up, submission and publishing of the (consolidated) financial report into conformity with the rules of the Directive 2013/34/EU;
- Stating the detailed requirements to statutory auditors and audit firms, compliance with ISA, qualification criteria and submission to quality control monitoring. The procedures relating to the appointment, dismissal and liability of practicing auditors also need to be clarified.

6.6. ASSESSMENT OF THE LEVEL OF IMPLEMENTATION OF ISA IN UKRAINE

Over 10 years ago audits in Ukraine were performed on the basis of Temporary National Regulations on Audit (until 1998) and 32 National Regulations on Audit and Auditors' Ethics Code (until 2003). The latter were primarily based on International Standards on Audit (ISA), while Ukrainian legislation on audit wasn't, which caused problems in practice.

In 2003 the CoAU accepted Audit and Ethics Standards of Association of International Accountants as part of Ukrainian national audit standards (Decision of dated 18.04.2003 No.122 "On Usage of Audit and Ethics Standards of International Accountants Association in Ukraine").

Currently the CoAU (with approval of International Accountants Association) regularly translates into Ukrainian and publishes Audit and Ethics Standards. The Standards Commission of the CoAU also develops national standards on audit practice and instructions in order to adjust international standards to local tax, legal and state governance specifics.

Application of ISA gave rise to a number of problems, namely:

- There is usually a time gap between enactment of ISA and their adaptation in Ukraine, namely translation into Ukrainian and subsequent application. In particular, for example, Handbook of International Quality Control, Auditing, Review, Other Assurance, and related Services Pronouncements (2012 Edition) is used in Ukraine starting from 1 May 2014 (enacted with the Decision of the CoAU as of 27.02.2014 No. 290/7;
- Lack of financing required for timely translation of ISA;
- Lack of knowledge of ISA by Ukrainian audit professionals.

7. CORPORATE DISPUTES, THE ROLE OF JUDICIARY, AND THE REALITY OF LAW ENFORCEMENT

7.1. NATIONAL LEGAL TRADITIONS AND DISPUTE SETTLEMENT MECHANISM. STATE COURTS AND ARBITRATION

Ukraine's judicial system was inherited from the Soviet Union and the former Ukrainian SSR. The Soviet justice system was dependent on the bodies of the Communist Party. The division of powers between the state and the party were not practiced as they were in Western democracies¹⁵². With the adoption of the Declaration of the State Sovereignty of Ukraine in 16 July 1990 by the Supreme Rada of Ukrainian SSR, Ukraine began to create its own judicial

¹⁵² Center for Political and Legal Reforms, <http://www.en.pravo.org.ua/index.php/judiciary>

system without the drawbacks of the Soviet system. It is worth mentioning that Ukraine was the first among the former Soviet republics to establish its own system of arbitral courts, independent from the all-USSR justice system for the settlement of commercial disputes in June 1991 (at that time and until 24 August 1991 Ukraine was still a member of the USSR)¹⁵³.

After adoption of the Constitution Ukraine in 1996 have continued to build its national judicial system. Its general structure is stipulated in Article 124 of the Constitution of Ukraine, according to which the justice is administered by the Constitutional Court of Ukraine and by courts of general jurisdiction. The courts of general jurisdiction administer justice in the form of civil, commercial, administrative and criminal legislation. The Constitutional Court of Ukraine is a special judicial body of constitutional control.

The system of general jurisdiction is based on the principles of the administrative and territorial division of Ukraine and includes four levels: local courts; courts of appeal; the highest specialized courts (in accordance with the Law of Ukraine on Court System Structure and Judges Status¹⁵⁴ there are the Highest Court for Civil and Criminal cases, the Highest Commercial Court, and the Highest Administrative Court); and the Supreme Court of Ukraine.

Civil, family, hereditary, and other cases should be brought before the local general courts when at least one party to the dispute is a natural person, except for an individual entrepreneur. Local general courts may also consider disputes arising out of business activity in cases where one of the parties is a natural person. At the same time, corporate disputes are considered by the commercial courts only (even with a natural person involved as a party). Article 12 of the Economic Procedure Code distinguishes two categories of disputes under the jurisdiction of the commercial court: (i) disputes arising out of corporate relations between business entity and its participant (founder, shareholder), including participant who dropped out; (ii) disputes arising out of corporate relations between participants (founders, shareholders) of the business entity, but only those related to the set-up, activities, management or termination of this entity.

The Highest Commercial Court of Ukraine in its 2007 Recommendations defined the following disputes as corporate and therefore subject to the exclusive jurisdiction of commercial courts:

- disputes between participants (shareholders) of a business entity related to its establishment, liquidation and management;
- disputes arising out of participants' claims on invalidation of statutory documents or their amendments;
- disputes related to liquidation or annulment of state registration of a business entity under the actions of its participants;
- disputes on invalidation of business entity's deeds under the participants' (shareholders) actions claiming violation of their corporate rights and interests;

¹⁵³ Ibid.

The system of commercial courts was set up on the territories of Ukraine in 1832 when Ukraine was a part of the Russian Empire in order to deal with commercial disputes between legal entities and businessmen. After the October revolution 1917 this commercial courts system was transformed into the system of State Arbitrazh, which had been especially adapted to handle disputes between state enterprises (See Alexandra Makovskaya, *Russian Company and Capital Market Law* [in:], *Private Law in Eastern Europe. Autonomous Developments or Legal Transplants?*, Ed. by Christa Jessel-Holst, Rainer Kulms and Alexander Trunk, 2010. XV, p. 308)

The commercial courts were established in 1991 by means of the reorganization of the previously existing institute of Departmental Arbitrage, the jurisdiction of which covered commercial disputes between state enterprises.

¹⁵⁴ The Law of Ukraine on Court System Structure and Judges Status No. 2453-VI, from July 7, 2010

- disputes arising out of participants' actions related to invalidation of shareholders' resolutions on their expulsion from the company's participation.

Moreover, the Supreme Court of Ukraine in its 2008 Resolution specified the disputes which are not deemed to be corporate and consequently are not subject to commercial courts exclusive jurisdiction:

- disputes arising out of the establishment, activity, management and activities termination of business entities – being not business companies (*i.e.* cooperatives, private, collective enterprises etc) if one of the parties in a dispute is an individual;
- the prohibition set forth in Article 12 of the Economic Procedure Code of Ukraine (hereinafter – ECP) shall not be applicable by analogy to other business entities;
- the prohibition set forth in Article 12 ECP cannot be construed broadly to disputes, in which one of the parties is not a participant (founder, shareholder) of business entity (disputes involving heirs of the participant which have not gained a participatory interest yet).

Besides, the commercial courts are competent to hear commercial disputes between legal entities, disputes arising out of the conclusion, amendment, termination or execution of economic contracts; bankruptcy cases; cases on accounting of rights to securities; disputes arising out of land relations involving business entities, except those within the jurisdiction of administrative courts, cases on motions of the Antimonopoly Committee of Ukraine, the Accounting Chamber. Labour disputes are excluded from the jurisdiction of the commercial courts. These disputes fall within the competence of the local general courts. Court proceedings are conducted under the Economic Procedure Code of Ukraine¹⁵⁵.

The commercial court system consists of three level of courts: local commercial courts in the regions and the cities in Kyiv and Sevastopol¹⁵⁶; appellate commercial courts; and the Highest Commercial Court, which acts as the cassation instance. The Highest Commercial Court reviews the acts of the lower courts as a last instance, analyzes court statistics, studies and generalizes case law, provides methodological assistance to lower level courts in order to foster consistent application of legislation in court practices based on the generalization of the latter and analysis of court statistics. Besides, it provides the specialized courts of the lower level with advisory interpretations/clarifications on issues of law application in regards to cases that fall under the corresponding jurisdiction¹⁵⁷. Although commercial courts are not formally bound by the recommendations of the Highest Commercial Court, in practice they appear to be obligatory.

The Supreme Court of Ukraine as the highest judicial body in the system of courts of general jurisdiction reviews cases regarding unequal application by the courts of cassation the same rule of substantive law in similar legal relations. It should be pointed out that till 2010, the Supreme Court of Ukraine was also authorized to issue resolutions with summary of court practice that served and serves now as recommendations for the lower courts on resolving the cases including the corporate ones.

¹⁵⁵ The Economic Procedure Code of Ukraine No. 1798-XII from November 6, 1991

¹⁵⁶ We consider Sevastopol and the Crimean peninsula as Ukrainian territories

¹⁵⁷ Art. 32 of the Law On the Judiciary and the Status of Judges adopted by the Verkhovna Rada dated 7 July 2010

Thus, as for now, the system of *de jure* but not *de facto* not binding acts issued by the judicial authorities includes:

- Resolution of the Plenum of the Supreme Court of Ukraine on Corporate Disputes No. 13 dated 24 October 2008
- Recommendations of the Presidium of the Highest commercial court of Ukraine of 28.12.2007 No. 04-5/14 "On the practice of application of legislation in consideration of cases arising from corporate relations"
- Clarifications of the Presidium of the Highest commercial court of Ukraine of 31.05.2002 No. 05-5/608 "On certain practical issues of consideration of cases involving foreign commercial entities and organizations"
- Resolution of the Plenum of the Highest commercial court of Ukraine of 26.12.2011 No. 18 "On certain practical issues of application of the Economic Procedure Code of Ukraine by the first instance courts"
- Letter of the Highest commercial court of Ukraine of 01.01.2009 "On consolidation of the court practice of settlement of certain categories of disputes involving non-residents by the commercial courts"
- Letter of the Highest commercial court of Ukraine of 01.01.2009 "On consolidation of the court practice of settlement of certain categories of disputes involving non-residents by the commercial courts"

Another possibility to resolve the dispute is arbitration. Ukraine have adopted all major international legal acts in the field of international arbitration, including New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and European Convention on International Commercial Arbitration of 1961. Moreover, Ukraine ratified the ICSID Convention and the Energy Charter Treaty (ECT).

It should be emphasized that Ukrainian legislation does not contain either a definition of non-arbitrability of disputes or an exhaustive list of disputes which are not capable of settlement by arbitration. However, Ukraine certainly belongs to the jurisdictions with restrictive approach towards arbitration of corporate disputes.

The categories of corporate disputes subject to Ukrainian common jurisdiction are defined in:

- the Economic Procedure Code of Ukraine of No. 1798-XII dated 06 November 1991;
- the Recommendations of the Presidium of the Highest Commercial Court of Ukraine "On Practice of Legislation Application in Disputes Arising out of Corporate Relations" No. 04-5/14 dated 28 December 2007;
- the Resolution of the Plenum of the Supreme Court of Ukraine on Corporate Disputes No. 13 dated 24 October 2008. The Court stated that "shareholders irrespective of their shareholding structure have no right to refer corporate disputes related to the activity of a company registered in Ukraine and, in particular, arising out of corporate management, to international arbitration."

Previously no limitations on arbitrability of corporate disputes existed on the legislation level. Parties were free to refer their disputes to arbitration as stated in Article 1 of the Law of Ukraine on International Commercial Arbitration No. 4002-XII dated 24.02.1994: parties may agree to refer the disputes between companies with foreign investments, international associations and organizations established in Ukraine; disputes between participants of such

entities; as well as disputes between such entities and other judicial entities of Ukraine to international arbitration.

In 2006 the Economic Procedure Code of Ukraine was amended and corporate disputes were submitted to the jurisdictions of commercial courts (Article 12 EPC). At the same time part 2 of Article 12 EPC stated that a dispute falling within the jurisdiction of commercial court may be referred to arbitration if agreed by the parties.

2009 Article 12 of the EPC was amended based on recommendations of the Supreme Court of Ukraine and corporate disputes were explicitly excluded from the list of disputes which could be referred to arbitration. Thus, the applicable wording of the Article 12 of EPC provides that the disputes arising out of corporate relations between a company and its participants (founders, shareholders), including former participants as well as disputes between participants (founders, shareholders) of the company relating to the establishment, activity, management and liquidation of the company (except for labour disputes) may not be referred to arbitration and are subject to exclusive jurisdiction of commercial courts of Ukraine. Such situation seems to be incompatible with EU and international standards where the right to arbitration in the sphere of corporate law is generally recognized. Thus, the arbitration of corporate disputes should be allowed under Ukrainian law as it makes possible to resolve disputes efficiently, in shorter time and with satisfaction for both parties.

7.2. APPLICATION OF COMPANY LAW IN THE PRACTICE OF UKRAINIAN COURTS: LEGAL REASONING AND JUDICIAL INTERPRETATION

One could not agree more that in a legal system with uncertain, unstable and inconsistent regulations, the judicial practice should play a special role in eliminating discrepancies in developing legislation, and fill the gaps in missing regulations through a "special form of lawmaking" - the interpretation of law.

Interpretation of law could be defined as an activity which covers the clarification or explanation of the legal rule with purpose to ensure its proper implementation and application. Its social purpose is to guarantee correct and unambiguous (unified) understanding of the meaning of legal regulations by all who have to use them.¹⁵⁸ Interpretation of company law is a key element of its enforcement as every legal interpretation is a "special noesis, which is carried out with aim of practical implementation of law."¹⁵⁹

Article 4 of the Economic Procedure Code of Ukraine provides that economic courts are prohibited to refuse the hearing of the case on the grounds of incompleteness, ambiguity, inconsistency or lack of legislation. Therefore, in the absence of regulation, the court has to refer to the case-law, and if there is no such - to create it by itself through the interpretation of existing rules. As a result, commercial courts in justification of their position often refer to the decisions of higher courts. For example, in the case No.26/148-11 of 06.10.2011 the Economic Court of Kiev Region refused to satisfy the claim and for justification of its refusal had referred

¹⁵⁸ Rabinovych P.M., *Osnovy Zagalnoi Teoriji Prava ta Derzhavy (Основи загальної теорії права та держави)*, Lviv, Kraj 2007, 192 pp.

¹⁵⁹ Alekseev S.S., *Teorija gosudarstva i prava (Теория государства и права)*, Moskva, 2004, 283 pp.

to the Resolutions of the Highest Commercial Court of 02.03.2010 (case No.12/190/09) and of 21.07.2009 (case No.31/382) according to which the amicable agreement approved by the court's ruling is not deemed as a civil contract and does not create the substantive legal obligations. There are many other examples where the courts refer directly to the case law when motivating their decisions.

After 22 December 2005 when the Law of Ukraine "On Access to Court Decisions"¹⁶⁰ was adopted, judicial rulings has become public and courts' position in different categories of cases – generally known. This event has significantly strengthened the role of positions of higher courts when considering cases in lower ones. However, in Ukraine judicial practice is not formally regarded as a source of law. But it is recognized that the power of a judge to interpret the law is a necessary precondition of the application of law¹⁶¹.

The issues of legal interpretation have become especially topical in the area of company law taking into consideration the recent codification of economic and civil legislation. The problems have arisen because of inconsistency of the EC and the CC, many provisions of which are overlapping with each other or even conflicting (the rules concerning agreements, liability, obligations etc.). It is recognized that not every problem may be solved through the application of "lex speciali derogat legi generali" rule. Under conditions of scattered and unclear corporate regulations it is often hard to distinguish what rule is general and what special. Thus, one may conclude that the problem of legal interpretation and enforcement of company law requires new methodological tools and special analyses.

The interpretation of company law has its peculiarities related to the subject of interpretation - business activity, professional terminology, status of legal entities, temporality of rules, hierarchy of laws, necessity to take into account not only legal, but economic and social components of dispute situations¹⁶². Generally accepted division of interpretational methods into grammatical (literal), logical, historical, systemic, and purposive¹⁶³ could be used when analyzing the judicial reasoning during solving the case concerning company law application.

Generally, the rules of company law are subject to static interpretation. Exceptions apply only to the principles, dynamic interpretation of which is based on their particular character derived from being a part of company legislation¹⁶⁴. General principles of business practice enshrined in the Art. 6 of the EC, principles of entrepreneurial activity laid down in the Art. 44 of the EC, general principles of civil law from Art. 3 of the CC combine not only a normative nature like any other legal rule, but the declaration of state legislators on their social, economic and political intentions as well. Therefore, their evolutionary interpretation in the light of changeable environment is fully justified.

¹⁶⁰ The Law of Ukraine On Access to Court Decisions No.3262-IV dated December 22, 2005

¹⁶¹ Alexandra Makovskaya, Russian Company and Capital Market Law [in:], *Private Law in Eastern Europe. Autonomous Developments or Legal Transplants?*, Ed. by Christa Jessel-Holst, Rainer Kulms and Alexander Trunk, 2010. XV, p. 311

¹⁶² Podcerkovnyj O., *Problemy Metodologiji Tlumachennia v Konteksti Galuzevyh, zokrema i Gospodars'ko-Pravovyh Doslidzhen'* (Проблеми методології тлумачення в контексті галузевих, зокрема й господарсько-правових, досліджень) [in:], *Aktualni Problemy Derzhavy i Prawa, Zbirnyk Naukovykh Prac, Vypusk 50*, Odessa 2009, p. 65

¹⁶³ *Supra* note 154

¹⁶⁴ Koval V., *Konceptualni Zasady Jurydychnoi Interpretaciji v Gospodars'komu Sudochynstvi* (Концептуальні засади юридичної інтерпретації у господарському судочинстві), avtoref. dys. d-ra juryd. nauk, Kharkiv 2012, 33 pp.

All legal interpretation must start by establishing a range of semantic meanings for a given text, from which the legal meaning is then drawn.¹⁶⁵ It is generally accepted among scholars that grammatical interpretation is primary with respect to all other methods of interpretation¹⁶⁶. It is due to the fact that legal rules are expressed in legal texts, and constructed in the form of grammatical sentences. Moreover, every interpretation is an intellectual process and therefore must refer to the logic rules. The commercial court in every decisions refers to logical and systemic interpretation. Under logical interpretation one should understand using methods of formal logic in order to identify structural elements of the legal norms.¹⁶⁷ One of the most well-known principles of logical interpretation that is of great topicality for Ukraine as it concerns the contradictions between provisions of laws that have been adopted at different times is a rule "lex posterior derogat legi priori" or "more recent law prevails over a former one". Thus, for example, in case of contradictory regulations the more recent JSCs law of 2008 is applicable. Systematic interpretation involves the interpretation of a particular legal article with respect to the other articles of the law or other legal acts that are relevant to the subject in question. It defines the place of legal norm in a concrete law or the legal system as a whole. The commercial courts in every case of their practice analyze all scope of the available legislation and define ties and relations between different legal norms in order to define which rule should be applied to the relations in dispute.

Taking into consideration the changeability of Ukrainian company legislation and existence of overlapping provisions, the attention should be paid to the historical interpretation of law. For example, the new JSCs Law foresees the division of joint stock companies to public and private. Thus, the old terminology ("open" and "closed" JSCs) which still are used in some legal acts¹⁶⁸ should be interpreted and applied in accordance with the new provisions. Commercial courts very often refer to previous legislation in order to regulate legal relations which had started before the new regulations were adopted. For example, in case No. 20/5025/2070/11 the Commercial Court stated that according to Art. 46 of the Law of Ukraine "On Business Associations" which was valid before the entry into force of the Law of Ukraine "On Joint Stock Companies", the supervisory board could be created from the shareholders for representation of the interests of the shareholders between the general meetings, review and regulation of the activities of the management board within the jurisdiction defined by the charter. Under such circumstances, given the provisions of the Civil Code of Ukraine, the Law of Ukraine "On Business Associations", the Law of Ukraine "On Joint Stock Companies", given the statute of the claimant and internal regulation on the supervisory board, the court found that the Supervisory Board meeting in question was not valid and therefore the decisions adopted at that meeting were invalid. Another case – No. 5023/8094/11 of 15.12.2012. The Kyiv Commercial Court in its decision had referred to the previously valid Regulation on the procedure for obtaining investor proceeds from corporate rights in joint stock companies from December 25, 2001 No.386, and concluded that the payment of accrued dividends is the responsibility of the executive body of the company before its shareholders.

¹⁶⁵ Aharon, Barak, *Purposive Interpretation of Law*, Princeton University Press, 2007, 448 pp.

¹⁶⁶ Cvik M. Petryshyn O., *Zagalna Teorija Derzhavy I Prava (Zagalna teorija derzhavy i prava)*, Pravo, Kharkiv 2009, 572 pp.

¹⁶⁷ *Supra* note 154

¹⁶⁸ For example, the Resolution of the Cabinet of Ministers of Ukraine "On approval of the formation of a joint stock company through the privatization, issue and placement of shares of such company" No. 1099 of 11.09.1996

From analysis of judicial practice of commercial courts it may be noted that they do not often openly refer to purposive (teleological) interpretation. This type of interpretation is used when the law is not plain and unambiguous and the court must give effect to the intention of the legislator, rather than determine what the law should or not should be. Because there are many previously mentioned Recommendations, Letters, Clarifications and Resolutions issued by the Highest Commercial Court of Ukraine and the Supreme Court of Ukraine which clarify vulnerable and questionable provisions, lower commercial courts simply apply those recommendations or refer to the case law and do not try to clarify by themselves the goals that were set out by the legislator and interpret legal norms in the light of these goals. As it is pointed out in the literature, in purposive (teleological) interpretation, the text's "purpose" is the criterion for establishing which of the semantic meanings yields the legal meaning.¹⁶⁹ Therefore, in our opinion, where the rules are of contradictory nature or there is a gap in the legislation the commercial courts should play more functional role than formal in the application and interpretation of company law. The foregoing allows to conclude that Ukrainian commercial courts when resolving the case are guided by the legislation as a primary source, by recommendations and clarifications issued by the higher courts and by the case-law. The systemic, logical and historical methods of interpretation are the most frequently used ones during the interpretation of company law provisions, i.e. formal interpretation prevails over functional.

7.3. LAW ON THE BOOKS VS. LAW IN ACTION: THE PROBLEM OF LEGAL CHANGE

The paradigm between "law on the books" and "law in action" has existed since the law was created. The questions "what is law?" and "what it ought to be?" as well as the problems of correlation of the "letter" and "spirit" of law will never lose their topicality. As Rudolf von Jhering has said, the law is like "Saturn devouring his own children," as law is perpetually renewed by contradictory changes.¹⁷⁰

The term "law on the books" refers to the actual written statute that can be found in the state's codified law books. "Law in action" refers the role of law, not just as it exists in the statutes and cases, but as it is actually applied in society. The essence of law-in-action, the characteristic most exactly distinguishing it from law in the books, is this: law-in-action is any decision, action or transaction made or contemplated by individuals and organizations as to which law or legal consequences might be relevant and might have an impact on how decisions are made. The decision maker in a particular context is in the foreground deciding what pieces of law are relevant — along with many other factors. Law does not dictate behavior "from the top." Decision makers determine the significance of law in decisions, actions and transactions.¹⁷¹

Obviously, in the sphere of company law the "law on the books" vs. "law in action" dilemma also finds its bright manifestation. In Ukraine one could distinguish many factors that affect the behavior of business persons – either their strict following the letter of law or, on the contrary, ignoring, improving or even circumvention of certain legal regulations. Business players

¹⁶⁹ *Supra* note 161

¹⁷⁰ Jhering Rudolf, *The Struggle for Law*, Chicago Callaghan, 1915, p. 13

¹⁷¹ Clune B., *Law in action and law on the books: A primer*, *New Legal Realism Conversations*, 2013, available at: <http://newlegalrealism.wordpress.com/2013/06/12/law-in-action-and-law-on-the-books-a-primer/>

decide by themselves in their ordinary economic life which discretionary rules apply in practice and which of them seem to be ineffective or meaningless and do not deserve to be put in real life. To the latter category one may include provisions on independent members of the board, adoption of internal codes of corporate governance, practicing of active communication with shareholders, establishment of the supervisory board committees, appointment of the corporate secretary, more disclosure than it is mandatory required etc. At the same time, some legal institutes which *de jure* are not provided by existing law are used or are tried to be used in practice. The most striking example – the creation of the supervisory board in a LLC. Neither the CC nor the Law On Business Associations provide for the possibility of its establishment. But, very frequently the participants of the LLC feel the necessity to establish a control body over the executives. Their main arguments states that despite not being foreseen, it is not forbidden directly by the laws as well.¹⁷² One may interpret such a situation differently, but it certainly does not mean a circumvention of law but its adaptation to the real needs of business participants. The conclusion from this may be only one: in order to put equal sign between “law on the books” and “law in action” the demand for legal rule must exist. Other factors that matter – effective incentives for compliance and resources available for implementation of specific rules in practice.

Decisions are the “action” in law-in-action. And the fundamental reason why law-in-action differs from law-on-the-books, why the influence of any law or rule is indeterminate, is the wide range of influences and internal value judgments impinging on actual decisions in an endless variety of social contexts.¹⁷³ When analyzing the problem what influences the decisions of economic subjects, it should be noted that one of the main factors that have the biggest impact on the state of corporate relations in Ukraine today is the role of the government in its relations with corporations. Many companies in Ukraine are controlled either by a narrow range of private shareholders/individuals or the state. In addition, the majority shareholders often hold managerial/executive positions, which may limit the ability of minority shareholders to verify or challenge the decision management. The main problem in this area is the lack of a unified government policy.¹⁷⁴ The companies of oligarchs, transnational corporations as well as state companies (i.e. those having some financial

¹⁷² Article 97 of the CC: General meeting of the company’s participants and the executive body shall act as the management bodies of the company unless otherwise established by the law.

Articles 58 - 62 of the Law of Ukraine "On Business Associations" determines the list of governmental bodies of a limited liability company, namely the supreme body – the general meeting, and an executive body - collective (the board) or sole (the director).

According to Art. 23 of the Law of Ukraine "On Business Associations" the association shall be managed by its bodies, the composition and manner of election (appointment) of which shall be subject to the form of the business association.

However, in accordance with subparagraph d) of Article 59 of the Law "On Business Associations", the competence of general participants' meeting of limited liability company includes the determination of forms of control over activities of the executive body, creation of appropriate control bodies and definition of their powers.

According to Article 145 of the CC, the exclusive competence of the general meeting of a limited liability company includes establishment of forms of control over the activities of the executive body, creation and establishment of powers of the respective control bodies.

Article 146 of the CC stipulates that operation of the executive body of a limited liability company shall be controlled per the procedure established by the charter and the law. The general meeting of a limited liability company may form the bodies that constantly control over financial and economic operation of the executive body. Procedure for creation and powers of the control body shall be determined by the general meeting of the company’s participants.

From the aforementioned, it may be possibly concluded that in a limited liability company several control bodies may be established, such as the audit commission and the supervisory board. But, it should be noted once again that the direct possibility of establishment of a supervisory board in a LLC (as it is in case of a JSC) is not provided by the laws.

¹⁷³ *Supra* note 167

¹⁷⁴ *Supra* note 123, p. 277

backing) look to be much less interested in demonstrating high-quality standards. Ukrainian owners unwillingly invite minority shareholders and independent directors to boards. State companies and TNC assets don't even consider inviting them. Though there are many public companies among the assets of oligarchs and transnational corporations, the management of many of them is ready to communicate with "ordinary" shareholders only with the main shareholder's approval.¹⁷⁵

Good law without its proper enforcement remains only on paper and has no chances to regulate relations "in action". The most common complaint of the shareholders in Ukraine is that the enforcement of the laws is to the certain extent ineffective. In fact, empirical analysis suggests that there is little correlation between the level of legal protection afforded by statutes on the one hand, and measures for the effectiveness of legal institutions on the other.¹⁷⁶ Ukraine today may borrow the most effective corporate solutions but if shareholder rights are systematically violated and Ukraine does not introduce adequate measures for the effectiveness and reliability of the judiciary and administrative institutions, then these solutions remain only "on paper" and do not find their real expression. It should be taken into account that according to the NCSSM the number of written and oral complaints from investors in 2012 was amounted to 3059¹⁷⁷. Moreover, 70% of all complaints were related to the violation of minority shareholders' rights by the company's management. Among the most typical violations were:

- violations of the right to equal treatment of all shareholders;
- violations of the right to take part in the management of the company;
- Violations of the right to get information about the company's activity;
- Violations of the right to receive part of profits as dividends;
- Violations of the rights during the additional issue of shares.

8. COMPANY LAW REFORM PATTERNS AND PHILOSOPHIES IN TRANSITIONAL ECONOMY

8.1. EXAMINATION OF THE SUITABILITY OF THE SELF-ENFORCING COMPANY LAW PARADIGM TO THE UKRAINIAN LEGAL REFORMS

Despite the large progress over the last ten years, Ukraine as a post-communist country continues to battle with both internal and external demand for competitive commercial environments. Soviet legacy with its inflexible and extensive central planning, relatively low openness to western trade, and a market-unfriendly legal system¹⁷⁸ has left a significant mark

¹⁷⁵ Concorde Capital Report 2013.

Business-group (oligarch) assets are those companies owned by large official Ukrainian holding companies, or companies whose main owners have other businesses of comparable size.

¹⁷⁶ Berkowitz, Daniel, Pistor Katarina, Richard Jean-Francois, The Transplant Effect, *American Journal of Comparative Law*, 2003, p. 163, p. 344, Table 6

¹⁷⁷ The NCSSM official site: <http://www.nssmc.gov.ua>

¹⁷⁸ Saul Estrin, Competition and Corporate Governance in Transition, *Journal of Economic Perspectives*, 16 (1), p. 101-124

in the development of Ukrainian company law. In the next years Ukraine's company law is going to be adapted in order to meet the requirements of European Union law since Ukraine as the aspiring state have taken an obligation to accept the EU legal framework "off the shelf".¹⁷⁹ In spite of this, a troublesome question remains to exist: what kind of company law should govern companies in developing and transition countries like Ukraine? Is there a model of company law that would perfectly fit into the conditions and processes in developing countries and emerging markets, and, if the answer is positive, how to create such a model? These questions remain to be open and require further analysis.

It is obvious that company law in an emerging economy must address a broader set of goals, and operate within a far less evolved market and legal infrastructure, than company law in a developed economy¹⁸⁰. As it is noted in the literature, emerging economies should not simply copy the corporate laws of developed economies because these laws depend upon highly evolved market, legal, and governmental institutions and cultural norms that often do not exist in emerging economies. For example, German corporate law is adapted to strong banks and labor unions, while American - to strong capital markets, weak financial institutions, and strong corporate managers¹⁸¹. Thus, corporate law must be designed substantially from scratch to work within the infrastructure available precisely in an emerging market¹⁸².

When designing particular law, two general approaches are possible: the "prohibitory model" that "bars a wide variety of suspect corporate behavior in considerable detail"¹⁸³ and prescribes almost every aspect of corporate activity in the laws, and the "enabling model" which is based on wide dispositiveness and discretion of the parties. The prohibitive model is familiar from nineteenth-century corporation statutes in the United States and Great Britain and, to some extent, from European corporate codes and emerging market corporate codes today¹⁸⁴, when the enabling model is the product of the twentieth century and now is widespread among the developed markets.

It is needless to say that the company laws of emerging economies have a tendency to a different balance between enabling and restrictive provisions than do the laws of developed economies. Minority shareholders in countries like Ukraine require strong legal protection from insiders because the market control that provide such protection in developed economies and public enforcement are weak. In our opinion, it is obvious that the enabling model are clearly unsuitable for the emerging economies including Ukraine, where transparency and disclosure on the market is not sufficient, financial markets are not competitive with the developed ones, and judicial and law enforcement systems are poor. At the same time, the prohibitory model is not flexible and may impede the development of companies, reduce incentives for the growth and improvement of corporate governance, despite being, actually, a good guarantee of property rights protection for the investors.

¹⁷⁹ Ibid.

¹⁸⁰ Bernard Black & Reinier Kraakman, *A Self-Enforcing Model of Corporate Law*, 109 HARV. L. REV. 1911 (1996) (presenting the principles of a new corporate law for Russia). The project of privatizing the Russian economy and establishing self-enforcing corporate governance, however, failed miserably. A culture of extreme self-dealing and corruption was among the major reasons, available at: <http://www.usdrinc.com/downloads/A-Self-Enforcing-Model.pdf>

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Supra note 176

As a solution for this dilemma, B. Black and R. Kraakman (1996)¹⁸⁵ have developed a "self-enforcing" approach to drafting company law, which, according to the authors, in emerging economies is the best legal strategy for protecting outside investors in large companies while simultaneously preserving managers' discretion to invest. The self-enforcing model structures corporate decision making processes to allow large outside shareholders to protect themselves from insider opportunism with minimal resort to legal authority, including the courts and administrative agencies for enforcement. Thus, it is robust even when these resources are weak. The authors emphasizes that in transitional economies, a self-enforcing model of corporate law dominates both the prohibitory model and the enabling model¹⁸⁶.

The central features of the "self-enforcing" model of company law could be summarized to¹⁸⁷: (i) the need to control self-dealing of managers with respect to shareholders; (ii) reliance on procedural protections (such as transaction approval by independent directors, shareholders) rather than on flat prohibitions of suspect categories of transactions; (iii) enforcement through actions by direct participants (shareholders, directors, managers), rather than indirect (judges, regulators, legal and accounting professionals etc.); (iv) usage, whenever possible, of bright-line rules, rather than standards, to define proper and improper behavior; (v) strong legal remedies on paper, to compensate for the low probability that the sanctions will be applied in fact.

It seems that the model of self-enforcing company law may be an appropriate choice for emerging markets to protect minority shareholders and improve overall corporate environment. It should be emphasized that Ukraine's legislators have been designing some provisions of the Law On JSCs from 2008 based on that model. To be precise, in the beginning these were different variants of one and the same draft law, firstly presented in the fall of 1998, which, actually, was drafted on the base of the model law "On Joint Stock Companies", drawn up by Professor B. Black and Anna Tarasova based on the aforementioned concept of self-enforcing model, introduced by B.Black and R.Kraakman¹⁸⁸. But since its first presentation the draft started to live its own life, passing through hands of various initiative groups, undergoing modifications, reductions and mutations. Re-shaping the draft to meet the narrow interests of certain groups in search of political and economic compromises couldn't but affect the structure of the model and connections between its elements¹⁸⁹. Thus, after the eight-year period of revisions the draft law lost to a considerable extent the features of self-enforcing model¹⁹⁰. But from 2008 till now the Law On JSCs has been amended many times and partially turned back towards the self-enforcing approach again.

Thus, as for now, the Ukrainian law "On Joint Stock Companies" is step by step approaching to proper standards of development of company legislation. It dedicates special attention to the protection of the rights of minority shareholders, introducing solutions which acknowledge a need to balance of interests of the majority against those of the minority. A series of generally recognized legal instruments based on the self-enforcing model of company law were introduced into it, namely:

¹⁸⁵ *Supra* note 176

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ Yefymenko A., Corporate Governance under Ukraine's new JSCs law, Social Science Research Network, 2009, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1387360

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

- a one share, one vote rule;
- rules on determination of market price;
- cumulative voting rule for election of a supervisory board and an audit committee;
- mergers, liquidations, and other transactions require approval by a supermajority of shares;
- the right of a shareholder to claim buy-out of shares by a company in case of significant changes related to the company's activity (e.g., reorganization, changes in the share capital, etc.);
- the rules on mandatory bid;
- special requirements to be met by the company to enter into significant transactions and transactions with affiliated parties.

Besides, previously, in Ukraine employees which are simultaneously the shareholders of the company, were vulnerable to having their votes controlled by corporate managers. The Law On JSCS introduced special rules that safeguard the rights of employee-shareholders, namely prohibition to require a shareholder being the company employee to provide information about the way he/she has voted or is going to vote at the general meeting, or the alienation of shares by a shareholder being the company employee or the intent to alienate them, or demand a power of attorney for the participation in the general meeting. In case of violation of this rule, the officer of the company shall be drawn to the administrative and pecuniary liability, dismissed from his position, and the contract governed by the civil law or the labour contract with the said officer shall be terminated.

These and other features of the self-enforcing approach have produced a JSCs law of Ukraine to be novel and modern and familiar for investors and regulators of developed countries. But still, as it was shown in the previous paragraphs, company law of Ukraine requires many reforms and efforts to be devoted. When discussing creating the best model of company law particularly for Ukraine it should be taken into account that political and social instability, weak and corrupted judicial and administrative institutions, poor ownership culture, concentration of capital in the hands of small groups of people, huge number of small shareholders are the defining factors that influence the company law paradigm in Ukraine. While western stock companies, which served as a model for the new Law On JSCs, strive to increase the value of their shares, shareholders in Ukraine have the sole purpose of gaining control over the company and keeping hold of it. Practically all Ukrainian political forces have close connections with large financial and industrial groups that by holding companies, mainly off-shore, control the major part of Ukrainian industry¹⁹¹, and all the attempts to improve legislation *de-facto* are to be agreed with them. Self-dealing transactions, opportunism of the managers, "tunneling", constant attempts to circumvent the laws in order to gain certain profits (for example, tax optimization) are very familiar for Ukrainian company law practice.

Taking these into consideration, the reform process in Ukrainian company law is and will be a time-consuming process involving several relevant factors - level of economic development, political influences, culture and level of knowledge of the judges and officials. Whether the self-enforcing model of company law can play a major role in overcoming Ukraine's problems and challenges remains to be seen. Without doubts, such a model cannot resolve

¹⁹¹ *Supra* note 184

all problems of company law. Since Ukrainian company law regulations contain many ambiguous provisions (especially in the Economic Code of Ukraine) and gaps, they will have to be explained or filled in by a regulator or court. In such a case the self-enforcing model may be not enough in order to provide real protection for shareholders. Moreover, the effectiveness of such a self-enforcing system in a developing country with very weak judicial enforcement and courts may be simply overrated. But still the self-enforcing approach seems to be the most appropriate for Ukraine since it creates corporate decision making processes that allow minority shareholders to protect themselves by their own voting decisions and by exercising transactional rights. In our opinion, instead of an enabling company law, for the emerging economies a much more mandatory company law regime is more suitable as it provides for a scope of possible behavior and prevents future abuses. Naturally, once the Ukrainian corporate society "grows up", its corporate culture strengthens and both the executives and shareholders feel and understand the benefits from obeying procedures required by the laws, the market constraints and a sophisticated judiciary develop to limit opportunism by managers and large shareholders, the self-enforcement regime may gradually be weakened and some elements from the enabling model be added. As for now, Ukraine has not reached yet such level of culture, both legal and corporate, that will allow to "untie the hands" for managers and majority shareholders. Moreover, company law provisions in Ukraine should be more precise as vague and unstable standards will rarely be understood and followed unlike the explicit instructions. From that point of view all discrepancies and inconsistencies should be eliminated from company legislation of Ukraine.

8.2. TOWARDS COMPETITIVE LEGAL FRAMEWORK FOR COMPANIES – BETWEEN BORROWING, LEAPFROGGING, AND INNOVATING

As it is often pointed out in the literature, a country's company laws, in their entirety, comprise a form of „business constitution“ for all of the participants in the country's economic life¹⁹². It is commonly accepted that on a practical level, competitive company law should be straightforward, clear, transparent, universal and, to the extent practicable, adopt a *laissez faire* attitude towards government regulation of business. In short, company laws should lay out the „rules of the game“ that all participants in a country's business life will apply consistently, and on which they can depend in conducting their business¹⁹³. The problem lies in defining methods of how to create such a competitive legal framework for companies which will not consist an obstacle for business and economic activities.

At first glance, the borrowing through introducing rules that are applied in foreign countries, where similar problems have already occurred, seems to be a perfect solution due to its simplicity, fastness, popularity and prestige, although the respective rules not always are specifically devised for the recipient country in which they then function. But such an approach leaves many open questions. For example, maybe it is better and more effective to devote significant efforts and resources in order to create some new and extraordinary legal rules perfectly suitable for relevant country, namely to innovate rather than borrow "turnkey solutions"? Maybe it would be much more efficient to use proven solutions and best

¹⁹² Ukrainian Company Laws and Regulations Handbook, International Business Publications, Washington, 2012, p. 69

¹⁹³ The OECD Report "Legal Issues with Regard to Business Operations and Investment in Ukraine", available at: <http://www.oecd.org/cfe/leed/37074808.pdf>

practices from other countries, which are considered to be leading and developed? Should we develop company law legislation gradually, step by step, without any haste or maybe we should leapfrog some phases and apply the most advanced revolutionary solutions from the examples of Western countries that in one fell swoop are able to put Ukraine on the same level as the EU member states? All these questions are of significant importance when modeling the new system of company law for particular country, in our case – for Ukraine.

Alan Watson has noticed that all changes in legal systems are the result of borrowing. This is true both for the Western world's private law of Roman Civil law and English Common law".¹⁹⁴ Obviously, borrowing is the fastest way of creating the new legislation. Transplant could be considered as solutions of good quality which are internationally accepted and attractive for investors. But this cannot eliminate their serious dangers, which are concentrated around two questions: firstly, whether or not the legislation is needed at all, and secondly, whether the transplanted regulation fits into the recipient legal system¹⁹⁵. Thus, legal transplants pose a two-fold efficiency problem. Even if they meet the efficiency criteria for market-supporting regulation, they still have to pass the reality test within the socio-economic context of the "importing country".¹⁹⁶

There are many views on the question what defines the success of borrowing. Actually, Watson in his work does not offer a detailed explanation why lawmakers adopt foreign legal concepts when domestic laws are unable to cope with economic change. He rejects socio-economic analysis¹⁹⁷. At the same time, LaPorta/Lopez-de-Silanez/Shleifer/Vishny pointed a radical departure: the historical origin of a country's legal rules is highly correlated with its current regulatory climate and economic outcomes.¹⁹⁸ Kahn-Freund identified a two-step process to determine the viability of a proposed transplant. The first step is to determine the relationship between the legal rule to be transplanted and the socio-political structure of the donor state. The second step involves comparing the socio-political environment of the donor and receiving state.¹⁹⁹ In our opinion, both socio-economic analysis and assessment of the past and present legal and political environment are important. As was mentioned earlier, Ukraine had inherited most of its regulations from native continental system, although there are many traces of the Anglo-Saxon one as well. Therefore, we believe that the donor legal system is not as much important as a very transplant *per se*, thus, a special attention should be paid to the issue of how the respected transplant corresponds to the local environment. It should be properly adapted into the national social, economic and regulatory conditions.

It should be emphasized that Ukraine's company law has been developing gradually: from poor regulations on the minorities' protection, wide scope of managers' competence, absence of the supervisory board etc. to a quite competitive and protective framework which is able to attract the investors and help the Ukrainian economy to survive. Probably, it

¹⁹⁴ Watson A., *Legal Transplants: An Approach to Comparative Law*, Edinburgh, 1974, p. 95

¹⁹⁵ Kulms, Rainer, *Optimistic Normativism After Two Decades of Legal Transplants and Autonomous Developments* [in:], *Private Law in Eastern Europe*. Autonomous Developments or Legal Transplants?, Ed. by Christa Jessel-Holst, Rainer Kulms and Alexander Trunk, 2010. XV, p. 7-14

¹⁹⁶ Waelde, Gunderson, *Legislative reform in transition countries: Western Transplants – A Short-Cut to Social Market Economy Status?*, I.C.L.Q. 43 (1994), 347 (371).

¹⁹⁷ *Supra* note 190

¹⁹⁸ LaPorta, Lopez-de-Silanez, Shleifer, Vishny, *Legal Determinants of External Finance*, 52 (3) (1997) *J. Fin.* 1131

¹⁹⁹ Kahn-Freund, Otto, *On Use and Misuse of Comparative Law*, 37 *Mod. L. Rev.* 1 (1974), p. 18

Three factors should be considered: (1) the macro-political structure of the donor state (democracy or dictatorship?); (2) the distribution of power within the political system; and (3) the role played by organized interests

could be labeled as “leapfrogging”, the concept of which explains how to accelerate the development by skipping inferior, less efficient, and more expensive solutions and move directly to more advanced ones²⁰⁰. In every case, the effect could be achieved only through the borrowing of the most effective provisions outside and adopting such legislative institutions which are tested and proven in other social systems to a local one. Thus, in the transition process the phenomenon of legal transplantation is unavoidable. Moreover, the reception of foreign law is desirable and justified in many cases, however, it must be harmonized with the real needs of the particular target society. It is very doubtful (but, actually, desirable) that nowadays a country could invent its own legal decisions completely autonomously without any spying and reflection to the external sources and trends. All this does not prevent a state from having particular and special legal solutions which are not widespread and mostly criticized abroad, like a 60% quorum requirement in Ukrainian companies.

Another reason for the implementation of foreign legal rules or institutions into a national legal system could be the demand for the harmonization of laws²⁰¹. Undoubtedly, the recent events have demonstrated Ukraine's abilities as a future Member State of the European Union. Thus, Ukrainian company law needs to be changed and become a part of the process of harmonisation and unification with laws of the Member States. Then, one could note that the problem of how to create a competitive company law is removed as now there is only one “lighthouse” on which the Ukraine's lawmakers should focus – the EU *Acquis*. In our opinion, the law of the EU could serve as an excellent solution when establishing a competitive company law framework in Ukraine. Differences between legal regimes hinder commercial cooperation between companies of Ukraine and EU member states, and the desire to overcome them operates as a powerful incentive to accelerate legal reforms in Ukraine.

In such a case the problem lies rather in proper application of law in the judicial, arbitral and business practice than in existence of adequate regulations. It is generally accepted that every statute is as good as its application²⁰². Good application of the law can eliminate to a great deal its contradictions, inconsistencies that are understandable for newer areas of law and legal institutes, and also logically originate in part from the abstract nature of the regulations as opposed to concrete business needs²⁰³. Due to weak institutions the enforcement of transplanted law in Ukraine is often problematic and Ukraine should pay special attention to this issue during harmonizing its legislation with the *Acquis*.

9. CONCLUSIONS AND OUTLOOK

²⁰⁰ Rouibah K., Khalil O., *Emerging Markets and E-commerce in Developing Economies*, Information Science Reference, 2008, p. 187

²⁰¹ Kisfaludi A., *Company Law in Hungary* [in:] **Private Law in Eastern Europe**. Autonomous Developments or Legal Transplants?, Ed. by Christa Jessel-Holst, Rainer Kulms and Alexander Trunk, 2010. XV, p. 437-444

²⁰² *Supra* note 124

²⁰³ *Ibid.*

Since 1991, when Ukraine gained independence, the European Union and Ukraine have developed an increasingly dynamic relationship. The EU technical and financial cooperation supports Ukrainian ambitions to get closer to the European Union. The new Association Agreement of 2014 has enhanced the co-operation between EU and Ukraine, *inter alia*, in all areas of company law, corporate governance, accounting and auditing issues through exchanging experience and information about their best practice and their current regulatory frameworks.

The development of a market economy has influenced the improvement of the company legislation of Ukraine. However, it still remains imperfect and differs from the company legislation of European countries, although various repeated attempts are being undertaken by the state in order to normalize and re-develop the mechanisms of its functioning. Much has been done, but much left to do. The most urgent task is to harmonize the company, corporate governance, accounting and auditing legislation of Ukraine with the EU *Acquis*. The system of national laws is complicated and unstable, with specific legislative provisions being inconsistent and in some cases also controversial. The provisions of the different legislative acts in the sphere of company can put obstacles in the way of enterprises development and the investment climate of Ukraine.

The distinctive feature of the Ukrainian corporate legislation is preservation of conceptual dualism of parallel existence of the legislative acts based on outdated soviet-time concepts (Economic Code of Ukraine) and relatively new legislation based on the European practice ("Law on Joint-Stock Companies", and Civil Code). Simultaneous existence of two conceptually incompatible systems of legal persons, aggravated by use of many common terms with different meaning, prevents formation of a clear concept of a legal person. The conceptual dualism hinders development of company legislation and precludes formation of consistent and sustainable judicial practice. The new Law on Joint Stock Companies and its later amendments improved the present legislation, however there are still many areas that should be improved in order to be in compliance with the EU Directives. Therefore, the positive experiences and effective legal solutions of member countries of the European Union (EU) can be used to contribute to the integration of Ukraine in this area within the process of unification and harmonization of the company, corporate governance, accounting and audit legislation of Ukraine.

10. LIST OF EU AND INTERNATIONAL LEGISLATION

International Treaties, Agreements and reference documents:

- The Association Agenda
- The Association Agreement between the European Union and its Member States of the one part, and Ukraine, of the other part
- White Paper on the preparation of associated countries of Central and Eastern Europe for integration into the internal market of the Union
- The Partnership and Cooperation Agreement

Company Law and Corporate Governance:

- Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC
- Directive 2009/109/EC Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions
- Directive 2007/63/EC amending Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies
- Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies
- Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent
- Directive 2005/56/EC on cross-border mergers of limited liability companies
- Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
- Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent
- Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees
- Directive 2009/102/EC in the area of company law on single-member private limited liability companies
- Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State
- Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC
- Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
- Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, as amended by Directive 2007/63/EC
- Directive 2011/35/EU concerning mergers of public limited liability companies
- Second Company Law Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of

the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent

- Directive 2009/101/EC on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent
- Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC
- Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
- Council regulation (EC) 2157/2001 on the Statute for a European company (SE)
- Council regulation (EEC) 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)
- OECD Principles on Corporate Governance
- Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies (2004/913/EC)
- Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC)
- Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies
- Proposal for a directive amending Shareholders' Rights Directive (2014/0121 (COD))
- Draft of the Directive on the cross-border transfer of a company's registered office (14th Company Law Directive)

Accounting:

- Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
- International Accounting Standards (IAS) Regulation 1606/2002
- Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards

Auditing:

- Directive 2008/30/EC amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
- Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending

Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

11. LIST OF UKRAINIAN LEGISLATION

- Law of Ukraine On State Program of Adaptation of the Legislation of Ukraine to the Legislation of European Union
- Decree of the President of Ukraine on Approval of the Program of Economic Reforms for 2010-2014 "Prosperous Society, Competitive Economy, Effective State"
- Concept of adaptation of Ukrainian legislation to legislation of European Union

Company Law and Corporate Governance:

- Civil Code of Ukraine
- Economic Code of Ukraine
- Economic Procedure Code of Ukraine
- Law of Ukraine On Business Associations
- Law of Ukraine On Joint-Stock Companies
- Law of Ukraine On Depository System of Ukraine
- Law of Ukraine On State Registration of Legal Entities and Individual Entrepreneurs
- Law of Ukraine On Securities and the Stock Market
- Law of Ukraine On State Regulation of Securities Market in Ukraine
- Law of Ukraine On Private International Law
- Law of Ukraine On Financial Services and State Regulation of Financial Services
- Law of Ukraine On the Judiciary and the Status of Judges
- Decision of the NCSSN On Approval of the Public or Private Joint Stock Company Authorized Capital Increase (Reduction) Procedure
- Decision of the NCSSM On Approval of the Procedure for Cancellation of the Shares Redeemed by Joint-Stock Company Without Change of the Size of the Authorized Capital
- Decision of the NCSSM On Supervision of Shareholders Registration, General Shareholder Meeting and Voting, and Summarizing the Results of Voting on the General Shareholder Meeting
- Decision of the NCSSM On Approval of the Regulation on information Disclosure by Securities Issuers
- Order of the Ukrainian Ministry of Foreign Economic Relations and Trade On Approval of the Instruction on the Procedure for Registering Representative Office of Foreign Business Entities in Ukraine
- Resolution of the Board of the National Bank of Ukraine Guidelines for the inspection of banks. „Risk assessment system"
- Resolution of the Board of the National Bank of Ukraine On the Approval of the Methodological Recommendations on the Organization and Functioning Risk Management Systems in Banks
- Resolution of the Financial Services Market Regulation Commission On Approval of Methodological Recommendations for Management System and Information Disclosure by Financial Institutions
- Principles of Corporate Governance adopted by the Resolution of the NCSSM

- Resolution of the Plenum of the Supreme Court of Ukraine on Corporate Disputes No. 13 dated 24 October 2008
- Recommendations of the Presidium of the Highest commercial court of Ukraine of 28.12.2007 No. 04-5/14 "On the practice of application of legislation in consideration of cases arising from corporate relations"
- Clarifications of the Presidium of the Highest commercial court of Ukraine of 31.05.2002 No. 05-5/608 "On certain practical issues of consideration of cases involving foreign commercial entities and organizations"
- Resolution of the Plenum of the Highest commercial court of Ukraine of 26.12.2011 No. 18 "On certain practical issues of application of the Economic Procedure Code of Ukraine by the first instance courts"

Accounting:

- Law of Ukraine On Accounting and Financial Reporting
- Cabinet of Ministers Regulation On Strategy of IFRS Implementation in Ukraine
- Cabinet of Ministers Regulation On IFRS Reform Program
- NBU Regulation On Procedure of Financial Reporting Preparation and Disclosure by the Banks in Ukraine
- NCSSM Decision On Recommendations on Transformation of Financial Statements of Ukrainian Enterprises in to the IFRS Based Statements
- NCRFS Regulation On Action Plan for IFRS Implementation for Non-Banking Financial Institutions
- National accounting standard (П(С)БО 25)

Auditing:

- Law of Ukraine On Audit Activity
- Audit Chamber Decision (excerpt from the minutes) On Usage of Audit and Ethics Standards of International Accountants Association in Ukraine

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13. APPENDICES

Appendix No. 1 Ukrainian Company Law Legislation – Inconsistencies Table

**Appendix No. 2 Ukrainian Company Law and Corporate Governance Legislation –
Approximation Tables**

| | |
|------------------|---|
| Appendix No. 2.1 | Civil Code (excerpts) |
| Appendix No. 2.2 | Economic Code (excerpts) |
| Appendix No. 2.3 | Law on Business Associations |
| Appendix No. 2.4 | Law on State Registration of Legal Entities and Individual Entrepreneurs |
| Appendix No. 2.5 | Law on Joint Stock Companies |
| Appendix No. 2.6 | NCSSM Decision On Approval Of The Public Or Private Joint Stock Company Authorised Capital Increase (Reduction) Procedure |
| Appendix No. 2.7 | NCSSM Decision On Supervision of Shareholders registration, GSM and Voting, and summarizing of the results of voting on the GSM |
| Appendix No. 2.8 | Law on Securities and Stock Market |

Appendix No. 2.9 Law on Depository System
Appendix No. 2.10 Principles of Corporate Governance

Appendix No. 3 Ukrainian Audit and Accounting Legislation – Approximation Tables

Appendix No. 3.1 Law on Accounting and Financial Reporting
Appendix No. 3.2 Law on Audit Activity

Appendix No. 4 EU – Ukraine Association Agreement (excerpt)

Appendix No. 5 Minutes from the Workshop held on December 15th, 2014 in Kiev

LIST OF INCONSISTENCIES

| Civil Code of Ukraine | Economic Code of Ukraine | Law of Ukraine "On Business Associations" | Law of Ukraine "On Joint Stock Companies" | Propositions |
|--|---|---|---|---|
| Separated subdivisions of the business entity | | | | |
| According to the Art. 95 branches and representative offices are separated subdivisions of the business entity. | According to part 2 of the Art. 58 branches (departments) and representative offices are separated subdivisions of the business entity. | According to the Art. 9 a business entity can establish branches and representative offices on the territory of Ukraine. | n/a | To unify the legislation of Ukraine it is necessary to specify that branches and representative offices are separated subdivisions of the business entity. |
| Reorganization and spin off | | | | |
| According to the Art. 104 the legal entity shall be terminated because of reorganization (merger, accession, division or transformation) or due to its liquidation. In the Civil Code of Ukraine additionally is used such definition as " spin off ". According to the Art. 109 spin-off is a transfer of a part of property, rights and obligations of the legal entity to one or several new legal | According to the Art. 59 termination of the business entity shall be undertaken through reorganization (merger, accession, division or transformation) or due to its liquidation. According to the provisions of the Commercial Code of Ukraine the concept « spin off » isn't an alternative to " termination ". However, the provisions about spin off are in the article entitled "Termination of the business | n/a | n/a | To unify the legislation of Ukraine it is necessary to define one approach to the concept " reorganization ". According to the provisions of the Civil Code of Ukraine spin off can't be considered as reorganization. According to the provisions of the Commercial Code of Ukraine the concept « spin off » isn't an alternative to " termination ". However, the provisions about |

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| <p>entities being created.</p> | <p>entity." According to part 4 of the Art. 59 in case of spin-off of one or several new business entities each of them shall be vested with property rights and duties of the reorganized entity in appropriate percentages on the basis of the division act (balance sheet).</p> | | | <p>spin off are in the article entitled "Termination of the business entity." However the controversial provisions of the current legislation can make problems in practice.</p> |
| <p>Definition of "Business Company"</p> | | | | |
| <p>According to part 1 of the Art. 113 a business company is a legal entity with the charter (aggregate) capital divided into participatory interests among its participants.</p> | <p>According to part 1 of the Art. 79 business companies shall be deemed enterprises or other business entities, set up by legal entities and/or individuals by means of uniting their property and participating in entrepreneurial activity of the company with the purpose of generating profit. The business companies in cases envisaged by the present Code may consist of one participant.</p> | <p>According to part 1 of the Art. 1 a business company is a legal entity with the charter (aggregate) capital divided into participatory interests among its participants.</p> | <p>n/a</p> | <p>To unify the legislation of Ukraine it is necessary to bring provisions of the Commercial Code of Ukraine in line with the Civil Code of Ukraine and Law of Ukraine "On Business Companies".</p> |
| <p>Definition of "Enterprise"</p> | | | | |

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| According to part 1 of the Art. 191 enterprise is the sole property complex that is used for carrying out business activities. | According to part 1 of the Art 62 enterprise shall be understood as an independent business entity established by a competent state authority or local self-government body, or by other bodies for satisfaction of public and personal needs by means of regular exercise of production, scientific research, trade, other business activities in accordance with the procedure prescribed by this Code and other laws. | n/a | n/a | According to the provisions of the Civil Code of Ukraine the enterprise is the object and according to the provisions of the Commercial Code of Ukraine the enterprise is the subject . To unify the legislation of Ukraine it is necessary to define one legislative approach to the definition " enterprise ". |
| Types and Organizational Forms of Business Companies | | | | |
| Legal entities may be established as companies, institutions and in other forms envisaged by the law (part 1 of the Art. 83). | According to the provisions of the Art. 63 the types of the business companies are the following: state and community-owned unitary and corporate enterprises. | n/a | n/a | To unify the legislation of Ukraine it is necessary to define one legislative approach to the classification of the "Types and Organizational Forms of Business Companies". |
| Types of the Business Companies depending on form of ownership | | | | |
| There is no definition of " mixed | According to part 1 of the Art. 63 | There is no definition of " mixed | There is no definition of " mixed | According to the provisions of the |

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| <p>and collective from of ownership".</p> | <p>business companies of the following types can operate in Ukraine depending on forms of ownership envisaged by the law:</p> <p>a private enterprise operating on the basis of private property of individuals or a business entity (legal entity);</p> <p>an enterprise based on the collective property (collectively owned enterprise);</p> <p>a community-owned enterprise operating on the basis of the property owned by a territorial community;</p> <p>a state-owned enterprise operating on the basis of the state-owned property;</p> <p>an enterprise based on the mixed form of property (based on the combination of property of various forms of ownership).</p> <p>Other types of enterprises envisaged by law can also operate in Ukraine.</p> | <p>and collective from of ownership".</p> | <p>and collective from of ownership".</p> | <p>Constitution of Ukraine, of the Civil Code of Ukraine there are only private, state and communal forms of ownership. The definition of "mixed and collective from of ownership" cannot be found in any legislative act of Ukraine except Commercial Code of Ukraine. In addition, the specified provisions refer only to the participation in the establishment of the business company by participants of different forms of ownership.</p> <p>To unify the legislation of Ukraine it is necessary to exclude the provision about "mixed and collective from of ownership".</p> |
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Definition of "Foreign Enterprise"

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| n/a | According to part 2 of the Art. 63 an enterprise, the charter capital of which is composed of foreign investments for one hundred per cent, shall be deemed to be a foreign enterprise . | n/a | n/a | An enterprise, the charter capital of which is composed of foreign investments for one hundred per cent, shouldn't be deemed to be a " foreign enterprise ", because such enterprise is established and registered under Ukrainian legislation. Such enterprise is " an enterprise with foreign investments ". |
| Definition of the "Joint-Stock Company" | | | | |
| According to Part 1 of the Art. 152 a joint-stock company is a company the charter capital of which is divided into a definite number of participatory interests of the same nominal value and corporate rights under which are certified by shares. | According to Part 2 of the Art. 80 a joint-stock company shall be deemed a business company that has a charter capital divided into a certain number of shares of the same par value and is held liable for its obligations only with the property of the company, whereas shareholders suffer the risk of losses associated with company activity within the value of their shares. | According to Part 1 of the Art. 24 a joint-stock company is a company with charter (combined) capital divided into determined number of shares of equal nominal value that carries responsibility for the commitments by its assets. | According to Part 1 of the Art. 3 a joint stock company is a business company whose charter capital is divided into certain number of shares of an equal nominal value, under which the corporate rights are confirmed with shares. | To unify the legislation of Ukraine it is necessary to bring provisions of the Commercial Code of Ukraine in line with the Civil Code of Ukraine and Law of Ukraine "On Joint-Stock Companies". The following definition of the «Joint-Stock Company» should be indicated -a joint stock company is a business company whose charter capital is divided into certain number of shares of an equal nominal value, under which the corporate rights are confirmed with shares. |
| Definition of the "Officials of the Company" | | | | |

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| n/a | According to Part 2 of the Art. 89 officials of the company shall be deemed the chairman and members of the executive body, the chairman of the audit commission (auditor) and in the event the company board is set up (supervisory board) – the chairman and members of such board. | According to Part 2 of the Art. 23 the chairman and members of executive body, the head of audit commission, head and members of supervisory board (in companies where they are established) are considered to be the officials of the company. | According to Part 15 of the Art. 1 officials of joint stock company's bodies shall be understood as individuals who occupy the posts of the chairman and members of the supervisory board, executive body, audit commission, chief audit executive of the joint stock company, as well as the chairman and members of another body of the company, if the formation of such a body is envisaged by the charter of the company | To unify the legislation of Ukraine it is necessary to define one definition of " Officials of the Company ", namely officials of the company shall be deemed the chairman and members of the executive body, the chairman of the audit commission (auditor) and in the event the company board is set up (supervisory board) – the chairman and members of such board. |
| Right of economic management, operational management | | | | |
| n/a | According to part 1 of the Art. 133 the basis of the legal regime of property of the business company are the right of ownership and other property rights - the right of economic management, operational management. | n/a | n/a | Civil Code of Ukraine defines only right of ownership and other property rights. |

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
|--|-------------------------|-----------------------------------|
| Civil Code of Ukraine | | |
| | | |
| Chapter 7. GENERAL PROVISIONS ON LEGAL ENTITY | | |
| Article 80. Notion of Legal Entity | | |
| <p>1. Legal entity is an organization established and registered according to the procedure specified by the law.</p> <p>Legal entity is vested with legal capacity and capability and may act as a plaintiff or a defendant in the court.</p> | n/a | |
| Article 81. Types of Legal Entities | | |
| <p>1. Legal entity may be created by integration of natural persons and (or) the property.</p> <p>2. Legal entities shall be divided to legal entities of the Private Law and those of the Public Law. Legal entity of the Private Law shall be organized on the basis of constituent documents according to Article 87 hereof. Legal entity of the Private Law may be established and operate under the model charter in the manner prescribed by law.</p> <p>Legal entity of the Public Law shall be established by the regulatory Act of the President of Ukraine, the state power authority and the power authority of the Autonomous Republic of Crimea or the local self-government body.</p> <p>3. This Code establishes the procedure for establishment of legal entities of the Private Law, their organizational-legal forms and legal status.</p> <p>The procedure for establishment of legal entities of the Private Law and their legal status shall be established by the Constitution of Ukraine and the law.</p> <p>4. Legal entity may be organized by enforced division (separation) as prescribed by the law.</p> | n/a | |
| Article 82. Participation of Legal Entities of the Private Law in Civil Relations | | |
| <p>1. Provisions of this Code shall extend to legal entities of the Private Law in civil relations unless otherwise established by the law.</p> | n/a | |
| Article 83. Type of Legal Entities | | |
| <p>1. Legal entities may be established as companies, institutions and in other forms envisaged by the law.</p> <p>2. A company is an organization created by uniting persons (participants) with the right to the participation in this company. The company may be organized by one person unless otherwise established by the law.</p> <p>Companies shall be divided to entrepreneurial and non-</p> | n/a | |

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| <p>entrepreneurial.</p> <p>3. An institution is an organization created by one or several persons (founders), who do not participate in management thereof, by uniting (separation) of their property with the purpose of achieving the goal specified by the founders at the expense of the referred property.</p> <p>The distinctive feature of the legal status of separate kinds of institutions shall be established by the law.</p> <p>4. Provisions of this Chapter shall be applied to all companies and institutions unless other rules for separate kinds of partnerships or institutions established by the law.</p> | | |
| <p>Article 84. Entrepreneurial Companies</p> | | |
| <p>The companies carrying out the entrepreneurial activity with the purpose of receiving profit and subsequent distribution thereof among their participants (entrepreneurial companies) may be created solely as business companies (full liability company, limited partnership, limited or additional liability company, joint-stock company) or production cooperatives.</p> | n/a | |
| <p>Article 85. Non-entrepreneurial Companies</p> | | |
| <p>1. Non-entrepreneurial companies are companies, the activity of which is not aimed at gaining any profit receipt for subsequent distribution among their participants.</p> <p>2. The distinctive features of the legal status of separate kinds of non-entrepreneurial partnerships shall be established by the law.</p> | n/a | |
| <p>Article 86. Carrying out Entrepreneurial Activity by Non-Entrepreneurial Companies and Institutions</p> | | |
| <p>1. Non-entrepreneurial companies (cooperatives, except for production cooperatives, citizen unions etc.) and institutions along with their principal activity may carry out the entrepreneurial activity unless otherwise established by the law and if this activity complies with the goal they were created for and promotes the achievement thereof.</p> | n/a | |
| <p>Article 87. Creation of a Legal Entity</p> | | |
| <p>1. To create a legal entity, its participants (founders) shall develop incorporation documents to be executed in writing and signed by all its participants (founders) unless the other procedure for the approval thereof was established by law.</p> <p>Legal entity of the Private Law can be established and operate under the model charter approved by the Cabinet of Ministers of Ukraine, which after its adoption by participants become an incorporation document.</p> <p>The founders (participants) of the legal entity established under the</p> | n/a | |

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| <p>model charter can approve a charter in accordance with the law, which become an incorporation document, and carry out activities on the basis thereof.</p> <p>2. An incorporation document is a charter approved by participants or incorporation agreement between participants unless otherwise established by the law.</p> <p>The company established by one person shall act on the basis of the charter approved by this person.</p> <p>3. An institution shall be established on the basis of individual or joint incorporation act composed up by a founder (founders). The incorporation act can be also contained in a testament. Prior to the establishment of the institution, the incorporation act composed by one or several persons can be canceled by the founder (founders).</p> <p>4. Legal entity shall be deemed as established as from the date of its state registration.</p> | | |
| <p>Article 88. Requirements to the Content of Incorporation Documents</p> | | |
| <p>1. The charter of the company shall include a name of legal entity, management bodies, their competence, procedure for decision making by management bodies, procedure for joining and withdrawal from the company unless any additional requirements to the charter are established by this Code or any other law.</p> <p>2. The incorporation agreement of the company shall include a participants' obligation to create the company, a procedure for their joint activity with respect to its creation, conditions of transferring participants' property to the company unless additional requirements to the charter are established by this Code or any other law.</p> <p>3. The incorporation act of the institution shall include its goal, determine its property to be transferred to the institution for achievement of the referred goal as well as management structure of the institution. If the incorporation act included to the testament does not contain some of the aforesaid provisions, they shall be determines by the state registration authority.</p> | n/a | |
| <p>Article 89. State Registration of Legal Entity</p> | | |
| <p>1. Legal entity shall be subject to the state registration according to the procedure specified by the law. State registration data shall be included to the Unified State Register open for public familiarization.</p> <p>2. Grounds for the denial of state registration of the legal entity shall be defined by the law. Denial of the state registration for any other reasons shall be not accepted.</p> <p>3. Denial of the state registration as well as its delay can be claimed in</p> | | <p>Detailed provisions are contained in particular in the Law on State Registration of Legal Entities and Individual Entrepreneurs as well as in specific provisions applicable to particular legal forms of companies</p> |

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| <p>the court.</p> <p>4. The Unified State Register shall include information about the type of legal entity, its name, registered office, management bodies, branches and representative offices, goal of institution and other data established by the law.</p> <p>5. Amendments to incorporation documents of the legal entity concerning information included in the Unified State Register shall come into effect for the third parties since the day of their state registration. Legal entities and their participants are not entitled to refer to absence of the state registration of these amendments in their relations with the third parties, which acted with regard to these amendments.</p> | <p>Directive 2009/101/EC Art. 3 par. 6: The documents and particulars may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 5 [i.e. in the national gazette or electronic platform], unless the company proves that the third parties had knowledge thereof. However, with regard to transactions taking place before the sixteenth day following the disclosure, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof. However, with regard to transactions taking place before the sixteenth day following the disclosure, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof. par. 7: [...] Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities havenot yet been completed, save where non-disclosure causes them not to have effect.</p> | <p>Adjustment needed to improve the level of protection of third parties acting bona fide (in good faith)</p> |
| <p>Article 90. Name of Legal Entity</p> | | |
| <p>1. Legal entity shall have a name containing information about its legal type. The name of the legal entity shall contain information about the nature of its activity. In addition to the full name, the legal entity can have a short name.</p> <p>2. Legal entity that is an entrepreneurial company can have a commercial (firm) name. Commercial (firm) name of the legal entity can be registered according to the procedure established by the law.</p> <p>3. The name of legal entity shall be indicated in its incorporation documents and included to the Unified State Register.</p> <p>4. In case of changing the name along with other requirements</p> | | <p>The requirement of the name of legal entity containing information about (or merely bearing reference to) the nature of the activity of the legal entity should be abolished.</p> <p>Whatever obligation to publish in print</p> |

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| <p>established by laws, the legal entity is obliged to publish a respective announcement in official print media publishing information about the state registration of legal entities to notify all persons having contractual relations with the legal entity about the referred changes. 5. Legal entity is not entitled to use the name of any other legal entity.</p> | | <p>media is becoming outdated and an electronic, easily accessible and searchable platform should be favored— see the recommendations of the SLIM Group, see also Directive 2009/101/EC art. 3 par. 5 sec. 2.</p> |
| <p>Article 91. Civil Legal Capacity of Legal Entity</p> | | |
| <p>1. Legal entity can have the same civil rights and obligations (civil legal capacity) as an individual, except for those, which can belong to a human only by their nature. 2. The civil legal capacity of the legal entity can be restricted only by a court decision. 3. Legal entity can carry out certain kinds of activity, the list of which is specified by laws, after receiving a special permit (license). 4. The civil legal capacity of legal entity shall occur from the moment of its establishment and shall terminate from the day of entering the record on its termination to the Unified State Register.</p> | <p>n/a</p> | |
| <p>Article 92. Civil Capacity of Legal Entity</p> | | |
| <p>1. Legal entity shall acquire civil rights and obligations and exercise them through bodies acting in accordance with the incorporation documents and the law. Procedure for the creation of bodies of the legal entity shall be specified in its incorporation documents and the law. 2. In cases specified by the law, the legal entity may acquire civil rights and obligations and exercise them through its participants. 3. A body or a person acting on behalf of the legal entity according to its incorporation documents or the law is obliged to perform fair and reasonable actions in the interests of the legal entity and not to exceed its/his/her powers. In relations with third parties any restriction of powers to represent legal entity shall not be effective except for cases when the legal entity proves that the third party knew about such restrictions or could not have been unaware of such restrictions. 4. Provided that members of a legal entity's body and other persons acting on behalf of the legal entity according to its incorporation documents or the law violate their obligations with respect to representation, they shall bear joint responsibility for the losses inflicted thereby to the legal entity.</p> | <p>Directive 2009/101/EC art. 10 par. 1. Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs. However, Member States may provide that the company shall not be bound where such acts are outside the objects of the company, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances</p> | <p>Adjustments needed so as to further enhance the reliance of third parties on unrestricted and generally unrestrictable power of the management board to act on behalf of the company</p> |

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| | <p>have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.</p> <p>par. 2. The limits on the powers of the organs of the company, arising under the statutes or from a decision of the competent organs, may not be relied on as against third parties, even if they have been disclosed.</p> | |
| Article 93. Location of Legal Entity | | |
| 1. Location of the legal entity shall be its actual place of business or office where a daily management of its activity (mainly the location place of managing personnel) as well as governance and accounting of the legal entity are conducted. | n/a | Possible inconsistency with art. 25 of the Law of Ukraine "On Private International Law" dated 23.06.2005 № 2709-IV stipulating the incorporation theory |
| Article 94. Personal Non-Property Rights of Legal Entity | | |
| 1. The legal entity shall have a right to its immunity of goodwill, secrecy of correspondence, information and other personal non-property rights it may own. Personal non-property rights of the legal entity shall be protected according to Chapter 3 of this Code. | n/a | |
| Article 95. Branches and Representative Offices | | |
| <p>1. A branch is a separated subdivision of the legal entity situated outside its location that performs all or part of its functions.</p> <p>2. A representative office is a separated subdivision of the legal entity situated outside its location that represents and protects interests of the legal entity.</p> <p>3. Branches and representative offices do not have a legal entity status. They are provided with property of the legal entity, which established them and act on the basis of the regulations approved by the legal entity.</p> <p>4. The managers of branches and representative offices shall be appointed by the legal entity and act on the basis of the power of attorney granted thereby.</p> <p>5. Information about branches and representative offices of the legal entity shall be included to the Unified State Register.</p> | n/a | |
| Article 96. Liability of Legal Entities | | |
| <p>1. Legal entity shall be solely liable for its obligations.</p> <p>2. Legal entity shall be liable for its obligations with all property its assets.</p> <p>3. Participant (founder) of the legal entity shall not be liable for obligations of the legal entity and the legal entity shall not be liable for the obligations of its participant (founder) unless established by</p> | | |

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| <p>incorporation documents and the law.</p> <p>4. Persons establishing the legal entity shall be jointly liable for obligations occurred prior to its state registration.</p> <p>Legal entity shall be liable for obligations of its participants (founders), which are connected with the establishment thereof, only in case of subsequent approval of their actions by the appropriate body of the legal entity.</p> | <p>Directive 2009/101/EC</p> <p>Art. 8 If, before a company being formed has acquired legalpersonality, action has been carried out in its name and thecompany does not assume the obligations arising from suchaction, the persons who acted shall, without limit, be jointlyand severally liable therefor, unless otherwise agreed.</p> | <p>Art. 96 par. 4 CC is compatible with the requirements of the directive. Some national doctrines contain more sophisticated rules, see the German <i>Vorgesellschaft</i>, see also art. 13 of the Polish Code of Commercial Companies:</p> <p>§ 1. The company and the persons who acted in its name shall be liable for the obligations of the capital company in organisation.</p> <p>§ 2. A shareholder of the capital company in organisation shall be jointly and severally liable with the parties referred to in § 1 for the obligations of the company up to the value of the contribution to finance the subscribed shares which has not been made.</p> |
| <p>Article 97. Corporate Governance</p> | | |
| <p>1. Corporate Governance shall be carried out by bodies of the legal entity.</p> <p>2. General participants' meeting and executive body are deemed to be the corporate governance bodies of the legal entity unless otherwise established by the law.</p> | <p>n/a</p> | |
| <p>Article 98. General Participants' Meeting of the Company</p> | | |
| <p>1. General participants' meeting of the company is entitled to adopt decisions on all issues of activity of the legal entity, including on those issues transferred to the competence of executive body by the general meeting.</p> <p>2. Decisions of the general meeting shall be adopted by the simple majority of present participants unless otherwise established by incorporations documents and the law.</p> <p>Resolutions on amendments to the charter, alienation of assets for amount equal to fifty or more per cent of the company's asset and on liquidation of the company shall be adopted by majority of no less than 3/4 votes unless otherwise established by the law.</p> <p>3. The participant of the company does not have any voting right when the general meeting decides upon issues regarding any dead to be concluded with the participant or regarding any dispute between the participant and the company.</p> <p>4. The procedure for convening the general meeting shall be specified</p> | <p>n/a</p> | <p>For the exclusion of voting rights in conflict transactions see new Proposal for a Directive amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive</p> |

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| <p>in the incorporation documents of the company. Participants of the company owning no less than ten per cent of votes can demand to convene the general meeting. Shall the participants' demand to convene the general meeting be not met, these participants are entitled to convene such general meeting by their own. 5. Any decision of the general meeting can be claimed by a participant in the court.</p> | | <p>2013/34/EU as regards certain elements of the corporate governance statement [2014/0121 (COD), version from November 10th, 2014) Art. 9c par. 2: Member States shall ensure that material transactions with related parties are approved by the shareholders or by the administrative or supervisory bodies of the company according to procedures which prevent a related party from taking advantage of its position and provide adequate protection for the minority shareholders' interests. Where the related party transaction involves a director or a shareholder, this director or shareholder and the persons related to them shall be excluded from the vote or at least from having a determining role in the approval process.</p> |
| <p>Article 99. Executive Body of the Company</p> | | |
| <p>1. The general meeting of the company shall appoint an executive body by its decision and specify its competence and membership. 2. The executive body of the company can be composed of one or several persons. The executive body consisting of several persons shall adopt resolutions according to the procedure established by paragraph one of part two of Article 98 hereof. 3. Members of the executive body can be released from the fulfillment of their duties at any time unless the grounds for releasing the executive body member from his/her duties are specified in incorporation documents. 4. According to incorporation documents or laws the executive body can be named as “board”, “directorate” etc.</p> | <p>n/a</p> | |
| <p>Article 100. The Right to Participate in a Company</p> | | |
| <p>1. The right to participate in the company is deemed to be a personal non-property right and cannot be separately transferred to any other person. 2. Participants of the company are entitled to withdraw from the company unless incorporations documents establish a participant's duty to notify about the withdrawal from the company in writing within a certain term which cannot exceed one year. 3. The participant of the company can be expelled from the company in cases and according to</p> | <p>n/a</p> | |

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| the procedure specified by the law. | | |
| Article 101. Institution Governance | | |
| <p>1. Founders of the institution do not participate in its governance. It shall be necessary to create a board in the institution, to which provisions of Article 99 of this Code are applied. The incorporation act can also stipulate the establishment of other bodies and specify the procedure for their creation and membership.</p> <p>2. The supervisory board shall carry out control over the administration of property, achievement of goals of the institution and its other activity pursuant to the incorporation act.</p> | n/a | |
| Article 102. Transfer of Property to the Institution | | |
| <p>1. The incorporation act shall specify the property to be transferred by the founder (and in case of his/her death – by the obliged person) to the institution upon its registration.</p> | n/a | |
| Article 103. Change of Purpose of the Institution and Governance Structure | | |
| <p>1. If the achievement of the purpose of the institution becomes impossible or it threatens social interests, a competent governmental authority can apply to the court with an application to specify another purpose of the institution upon agreement with governance bodies of the institution.</p> <p>2. In case of changing purpose of the institution, the court must consider the founders' intentions and take care of the transfer of benefits from the use of property of the institution to those destinators who these benefits were designed for according to the founder's intent.</p> <p>3. The court can change the governance structure of the institution if required due to changing the purpose of the institution or by other substantial reasons.</p> <p>4. In case of changing the purpose of the institution or its governance structure, its board shall be obliged to notify the court in writing about its opinion on this issue.</p> | n/a | |
| Article 104. Termination of Legal Entity | | |
| <p>1. The legal entity shall be terminated in result of reorganization (merger, accession, spin-off or transformation) or due to its liquidation. In case of reorganization of legal entities their assets, rights and obligations shall be transferred to their legal successor.</p> <p>2. The legal entity shall be deemed terminated from the day of entering the record on its termination to the Unified State Register.</p> <p>3. The termination procedure for legal entities in course of the solvency restoration or bankruptcy shall be established by the law.</p> | n/a | |

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| 4. Termination peculiarities of a bank as a legal entity shall be established by the law. | | |
| Article 105. Execution of the Decision on Legal Entity Termination | | |
| <p>1. Participants of the legal entity, the court or the body that has taken decision on legal entity termination are obliged to notify in writing the body carrying out the state registration within three business days from the moment of taking the decision.</p> <p>2. After recording the decision of founders (participants) of the legal entity, the court or the body authorized by them on legal entity termination in the Unified State Register of Legal Entities and Individual – Entrepreneurs a respective notification about the record in the Unified State Register of Legal Entities and Individual – Entrepreneurs regarding the decision of founders (participants) of the legal entity, the court or the body authorized by them on the legal entity termination shall be published in the specialized print media.</p> <p>3. Participants of the legal entity, the court or the body that has taken decision on a legal entity termination shall appoint a commission for the legal entity termination (reorganization commission, liquidation commission), chairman of the commission or liquidator and establish the procedure and terms for creditors' claims toward the legal entity to be terminated.</p> <p>Functions of the commission for legal entity termination (reorganization commission, liquidation commission) can be assigned to the management body of the legal entity.</p> <p>4. Since the moment of appointing, all corporate governance powers shall be transferred to the commission for the legal entity termination (reorganization commission, liquidation commission) or liquidator. The chairman of the commission, its members or liquidator of the legal entity shall its representative in relations with third parties and act in the court on behalf of the legal entity to be terminated.</p> <p>5. The term for creditors' claims toward the legal entity to be terminated cannot be less than two and more than six months from the date of publishing the notice about the decision on legal entity termination.</p> <p>6. Each individual creditor's claim, including with respect to payment of taxes, duties, a single contribution for obligatory state social insurance, insurance payments to the Pension Fund of Ukraine, social insurance funds, shall be considered. Then a respective decision shall be taken and sent to the creditor no later than thirty days after receiving the creditor's claim by the legal entity to be terminated.</p> | n/a | Requirement of publication in the print media should be supplemented or replaced by publication in electronic platform (see art. 3 par. 5 of the Directive 2009/101/EC). |
| Article 106. Merger, Accession, Spin-Off and Transformation of | | |

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| Legal Entity | | |
| <p>1. Merger, accession, spin-off and transformation of the legal entity shall be carried out upon a decision of participants or a body of the legal entity empowered thereby according to incorporation documents and in cases provided for by the law – upon a decision of the court or appropriate governmental authorities.</p> <p>2. The law may envisage the receipt of a certain approval from the appropriate governmental authorities to terminate the legal entity by merger or accession.</p> | <p>Directive 2011/35/EU (applicable to JSC only) art. 7 - A merger shall require at least the approval of the general meeting of each of the merging companies [...]</p> | |
| Article 107. Procedure of Legal Entity Termination by Merger, Accession, Spin-Off and Transformation | | |
| <p>1. The creditor can demand from the legal entity to be terminated, obligations of which are not secured, to terminate or to fulfill its obligations earlier or to secure the fulfillment of obligations unless otherwise prescribed by laws.</p> <p>2. Upon expiring the term for presenting creditors' claims and satisfying or rejecting thereof, the commission for legal entity termination shall compose a transfer act (in case of merger, accession or transformation) or a distribution balance sheet (in case of spin-off), which shall contain provisions on legal succession with respect to all obligations of the legal entity to be terminated towards all its creditors and debtors including obligations claimed by the parties.</p> <p>3. The transfer act and the distribution balance sheet shall be approved by participants of the legal entity or the body that has taken decision on the termination thereof, except for cases defined by laws. Copies of the transfer act and distribution balance sheet signed by the chairman and members of the commission for the legal entity termination and approved by participants of the legal entity or body that made the decision on legal entity termination shall be transferred to the authority responsible for the state registration of legal entity to be terminated at the place of its state registration and to the body that carries out the state registration of legal entity – successor at the place of its registration.</p> <p>4. The violation of the second and third parts of this Article shall be the ground for refusal to enter a record on legal entity termination and to conduct the state registration of legal entities to be created, i.e. legal successors.</p> <p>5. The legal entity - successor formed in result of the division, shall bear subsidiary liability for obligations of the terminated legal entity, which according to the distribution balance sheet were transferred to another legal entity - a successor. Are there more than two legal</p> | <p>Directive 2011/35/EU (applicable to JSC only)</p> <p>1. The laws of the Member States must provide for an adequate system of protection of the interests of creditors of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.</p> <p>2. To that end, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards. Member States shall lay down the conditions for the protection provided for in paragraph 1 and in the first subparagraph of this paragraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the merger the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.</p> <p>3. Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.</p> <p>Directive 82/891/EEC (Sixth Directive) art. 3 par. 3 (b) Where a liability is not allocated by the draft terms of division and where the interpretation of these terms does not make a</p> | |

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| <p>entities – successors formed in result of division, they shall bear the referred subsidiary liability jointly.</p> <p>6. If several legal entities become a legal entity successor and it is impossible to determine the successor for the specific obligations of the terminated legal entity, the legal entities – successors shall bear joint responsibility towards creditors of the terminated legal entity. Participants (founders) of the terminated legal entity, which were responsible for its obligations under the law or incorporation documents, shall be liable for obligations of the successors, which arose prior to the legal entity termination in the same amount, unless greater responsibility of participants (founders) for the obligations of successors provided for by the law or their incorporation documents.</p> | <p>decision on its allocation possible, each of the recipient companies shall be jointly and severally liable for it. Member States may provide that such joint and several liability be limited to the net assets allocated to each company.</p> <p>Art. 12 par 6. Member States may provide that the recipient companies shall be jointly and severally liable for the obligations of the company being divided. [...].</p> | |
| <p>Article 108. Transformation of Legal Entity</p> | | |
| <p>1. Transformation of the legal entity shall be a modification of its company type.</p> <p>2. In case of transformation, all property, rights and obligations of the previous legal entity shall be transferred to the new legal entity.</p> | | |
| <p>Article 109. Spin-Off</p> | | |
| <p>1. Spin-off is a transfer of a part of property, rights and obligations of the legal entity to one or several new legal entities being created.</p> <p>2. Upon the decision on spin-off participants of the legal entity or body which decided on the spin-off, shall prepare and approve a distribution balance sheet.</p> <p>The court that decided on the spin-off shall determine in its decision a participant of the legal entity or supreme body of the legal entity (owner) which is required to prepare and approve the distribution balance sheet.</p> <p>3. The legal entity formed in result of the spin-off shall bear subsidiary liability for obligations of the legal entity subject to spin-off, which were not transferred to the legal entity formed in result of the spin-off according to the distribution balance sheet. The legal entity subject to spin-off shall bear subsidiary liability for obligations which were transferred to the legal entity formed in result of the spin-off according to the distribution balance sheet. Are there two or more legal entities formed in result of the spin-off they shall bear the referred subsidiary liability jointly with the legal entity subject to spin-off.</p> <p>4. If it is impossible to determine duties of the entity for specific obligations after the spin-off, which existed prior to the spin-off, the legal entity subject to the spin-off and legal entities formed in result of the spin-off shall bear joint responsibility towards creditors under such obligations.</p> | <p>Directive 82/891/EEC (Sixth Directive)</p> <p>art. 22 Articles 3 [... → see supra] 9 to 19 [art. 12 → see supra] of this Directive shall apply [...] to division by the formation of new companies. For this purpose, the expression "companies involved in a division" shall refer to the company being divided and the expression "recipient companies" shall refer to each of the new companies.</p> | |

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| <p>Article 110. Liquidation of Legal Entity</p> | | |
| <p>1. The legal entity shall be liquidated:</p> <p>1) by a decision of its participants or the body of legal entity empowered thereto by incorporation documents, including in connection with expiring of the term and achievement of the goal, for which the legal entity has been created, as well as in other cases provided for by incorporation documents;</p> <p>2) by a court decision on the legal entity liquidation due to violations committed while its creation that cannot be resolved, upon a claim of the legal entity participant or relevant governmental authority;</p> <p>3) by a court on the legal entity liquidation in other cases prescribed by laws, - upon a claim of relevant governmental authority.</p> <p>2. Provided that proceedings for liquidation of the legal person were initiated by a governmental authority, this authority can be appointed as a liquidator, if it has the appropriate authority.</p> <p>3. If the property value of legal entity is insufficient to meet creditors' claims, the legal entity shall conduct all actions in compliance with the procedure established by the law on solvency renewal or adjudication in bankruptcy.</p> <p>4. Peculiarities of bank liquidation shall be specified by the law on banks and banking activity.</p> | <p>Directive 2009/101/EC Art. 12</p> <p>The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:</p> <p>(a) nullity must be ordered by decision of a court of law;</p> <p>(b) nullity may be ordered only on the grounds:</p> <p>(i) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;</p> <p>(ii) that the objects of the company are unlawful or contrary to public policy;</p> <p>(iii) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;</p> <p>(iv) of failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;</p> <p>(v) of the incapacity of all the founder members;</p> <p>(vi) that, contrary to the national law governing the company, the number of founder members is less than two.</p> <p>Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of non-existence, absolute nullity, relative nullity or declaration of nullity.</p> | |
| <p>Article 111. Procedure of Legal Entity Liquidation</p> | | |
| <p>1. After the date of entering a record regarding the decision of founders (participants) of the legal entity, the court or the body authorized by them on the legal entity liquidation in the Unified State Register of Legal Entities and Individual – Entrepreneurs the</p> | <p>n/a</p> | |

liquidation commission (liquidator) shall take all necessary measures to recover receivables of the legal entity being liquidated, and notify each debtor about termination of the legal entity in writing within terms established by this Code.

The liquidation commission (liquidator) shall state requirements and claims for the recovery of debts from debtors of the legal entity.

2. The liquidation commission (liquidator) shall notify participants of the legal entity, the court or authority that made the decision on the legal entity termination about its participation in other legal entities and / or provide the information about business companies, subsidiaries established by the legal entity.

3. During measures aimed at the liquidation of legal entity before expiry of the term for presentation of creditors' claims the liquidation commission (liquidator) shall close accounts opened with financial institutions, except for an account to be used for settlements with creditors while the legal entity liquidation.

4. The Liquidation commission (liquidator) shall take measures to conduct an inventory of the property of legal entity to be terminated and the property of its branches and representative offices, subsidiaries, business companies, as well as property confirming its corporate rights in other legal entities, shall detect and take actions to return the property being at disposal of the third persons.

Where required by law, the liquidation commission (liquidator) provides independent estimation of the property of legal entity to be terminated.

5. The liquidation commission (liquidator) shall take measures to close separate subdivisions of the legal entity (branches, representative offices) and to dismiss employees of the legal entity to be terminated in accordance with the labor legislation.

6. Licenses, permits and other documents as well as seals and stamps to be returned to the governmental authorities, local authorities, shall be given back to them by the liquidation commission (liquidator).

7. To conduct inspections and to determine existence or absence of arrears on taxes, duties, single contribution for obligatory state social insurance, insurance payments to the Pension Fund of Ukraine, social insurance funds the liquidation commission (liquidator) ensure timely submission of documents of the legal entity (its subsidiaries, representative offices), including primary documents, accounting and tax accounting reports, to the authorities of revenue and duties and the Pension Fund of Ukraine and social insurance funds.

Prior to approval of the liquidation balance sheet the liquidation commission (liquidator) prepares statements for the last reporting

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| <p>period and files them to the authorities of revenue and duties, the Pension Fund of Ukraine and social insurance funds.</p> <p>8. The liquidation commission (liquidator) after the deadline for submission of claims by creditors shall execute an interim liquidation balance sheet that includes information about property of the legal entity being liquidated, a list of submitted creditors' claims and results of their review.</p> <p>The interim liquidation balance sheet shall be approved by participants of the legal entity, the court or body that made the decision to liquidate the legal entity.</p> <p>9. Payments to creditors of the legal entity being liquidated, including taxes, duties, single contribution for obligatory state social insurance and other payments to be made to the state or local budget, the Pension Fund of Ukraine, social insurance funds, shall be carried out in order of priority established by Article 112 of this Code.</p> <p>Have the legal entity being liquidated insufficient money to meet creditors' claims, the liquidation commission (liquidator) shall arrange a sale of property of the legal entity.</p> <p>10. Prior to approval of the liquidation balance sheet the liquidation commission (liquidator) prepares statements for the last reporting period and files them to the authorities of revenue and duties, the Pension Fund of Ukraine and social insurance funds.</p> <p>11. Upon completion of payments to creditors the liquidation commission (liquidator) shall execute a liquidation balance sheet, ensures its approval by participants of the legal entity, the court or body that made the decision to terminate the legal entity and ensures its submission to the authorities of revenue and duties.</p> <p>12. Property of the legal entity remained after satisfaction of creditors' claims (including on taxes, duties, single contribution for obligatory state social insurance and other payments to be paid to the state or local budget, the Pension Fund of Ukraine, social insurance funds) shall be transferred to participants of the legal entity, unless otherwise provided for by incorporation documents of the legal entity or the law.</p> <p>13. Documents subject to compulsory custody shall be transmitted to relevant archival institutions in accordance with the legislation.</p> <p>14. The liquidation commission (liquidator) shall file documents necessary for the state registration of the legal entity termination to the state registrar within the term prescribed by laws.</p> | | |
| <p>Article 112. Meeting the Creditors' Demands</p> | | |
| <p>1. In case of liquidation of a solvent legal entity, its creditors' demands shall be met in the following order of priority:</p> | <p>n/a</p> | |

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| <p>1) demands on the indemnification of losses caused by the disability, other health injuries or the death as well as creditors' demands secured by pledge or otherwise shall be met in the first place;</p> <p>2) employees' demands connected with labor relations and author's demands regarding the payment for the use of results of his/her intellectual and creative activity shall be met in the second place;</p> <p>3) the demands on taxes and duties (mandatory payments) shall be met in the third place;</p> <p>4) all other demands shall be met in the fourth place.</p> <p>The demands of the same priority shall be met pro rata to the sum of demands due to each creditor of this priority.</p> <p>2. Sequence of creditors' claims satisfaction under insurance agreements shall be set forth by laws.</p> <p>3. Shall the liquidation committee decline the creditor's claims or avoid their consideration, the creditor can file a claim against the liquidation committee to the court within one month from the date on which he became aware or had to become aware of this declining. Upon a court decision the creditor's claim can be satisfied from the property remained after the legal entity liquidation.</p> <p>4. Creditor's claims filed upon expiring the term specified by the liquidation commission for their submission shall be met on the account of the property of the legal entity being under liquidation that remained after meeting the creditor's claims filed in due time.</p> <p>5. Creditors' claims not approved by the liquidation commission and the creditor has not applied to the court within one month after receiving a notice on full or partial refusal to accept his/her/its claims, claims, the satisfaction of which is declined upon a court decision as well as demands, which were not met due to lack of property of the legal entity being under liquidation shall be deemed satisfied.</p> | | |
| <p align="center">Chapter 8. ENTREPRENEURIAL COMPANIES</p> <p>§ 1. Business Companies</p> <p>1. General Provisions</p> <p>Article 113. Notion and Types of Business Companies</p> | | |
| <p>1. A legal entity with the charter (aggregate) capital divided into participatory interests among its participants shall be deemed a business company.</p> <p>2. Business company can be created in the form of a full liability company, a limited partnership, a limited liability company, an additional liability company and a joint stock company.</p> | n/a | |
| <p>Article 114. Participants of Business Company</p> | | |
| <p>1. An individual or a legal entity can become a participant of a</p> | n/a | |

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| <p>business company. Limitation of the participation in a business company can be established by the law.</p> <p>2. A business company other than a full liability company and a limitedpartnership canbe created by one person who becomes its single participant.</p> | | |
| Article 115. Property of Business Company | | |
| <p>1. A business company shall be the owner of:</p> <ol style="list-style-type: none"> 1) property transferred thereto into possession by the business company participants as a contribution to the charter capital; 2) products manufactured by the company as a result of its economic activity; 3) received incomes; 4) other property acquired on the basis not prohibited by the law. <p>2. Money, securities and other things or property and other alienable rights that have pecuniary value can be a contribution to the charter capital of the business company unless otherwise provided by the law. Pecuniary evaluation of the contribution of the business company participant shall be conducted upon agreement of the business company participants and in cases established by the law it shall be subject to the independent expert examination.</p> | n/a | |
| Article 116. Rights of Business Company Participants | | |
| <p>1. Business company participants shall be entitled according to the procedure specified by the incorporation documents of the partnership and the law:</p> <ol style="list-style-type: none"> 1) to participate in the corporate governance pursuant to the procedure specified in incorporation documents except for cases established by the law; 2) to take part in distributing the profit of the company and receive a part thereof (dividends); 3) to withdraw from the company according to the established procedure; 4) to alienate participatory interests in the charter capital of the company, securities, which acknowledge the participation in the company, according to the procedure established by the law; 5) to obtain information about activity of the company according to the procedure specified by incorporation documents; <p>2. A business company participants can also have other rights specified by incorporation documents and the law.</p> | n/a | |
| Article 117. Duties of Business Company Participants | | |
| <p>1. Business company participants shall be obliged:</p> | n/a | |

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| <p>1) to follow the incorporation document of the company and execute resolutions of the general meeting;</p> <p>2) to fulfill their obligations towards the company including those connected with the property participation as well as to make contributions (pay for the shares) in amount and according to the procedure and by means provided by the incorporation document;</p> <p>3) not to disclose a commercial secret and confidential information about activity of the company.</p> <p>2. Business company participants can also have other duties specified by incorporation documents and the law.</p> | | |
| <p>Article 118. Dependent Business Company</p> | | |
| <p>1. A business company (limited or additional liability company, joint stock company) is deemed to be dependent if another (principal) business company owns twenty or more per cent of the charter capital of the limited or additional liability company or twenty or more per cent of ordinary shares of the joint stock company.</p> <p>2. The business company that purchased or otherwise acquired twenty or more per cent of the charter capital of limited or additional liability company or twenty or more per cent of ordinary shares of the joint stock company shall be obliged to publish this information according to the procedure established by the law.</p> | n/a | Separate dependency or affiliation definitions are contained in separate laws, e.g. art. 2 par. 1 (1) of the Law on JSC. |
| <p>2. Full Liability Company Article 119. Notion of Full Liability Company</p> | | |
| <p>1. A full liability company is a company, participants of which carry out the entrepreneurial activity on behalf of the company and incur joint additional (subsidiary) liability on its obligations by all property owned by them in compliance with the agreement concluded between them.</p> <p>2. A person can be participant of only one full liability company.</p> <p>3. A participant of the full liability company shall not be entitled to take legal deeds on his/her own behalf and in his/her interests or in interests of third parties, which are similar to deeds being a subject of the company activity, without approval of other participants.</p> <p>In case of violation of this rule, the company shall be entitled at its option to demand from such participant either an indemnification of losses inflicted to the company or a transfer of all benefits resulted from these legal deeds to the company.</p> <p>4. The name of full liability company shall include names of all its participants and words “full liability company” or the name of one or several participants with adding words “and company” as well as the words “full liability company”.</p> | n/a | |
| <p>Article 120. Incorporations Agreement of Full Liability Company</p> | | |

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| <p>1. A full liability company shall be created and act on the basis of an incorporation agreement. The incorporation agreement shall be signed by all its participants.</p> <p>2. In addition to the information provided by Article 88 of this Code, the incorporation agreement of the full liability company shall include information on: the amount and composition of the charter capital; the amount and the procedure of alteration of participatory interests of each participant in the charter capital; and amount, composition and terms of making contributions thereby.</p> | n/a | |
| <p>Article 121. Governance of Full Liability Company</p> | | |
| <p>1. A full liability company activity shall be governed upon joint consent of all its participants. The incorporation agreement of the full liability company can envisage cases when a resolution shall be adopted by the majority of its participants' votes.</p> <p>2. Each participant of the full liability company shall have one vote unless another procedure for determining the number of votes provided by the agreement.</p> <p>3. Each participant of the full liability company, despite of the fact whether he/she is authorized to run the company business or not, shall be entitled to familiarize with all documentation on carrying on the company business. The waiver of this right or its restriction, in particular upon consent of participants of the company, shall be inessential.</p> | n/a | |
| <p>Article 122. Conducting Business of Full Liability Company</p> | | |
| <p>1. Each participant of the full liability company shall be entitled to act on behalf of the company unless joint conduct of the company business by all its participants or entrusting it to its separate participants specified by the incorporation agreement.</p> <p>In case of joint conduct of the company business, an approval of all participants of the company is required in each case to make each legal action. If separate participants of the full liability company are entrusted to conduct business, other participants of the company can take legal actions on behalf of the company in case of being granted a power of attorney issued by the participants entrusted to conduct the company business.</p> <p>In relations with third parties the full liability company cannot refer to provisions of the incorporation agreement, which restrict the powers of the full liability company to act on behalf of the company unless it is proved that the third party knew or could know about the absence of participant's right to act on behalf of the company at the moment of taking a legal action.</p> <p>2. In case of non-approving actions of a participant of the full liability</p> | n/a | |

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| <p>company, who acted in jointinterests but had no powers therefor, by other participants, he/she/it shall be entitled todemand from the company to indemnify for expenses incurred thereby if he/she/itproves that in connection with his/her actions the company has retained or acquired theproperty with value exceeding these expense.</p> <p>3. In case of dispute among the participants of the full liability company, the powers to conduct thecompany business granted to one or several participants thereof can be terminated by courtupon the request of one or several other participants of the company if there are enoughgrounds therefor, in particular, by reason of a gross violation of obligations by the participantempowered to conduct the company business or its incapability to conduct business reasonably.On the basis of the court decision, the required modifications shall be introduced to theincorporation agreement of the company.</p> | | |
| <p>Article 123. Distribution of Profits and Losses of Full Liability Company</p> | | |
| <p>1. Profits and losses of the full liability company shall be distributed among its participants prorata to their shares in the total capital unless otherwise provided by the incorporationagreement or arranged by its participants.</p> <p>2. It shall be unacceptable to deprive a participant of the full liability company of a right to participate in the distribution ofprofits and losses.</p> | n/a | |
| <p>Article 124. Liability of Participants of Full Liability Company for its Obligations</p> | | |
| <p>1. Shall the property of the full liability company be insufficient to meet creditors' demands in full, theparticipants of the full liability company shall bear a joint liability for the obligations of the company by all their property that may be subject to levy.</p> <p>2. A participant of the full liability company shall be liable for debts of the company irrespective the fact weatherthey occurred prior to or after his/her/its joining the company.</p> <p>3. A participant of the full liability company which has withdrawn from the company shall be liablefor obligations of the company occurred prior to the moment of his/her/itswithdrawal to the same extent as remained participants within three years from the dayof statement approval on the company activity for the year of his/her/itswithdrawal from the company.</p> <p>4. A participant of the full liability company, which has paid debts of the company in full, is entitled to apply with a recourse claim in</p> | n/a | |

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| appropriate part to other participants which incur liability thereto pro rata to their participatory interests in the charter capital of the company. | | |
| Article 125. Changes of Participants of Full Liability Company | | |
| 1. Participants of the full liability company can be changed in connection with: 1) withdrawal of the participant from the full liability company on his/her/its own initiative; 2) exclusion from participants of the full liability company; 3) cessation of the participation by reasons which are beyond the control of the participant. | n/a | |
| Article 126. Withdrawal from the Full Liability Company | | |
| 1. A participant of the full liability company created for an indefinite term can withdraw from the company any time, having notified thereof not less than three months prior to the actual withdrawal from the company. A pre-term withdrawal of the participant from the full liability company created for a definite term shall be accepted only by essential reasons. 2. A waiver of the right to withdraw from the full liability company shall be null and void. | n/a | |
| Article 127. Transfer of Participatory Interest (its Part) in the Charter Capital of Full Liability Company by its Participant | | |
| 1. A participant of the full liability company shall be entitled to transfer his/her/its participatory interest in the charter capital or its part to another participant of the company or the third party upon consent of its other participants. 2. In case of transferring the participatory interest in the charter capital (its part) to a new owner rights owned by the participant, who transferred the participatory interest in the charter capital (its part), in full or in appropriate proportion shall pass to a new owner. The person, who the participatory interest of the charter capital (its part) has been transferred to, shall incur liability for obligations of the company according to part two of Article 124 hereof. 3. In case of transferring the full participatory interest by the participant to another person the participation of this participant in the full liability company shall be terminated and it/he/she is subject to implications provided by part three hereof. | n/a | |
| Article 128. Exclusion from Participants of the Full Liability Company | | |
| 1. A participant of the full liability company, which fails to fulfill | n/a | |

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| <p>obligations regularly or fulfill obligations imposed thereon by the company in improper way or which prevents by his/her actions (omission of actions) from the achievement of company goals, can be excluded from the company according to the procedure established by the incorporation agreement.</p> <p>2. A decision on exclusion from the full liability company can be appealed in the court.</p> | | |
| <p>Article 129. Cessation of Participation in the Full Liability Company</p> | | |
| <p>1. The full liability company can take a decision on recognizing the participation of the participant in the company as ceased in case of:</p> <ol style="list-style-type: none"> 1) participant's death or recognition of the participant as deceased if he/she/it has no inheritors; 2) liquidation of the legal entity – participant of the company, including in connection with recognition of the company a bankrupt; 3) recognition of the participant as legally incapable, restriction of his/her legal capability or recognition of the participant as missing; 4) enforced reorganization of the legal entity by a court decision, in particular, in connection with its insolvency; 5) imposing a levy on a part of property of the company that corresponds to the participant's participatory interest in the charter capital of the full liability company. <p>2. A decision on recognizing the participation of the participant in the company as ceased can be appealed by interested persons in the court.</p> <p>3. In case of ceasing the participation in the full liability company due to reasons envisaged by part one of this article, the company can continue its activity unless otherwise established by the incorporation agreement or arranged by remaining participants.</p> | n/a | |
| <p>Article 130. Settlements in Case of Withdrawal, Exclusion or Cessation of Participation in the Full Liability Company</p> | | |
| <p>1. A participant, which withdrawn, has been excluded or ceased to be a participant of the full liability company due to reasons specified in Articles 126, 128 and 129 hereof, shall get a value of the property part of the company pro rata to his/her/its participatory interest in the charter capital of the company unless otherwise established by the incorporation agreement.</p> <p>2. If the inheritor of participant of the full liability company – an individual or the successor of the legal entity do not join the full liability company, all settlements therewith should be effected pursuant to part one of this Article.</p> <p>3. Evaluation procedure of the participant's participatory interest in the property of the full liability company and terms of its payment</p> | n/a | |

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| shall be specified by the incorporation agreement and the law. | | |
| Article 131. Levying a Property Part of the Full Liability Company Pro Rata to Participant's Participatory Interest in the Charter Capital of the Company | | |
| <p>1. Imposing a levy on a participant's participatory interest in the charter capital of the full liability company on his/her/its own obligations shall be accepted only in case of insufficiency of other property to meet creditors' demands. Shall the property of participant of the full liability company be insufficient to fulfill its/his/her obligations towards creditors, they can demand to withdraw a property part of the full liability company pro rata to the participatory interest of participant – the debtor in the charter capital of the company according to established procedure.</p> <p>2. A part property of the full liability company pro rata to the participatory interest of participant – the debtor in the charter capital shall be withdrawn in a monetary form or in kind according to the balance sheet made up as of the moment of cessation of participation in the company.</p> | n/a | |
| Article 132. Liquidation of the Full Liability Company | | |
| <p>1. The full liability company shall be liquidated on grounds established by Article 110 hereof as well as in the event when only one participant remains in the company. This participant is entitled to transform this company into another business company type within six months as from the moment, when he/she/it became a single participant of the company according to the procedure specified by this Code.</p> <p>2. In case of participant's withdrawal from the full liability company, exclusion of one of its participants, death of the participant of the company, liquidation of legal entity - the participant of the company or imposing a levy on a part of the property pro rata to the participant's participatory interest in the charter capital of the company by a creditor of one of its participants, the company can continue its activity if it is provided by the incorporation agreement of the company or arranged by the remained participants.</p> | n/a | |
| 3. Limited Partnership | | |
| Article 133. Basic Provisions on Limited Partnership | | |
| <p>1. Limited partnership is a partnership, which along with participants carrying out the entrepreneurial activity on behalf of the partnership and incurring joint additional (subsidiary) liability on obligations of the partnership by all their property (full participants) includes one or several participants (contributors) who bear loss risks connected with the partnership activity within amounts of their contributions and do</p> | n/a | |

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| <p>not participate in the partnership activity.</p> <p>2. The name of limited partnership shall include names of all its participants and words “limited partnership” or contain the name of at least one full participant with adding words “and company” as well as the words “limited partnership”. If the name of limited partnership includes the name of a contributor, such contributor shall become a full participant of the limited partnership.</p> <p>3. Provisions on the full liability company shall be applied to the limited partnership unless otherwise established by this Code or any other law.</p> | | |
| <p>Article 134. Incorporation Agreement of Limited Partnership</p> | | |
| <p>1. The limited partnership shall be established and act on the basis of an incorporation agreement. The incorporation agreement shall be signed by all full participants.</p> <p>2. In addition to the information provided by Article 88 hereof, the incorporation agreement of the limited partnership shall include information about: amount and composition of the charter capital; amount and procedure of changing participatory interests of each full participant in the charter capital; aggregate amount of contributions of the contributors.</p> <p>3. In case of participant’s withdrawal, exclusion or cessation of participation only one full participant remains in the limited partnership, the incorporation agreement shall be transformed into individual application signed by the full participant. If the limited partnership is created by one full participant, the referred individual application (memorandum) containing all information specified by this Article is deemed to be an incorporation document.</p> | n/a | |
| <p>Article 135. Participants of the Limited Partnership</p> | | |
| <p>1. Legal status of full participants of the limited partnership and their liability for obligations of the partnership are specified by provisions of this Code regarding participants of the full liability company.</p> <p>2. A person can become a full participant only of one limited partnership.</p> <p>A full participant of the limited partnership cannot become a participant of the full liability company.</p> <p>A full participant of the limited partnership cannot become a contributor thereof.</p> <p>3. An aggregate amount of contributors’ contributions shall not exceed fifty per cent of the charter capital of the general partnership.</p> <p>4. The charter capital shall be paid by participants of the limited partnership within the first year from the date of state registration.</p> | n/a | |
| <p>Article 136. Limited Partnership Governance</p> | | |

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| <p>1. The limited partnership shall be governed by its full participants according to the procedure established by this Code for the full liability company.</p> <p>2. Contributors are not entitled to participate in governance of the limited partnership activity and object against actions of full participants on the partnership governance. Contributors of the limited partnership can act on behalf of the partnership only on the basis of a power of attorney.</p> | n/a | |
| <p>Article 137. Rights and Duties of Limited Partnership Contributor</p> | | |
| <p>1. A limited partnership contributor shall be obliged to make its contribution to the charter capital. Such contribution shall be confirmed by a certificate of participation in the limited partnership.</p> <p>2. A limited partnership contributor shall be entitled:</p> <p>1) to receive a part of the partnership's profit according to its participatory interest in the charter capital of the partnership pursuant to the procedure established by the incorporation agreement (memorandum);</p> <p>2) to act on behalf of the partnership in case of granting a power of attorney thereto and in accordance therewith;</p> <p>3) to enjoy a preemptive right when acquiring a participatory interest in the charter capital (or its part) of the partnership with respect to third persons according to the provisions of Article 147 hereof.</p> <p>If several contributors wish to acquire a participatory interest (or its part), this participatory interest shall be distributed among them according to their participatory interests in charter capital of the partnership;</p> <p>4) to demand to pay back the contribution on a preferential basis in case of the partnership liquidation;</p> <p>5) to familiarize with annual reports and balance sheets of the partnership;</p> <p>6) to withdraw from the partnership and receive its contribution according to the procedure established by the incorporation agreement (memorandum) upon closing the financial year.</p> <p>7) to transfer its participatory interest in the charter capital (or its part) to another contributor or third person having notified the partnership thereof.</p> <p>The transfer of his/her/its participatory interest in full by the contributor to another person shall terminate his/her/its participation in the limited partnership.</p> <p>3. The incorporation agreement (memorandum) of the limited</p> | n/a | |

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| partnership can also envisage other rights of the contributor. | | |
| Article 138. Liability of Limited Partnership Contributor | | |
| <p>1. If a limited partnership contributor takes a legal action on behalf and in interests of the partnership without appropriate powers therefor, he/she/it shall be released from liability towards creditors for this legal action in case of approval of his/her/its actions by the limited partnership.</p> <p>Is the referred approval from the limited partnership not received, the contributor shall be liable towards third persons for legal action he/she/it has taken by all his/her/its property that may be seized according to the law.</p> <p>2. The limited partnership contributor, who has not made a contribution provided by the incorporation agreement (memorandum), shall be liable to the partnership according to the procedure established by the incorporation agreement (memorandum).</p> | n/a | |
| Article 139. Liquidation of Limited Partnership | | |
| <p>1. A limited partnership shall be liquidated in case of withdrawal of all its contributors. Full participants shall be entitled to transform the limited partnership into a full liability company in case of withdrawal of all its contributors. The limited partnership shall be also liquidated on the grounds specified by Article 132 hereof.</p> <p>The limited partnership shall be not obliged to undergo liquidation if it includes at least one full participant and one contributor.</p> <p>2. In case of the limited partnership liquidation upon effecting settlements with creditors, the contributors shall have a preemptive right with respect to its full participants to receive contributions according to the procedure and under terms and conditions established by this Code, any other law and the incorporation agreement (memorandum). Due to lack of partnership's funds to repay in full contributions to contributors, the available funds shall be distributed among contributors pro rata to their participatory interests in the partnership's charter capital.</p> | n/a | |
| 4. Limited Liability Company | | |
| Article 140. The Notion of Limited Liability Company | | |
| <p>1. A limited liability company is a company established by one or several persons, the charter capital of which shall be divided into participatory interests of the amount specified by the charter.</p> <p>2. Participants of the limited liability company shall be not liable for its obligations and bear risks of loss connected with the company activity within their contribution value.</p> | n/a | |

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| <p>Participants of the company, who have not made their contributions in full, shall incur a joint liability for its obligations within the value of not contributed part of the contribution of each its participant.</p> <p>3. The name of limited liability company shall include the name of company and words “limited liability company”.</p> | | |
| <p>Article 141. Participants of Limited Liability Company</p> | | |
| <p>1. Maximal participant number of the limited liability company shall be established by the law. In case of exceeding this number, the limited liability company shall be subject to the transformation into a joint stock company within one year and upon expiring this term – to the liquidation by judicial procedure if the number of its participants does not decrease to the established limit.</p> <p>2. The limited liability company cannot consist of sole participant – a business company consisting of one participant.</p> <p>A person can become a participant of only one limited liability company consisting of one participant.</p> | <p>Directive 2009/102/EC art. 2. par. 2 Member States may, pending coordination of national laws relating to groups, lay down special provisions or penalties for cases where: [...] (b) a single-member company or any other legal person is the sole member of a company</p> | <p>Ukrainian legislator makes use of limitation allowed under art. 2 par. 2 (b) of the Directive 2009/102/EC</p> |
| <p>Article 142. Agreement on Limited Liability Company Foundation</p> | | |
| <p>1. Shall a limited liability company be founded by several persons, these persons, if required to determine their interrelations, conclude an agreement in writing to specify the foundation procedure of the company, conditions of their joint activity on creation of the company, the charter capital amount, participatory interest of each participant in the charter capital as well as terms of and procedure for making contributions and other conditions.</p> <p>2. The foundation agreement of the limited liability company shall not be deemed an incorporation document. It is not required to submit this document for the state registration of the company.</p> | <p>n/a</p> | |
| <p>Article 143. Charter of Limited Liability Company</p> | | |
| <p>1. An incorporation document of the limited liability company shall be a charter.</p> <p>In addition to the data indicated in Article 88 of this Code, the charter shall determine conditions regarding: amount of the charter capital determining participatory interests of each participant; composition and competence of governing bodies and procedure for decision-making by these bodies; amount and procedure for reserve capital creation; procedure for assignment (transfer) of participatory interests in the charter capital.</p> | <p>n/a</p> | |

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| <p>2. The charter of the limited liability company with all subsequent amendments and additions shall be kept with the body that performed its state registration and be open for familiarization.</p> | | |
| <p>Article 144. Charter Capital of Limited Liability Company</p> | | |
| <p>1. Charter capital of the limited liability company shall be composed of participants' contributions. The amount of the charter capital is equal to the sum of such contributions value. The charter capital determines a minimum amount of the company property that secures interests of its creditors.</p> <p>2. A participant to the limited liability company cannot be released from the obligation to make a contribution to the charter capital of the company, including by offsetting claims against the company.</p> <p>3. The charter capital of the limited liability company shall be subject to payment by its participant before the end of the first year from the date of state registration. Provided that participants do not pay (paid not in full) their contributions before the end of the first year from the date of state registration, the general participants' meeting shall adopt one of the following decisions: to exclude those participants from the company, which did not pay (paid not in full) their contributions, and to determine the order of new distribution of participatory interests in the charter capital; to decrease the charter capital and to determine the order of new distribution of participatory interests in the charter capital; to liquidate the company. Amendments to the charter relating to the change of charter capital and/or change in composition of participants are subject to the state registration in accordance with the law. The decision on decrease of the charter capital of the company shall be sent to all creditors of the company by post within three days from the date of its adoption.</p> <p>4. If following the second or any subsequent fiscal year the value of the net assets of the limited liability company turns out to be less than the registered charter capital, the company shall be obliged to decrease its charter capital and register respective changes to the charter per the established procedure, unless participants decide to make additional contributions. Provided that the value of net assets becomes less than the minimum amount of charter capital established by the law, the company shall be subject to liquidation.</p> <p>5. A decrease of the charter capital of the limited liability company shall be allowed only after notification of all its creditors under the procedure provided by the law. In this case the creditors are entitled to</p> | <p>n/a</p> | |

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| <p>demand early termination or fulfillment of respective obligations of the company and compensation for losses incurred to them.</p> <p>6. An increase of the charter capital of the limited liability company shall be allowed only after investing all contributions in full by participants. The procedure for making additional contributions shall be determined by the law and the charter of the company.</p> | | |
| <p>Article 145. Governance of Limited Liability Company</p> | | |
| <p>1. The supreme body of the limited liability company shall be a general participants' meeting.</p> <p>2. An executive body (collective or single-member) shall be formed in the limited liability company to perform a day-to-day management of its activity. The executive body is accountable to the general participants' meeting. The executive body of the company can be also elected not only from participants of the company.</p> <p>3. The executive body competence of the limited liability company, procedure of decision making and procedure of acting on behalf of the company, shall be established by this Code, other laws and charter of the company.</p> <p>4. The exclusive competence of the general participants' meeting of the limited liability company shall include:</p> <ol style="list-style-type: none"> 1) to determine main directions of activities of the limited liability company and to approve its plans and reports on their fulfillment; 2) to amend the charter of the company and to change the amount of charter capital; 3) to appoint and to recall executive body of the company; 4) to establish forms of supervision over activity of the executive body, to appoint and determine authorities of respective supervisory bodies; 5) to approve annual reports and accounting balance sheets, to distribute the profits and losses of the company; 6) to decide upon acquisition of participant's participatory interest of by the company; 7) to exclude a participant from the company; 8) to decide upon liquidation of the company, to appoint liquidation commission, to approve a liquidation balance sheet. <p>Other issues can be attributed to the exclusive competence of the general meeting by the charter of the company and the law.</p> <p>Issues attributed to the exclusive competence of the general participants' meeting of the company cannot be delegated to the executive body of the company.</p> <p>The priority and procedure of convening the general meeting shall be established by the charter of the company and by the law.</p> | <p>n/a</p> | |

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| Article 146. Supervision over Executive Body of Limited Liability Company | | |
| <p>1. Operation of the executive body of a limited liability company shall be supervised per the procedure established by the charter and the law.</p> <p>2. The general meeting of the limited liability company can appoint bodies that constantly supervise over financial and economic activity of the executive body.</p> <p>Procedure for creation and authorities of the supervisory body shall be determined by the general participants' meeting of the company.</p> <p>3. To supervise over financial activity of the limited liability company an audit can be appointed pursuant to the decision of general meeting and in other cases established by charter of the company and the law.</p> <p>4. Audit procedure of activity and accounts of the limited liability company shall be established by the charter of the company and the law.</p> <p>On request of any participant of the company annual financial statements of the company can be audited by engaging a professional auditor not related to the company or to its participants by property interests.</p> <p>Expenditures for such audit shall be charged to the participant who requested the audit, unless otherwise established by charter of the company.</p> <p>5. Public reporting of the limited liability company about results of its activity is not required, except for cases established by the law.</p> | n/a | |
| Article 147. Transfer of Participant's Participatory Interest in Charter Capital of Limited Liability Company to Another Person | | |
| <p>1. A participant of the limited liability company is entitled to sell or otherwise assign its/his/her participatory interest (a part thereof) in the charter capital to one or several participants of this company.</p> <p>2. Alienation of its/his/her participatory interest (a part thereof) by the participant to third persons shall be admissible, unless otherwise established by charter of the company.</p> <p>Participants of the company shall have a preemptive right to buy a participant's participatory interest (a part thereof) pro rata to amounts of their participatory interest, unless the charter of the company or arrangement between participants established another procedure for exercising this right. The purchase shall be executed at the price and on other terms on which the participatory interest (a part thereof) was offered for sale to third persons. If participants of the company do not use their preemptive right within one month following notification about the participant's intention to sell the participatory interest (a part thereof) or within another period established by the charter of</p> | n/a | |

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| <p>the company or arrangement between participants, the participatory interest (a part thereof) can be alienated to thirdperson.</p> <p>3. The participant's participatory interest (a part thereof) of the limited liability company can be alienated before itscomplete payment only in that part which has been already paid.</p> <p>4. In case of acquisition of the participant's participatory interest (a part thereof) by the limited liability companyitself, the company is obliged to sell it to other participants or third persons withinterm and under procedure established by the charter and the law or to decrease itscharter capital pursuant to Article 144 of this Code.</p> <p>5. The participatory interest (a part thereof) in the charter capital of the limited liability company shall be transferred to heirs of the individual or to successors of the legal entity - the participant of the company, unless the charter of the company envisages such transfer to be admissible onlywith the consent of the other participants of the company.</p> <p>Settlements with participant’s heirs (successors) who have not joined the companyshall be made pursuant to provisions of Article 148 of this Code.</p> | | |
| <p>Article 148. Withdrawal of Participant from Limited Liability Company</p> | | |
| <p>1. Participant of the limited liability company is entitled to withdraw from thecompany by notifying the company of its/his/her withdrawal not later than three monthsprior to the withdrawal, unless another term established by the charter.</p> <p>2. The participant withdrawing from the limited liability company shall have the right toreceive a value of the part of its property pro rata to his/her participatory interest in the chartercapital of the company.</p> <p>Upon arrangement between the participant and the company a payment of theparticipant’s participatory interest can be replaced with the property transfer in kind.</p> <p>Where a contribution to the charter capital was made by means of the rightransfer to use any property, the respective property shall be returned to the participant withoutany compensation.</p> <p>The procedure and method of establishing the value of part of the property pro rata tothe participant’s participatory interest in the chartercapital as well as the procedure and term ofpayments shall be established by the charter and the law.</p> <p>3. Disputes arising in connection with withdrawal of the participant from the limited liabilitycompany, including disputes over the procedure of determining the participatory interest in the</p> | <p>n/a</p> | |

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| chartercapital, its amount and terms of payment, shall be decided by the court. | | |
| Article 149. Levy on Property Part of Limited Liability Company Pro Rata Participant's Participatory Interest in Charter Capital | | |
| <p>1. Levy on property part of the limited liability company pro rata to the participant's participatory interest in the chartercapital for its/his/her personal debts can be allowed only in case, if other participant's property is insufficient to satisfy creditors' claims. Creditors of such participant shall have the right to demand from the company to pay out the value of the property part of the company pro rata to debtor's participatory interest in the chartercapital of the company or to allot this property with the purpose of levy. The property part subject to allotment or amount of funds that constitute its value shall be determined pursuant to the balance sheet made as of the date of creditors' claim submission.</p> <p>2. Levy on the whole share of participant's participatory interest in the chartercapital of the limited liability company shall terminate its/his/her participation in the company.</p> | n/a | |
| Article 150. Liquidation of Limited Liability Company | | |
| <p>1. A limited liability company can be liquidated by decision of the general participants' meeting, including in connection with expiration of the period for which the company was created, as well as by a court decision – in cases established by the law.</p> <p>2. A limited liability company can be reorganized into a joint-stock company or a production co-operative.</p> | n/a | |
| Article 151. Notion of Additional Liability Company | | |
| <p>1. An additional liability company shall be a company founded by one or several persons, the charter capital of which is divided into participatory interests with amount determined by the charter.</p> <p>2. Participants of the additional liability company bear solidary a secondary (subsidiary) liability for its obligations with their property in amount established by the charter of the company and being equally multiple for all the participants to the contribution value made by each participant. In case one of the participants is acknowledged bankrupt its/his/her liability for obligations of the company shall be divided among the other participants pro rata to their participatory interests in the charter capital of the company.</p> <p>3. The name of additional liability company shall contain the name of the company as well as words "additional liability company".</p> <p>4. Provisions of this Code related to limited liability company shall apply to additional liability company, unless otherwise established by</p> | n/a | |

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| the charter of the company and the law. | | |
| <p>5. Joint-Stock Company Article 152. Notion of Joint-Stock Company</p> | | |
| <p>1. A joint-stock company is a company the charter capital of which is divided into a definite number of participatory interests of the same nominal value and corporate rights under which are certified by shares.</p> <p>2. A joint-stock company shall be independently liable for its obligations with all its property. Shareholders shall not be liable for obligations of the company and shall bear a risk of losses related to activity of the company within the value limits of shares owned by them.</p> <p>In cases provided by the charter shareholders who have not fully paid their shares shall be liable for obligations of the company within limits of unpaid shares value owned by them.</p> <p>Guarantees to protect property rights of shareholders shall be established by the law.</p> <p>3. The name of joint-stock company shall contain its name and indication that the company is a joint-stock company.</p> <p>4. Peculiarities of the legal status of joint-stock companies created by privatization of state enterprises shall be established by the law.</p> <p>The procedure for establishment, operation and termination of corporate investment funds is governed by laws on collective investment undertaking.</p> <p>5. The joint-stock company that conducts public offering of shares is obliged to publish annually its annual report, balance sheet, information about profits and losses as well as other information envisaged by the law for the purpose of general notice.</p> <p>6. Joint-stock companies are divided by type into public companies and private companies. Peculiarities of legal status of public and private joint stock company are established by law.</p> | n/a | |
| <p>Article 153. Incorporation of Joint Stock Company</p> | | |
| <p>1. A joint-stock company can be incorporated by legal entities and/or individuals as well as by state through an authorized body and territorial community through an authorized body.</p> <p>2. If several persons incorporate the joint-stock company, they shall enter into an agreement among to determine the procedure for joint operation regarding incorporation of the company.</p> <p>This agreement shall not be deemed an incorporation document of the company.</p> <p>The agreement on joint-stock company incorporation shall be concluded in writing and if the company is established by individuals</p> | | |

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| <p>certified by a notary.</p> <p>3. Persons incorporating the joint stock company shall bear joint liability for obligations arisen prior to the company state registration. The joint-stock company shall be liable for obligations of its participants related to its incorporation only if the general shareholders' meeting subsequently approves their actions.</p> <p>4. The joint-stock company can be incorporated by one person or consist of one person, if all shares of the company are acquired by one shareholder. Information thereabout is subject to registration and publication for general notice. The joint-stock company cannot consist of sole participant – a business company consisting of one participant.</p> <p>5. The procedure and terms of joint-stock company incorporation, including the procedure of constituent meeting and its authority, shall be established by the law.</p> | <p>Directive 2009/101/EC Art. 8 If, before a company being formed has acquired legal personality, action has been carried out in its name and the company does not assume the obligations arising from such action, the persons who acted shall, without limit, be jointly and severally liable therefor, unless otherwise agreed.</p> <p>Directive 2009/102/EC art. 6 Where a Member State allows single-member companies [...] in the case of public limited companies as well, this Directive shall apply. Art. 2 par. 2. Member States may, pending coordination of national laws relating to groups, lay down special provisions or penalties for cases where: [...] (b) a single-member company or any other legal person is the sole member of a company.</p> | |
| <p>Article 154. Charter of Joint-Stock Company</p> | | |
| <p>1. The charter of joint-stock company shall be its incorporation document.</p> <p>2. Apart from the data stipulated in Article 88 of this Code the charter of joint stock company shall contain information about: amount of the charter capital, conditions regarding share categories to be issued by the company, their nominal value and number; rights of shareholders; composition and competence of the managing bodies of the company and procedure of decisions approval by them. The charter of joint-stock company shall also contain other data envisaged by the law.</p> | <p>Directive 2012/30/EU (“Capital Directive”) Art. 2 The statutes or the instrument of incorporation of the company shall always give at least the following information: (a) the type and name of the company; (b) the objects of the company; (c) when the company has no authorised capital, the amount of the subscribed capital; (d) when the company has an authorised capital, the amount thereof and also the amount of the capital subscribed at the time the company is incorporated or is authorised to commence business, and at the time of any change in the authorised capital [...]; (e) in so far as they are not legally determined, the rules governing the number of and the procedure for appointing members of the bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies; (f) the duration of the company, except where this</p> | |

is indefinite.

art. 3 The following information at least must appear in either the statutes or the instrument of incorporation or a separate document published in accordance with the procedure laid down in the laws of each Member State in accordance with Article 3 of Directive 2009/101/EC:

- (a) the registered office;
- (b) the nominal value of the shares subscribed and, at least once a year, the number thereof;
- (c) the number of shares subscribed without stating the nominal value, where such shares may be issued under national law;
- (d) the special conditions, if any, limiting the transfer of shares;
- (e) where there are several classes of shares, the information referred to in points (b), (c) and (d) for each class and the rights attaching to the shares of each class;
- (f) whether the shares are registered or bearer, where national law provides for both types, and any provisions relating to the conversion of such shares unless the procedure is laid down by law;
- (g) the amount of the subscribed capital paid up at the time the company is incorporated or is authorised to commence business;
- (h) the nominal value of the shares or, where there is no nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing that consideration;
- (i) the identity of the natural or legal persons or companies or firms by whom or in whose name the statutes or the instrument of incorporation, or where the company was not formed at the same time, the drafts of those documents, have been signed;
- (j) the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorised to commence

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| | business; and (k) any special advantage granted, at the time the company is formed or up to the time it receives authorisation to commence business, to anyone who has taken part in the formation of the company or in transactions leading to the grant of such authorisation. | |
| Article 155. Charter Capital of a Joint-Stock Company | | |
| <p>1. The charter capital of joint-stock company shall be composed of participants' contributions made as a result of shares acquisition. The charter capital determines a minimum amount of the company property that secures interests of its creditors. It cannot be less than the amount established by the law.</p> <p>2. During incorporation of the joint-stock company all its shares shall be distributed among founders through private offering. Public offering of the shares can be made after obtaining a certificate of the first share issue.</p> <p>3. If following the second or any subsequent fiscal year the value of the net assets of the joint-stock company turns out to be less than the registered charter capital, the company shall be obliged to decrease its charter capital and register respective changes to the charter per the established procedure, unless participants decide to make additional contributions. Provided that the value of net assets becomes less than the minimum amount of charter capital established by the law, the company shall be subject to liquidation.</p> | <p>Directive 2012/30/EU (“Capital Directive”) Art. 19 par. 1. In the case of a serious loss of the subscribed capital, a general meeting of shareholders must be called within the period laid down by the laws of the Member States, to consider whether the company should be wound up or any other measures taken. par. 2. The amount of a loss deemed to be serious within the meaning of paragraph 1 may not be set by the laws of Member States at a figure higher than half the subscribed capital.</p> | <p>Art. 155 par. 3 CC needs to be adjusted to the requirements of art. 19 Directive 2012/30/EU. The current regime goes too far and is not justified from the efficiency perspective.</p> |
| Article 156. Increase of Charter Capital of Joint-Stock Company | | |
| <p>1. A joint-stock company is entitled to increase its charter capital upon a decision of the general shareholders' meeting by increasing the nominal value of shares or by issuing additional shares.</p> <p>2. Increase of the charter capital of joint-stock company is allowed when it is paid in full. The charter capital increase for recovering losses of the company is not allowed except for cases prescribed by the law.</p> <p>3. A preemptive right of shareholders to acquire additional shares issued by the company can be established in cases established by charter of the company or by the law.</p> | <p>Directive 2012/30/EU (“Capital Directive”) Art. 29 Art. 33 par. 1. Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares.</p> | <p>Pre-emptive rights are mandatory and must be provided in the law (ex lege) and not merely in the charter.</p> |

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| Article 157. Decrease of Charter Capital of Joint-Stock Company | | |
| <p>1. A joint stock company is entitled to decrease its charter capital upon a decision of the general shareholders' meeting by decreasing the nominal value of shares or by purchasing a part of issued shares in order to decrease their total number.</p> <p>Decrease of charter capital of the company is allowed after notification of all its creditors thereof per the procedure established by the law. Creditors of the company are entitled to demand either pre-term termination or fulfillment of respective obligations by the company and compensation for losses.</p> <p>2. Decrease of charter capital of the company by purchasing and cancelling a part of shares shall be admissible, provided that such possibility is envisaged by charter of the company.</p> <p>3. Decrease of charter capital of the joint-stock company below the minimum amount established by the law shall result in liquidation of the company.</p> | <p>Directive 2012/30/EU (“Capital Directive”) art. 34 – art. 38 (reduction of the subscribed capital) art. 21 – art. 24 (acquisition of own shares)</p> | |
| Article 158. Limitations on Issue of Securities and on Payment of Dividends | | |
| <p>1. A part of preference shares in charter capital of the joint-stock company cannot exceed twenty-five per cent.</p> <p>3. The joint-stock company shall not have the right to announce and pay dividends:</p> <ol style="list-style-type: none"> 1) prior to full payment of the entire charter capital; 2) when the net assets value of the company is reduced to the amount less than the charter capital and the reserve fund; 3) in other cases established by the law. | <p>Directive 2012/30/EU (“Capital Directive”) art. 17 (dividends)</p> | |
| Article 159. General Shareholders' Meeting | | |
| <p>1. The highest body of a joint-stock company shall be general shareholders meeting. All its shareholders regardless of the number and type of shares owned by them shall be entitled to participate in the general meeting.</p> <p>Shareholders (their proxies) participating in the general meeting shall be registered, specifying the number of votes of each shareholder.</p> <p>2. The exclusive competence of the general meeting includes:</p> <ol style="list-style-type: none"> 1) changes in the charter of the company, including the modification of its charter capital; 2) appointment and liquidation of the supervisory board and other bodies of the company as well as election and recall of supervisory board members; 3) approval of the annual report of the company; | | |

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| <p>4) decision on liquidation of the company. Other issues can be attributed to the exclusive competence of general meeting by charter of the company of the law. Issues relegated by the law to the exclusive authority of the general shareholders' meeting cannot be transferred to other bodies of the company.</p> <p>3. The procedure for voting at the general meeting shall be determined by the law. A shareholder is entitled to appoint its/his/her proxy for participation in the meeting. The proxy can be permanent or appointed for a definite term. The shareholder is entitled to substitute its/his/her proxy in the highest body of the company by notifying the executive body of the joint-stock company thereof.</p> <p>4. Decisions of the general shareholders' meeting shall be adopted by the majority of $\frac{3}{4}$ votes of the shareholders participating in the meeting on issues of:</p> <ol style="list-style-type: none"> 1) amending the charter of the company; 2) making a decision on liquidation of the company except for cases specified by the law; 3) on issues determined by the law, which regulates incorporation, activity and termination of joint-stock companies. <p>Decisions on other issues shall be adopted by a simple majority of votes of the shareholders participating in the meeting.</p> <p>5. The general meeting of shareholders shall be convened not less than once a year. An extraordinary shareholders' meeting shall be convened in case of insolvency of the company as well as under circumstances stipulated in the charter of the company and in any other case required by interests of the joint-stock company in general. The procedure for convening and holding the general meeting, conditions of convening and holding extraordinary meeting and notification of shareholders shall be established by the law and the charter of the company.</p> | <p>Directive 2007/36/EC (SRD)</p> | |
| <p>Article 160. Supervisory Board of Joint-Stock Company</p> | | |
| <p>1. A supervisory board, which performs control over the activity of its executive body and protection of shareholders rights, can be created in the joint-stock company. Cases for compulsory appointment of supervisory board shall be established by the law.</p> <p>2. The charter of the company and the law shall establish exclusive competence of the supervisory board. Issues attributed to the</p> | <p>Recommendation 2005/162/EC</p> | <p>Supervisory board should always be mandatory in jurisdictions adhering to the two-tier governance system, as Ukraine does.</p> |

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| <p>exclusive competence of the supervisory board by the charter cannot be delegated to the executive body of the company.</p> <p>3. Members of the supervisory board of a joint-stock company cannot be members of its executive body.</p> <p>4. The supervisory board of joint-stock company shall determine forms of control over the activity of its executive body.</p> | | |
| Article 161. Executive Body of Joint-Stock Company | | |
| <p>1. A board of directors or any other body determined by the charter shall be an executive body of the joint-stock company which manages its current activity.</p> <p>The executive body shall resolve all issues of the joint-stock company operation, except for those attributed to the competence of the general meeting and the supervisory board of the company.</p> <p>The executive body shall be accountable to the general shareholders' meeting and the supervisory board of the joint-stock company and shall organize execution of their decisions. The executive body shall act on behalf of the joint-stock company within limits established by the charter of the joint-stock company and the law.</p> <p>2. The executive body of the joint-stock can be collective (board of directors, directorate) or a single-person body (director, general director).</p> | n/a | |
| Article 162. Auditing of a Joint-Stock Company | | |
| <p>1. A joint-stock company, which is obliged pursuant to the law to publish documents stipulated by Article 152 of this Code for general information, shall engage for the purpose of examination and confirmation of accuracy of its annual financial accounts an auditor not related to the company or its shareholders by property interests.</p> <p>2. An audit of the joint-stock company operation, including such that is not obliged to publish documents for general information, shall be conducted at any time on request of shareholders who jointly own not less than 10 per cent of the shares.</p> <p>The procedure for auditing the joint stock company operation shall be determined by the charter of the company and the law.</p> <p>Expenditures for audit shall be charged to persons requested the audit unless otherwise is decided by the general shareholders meeting.</p> | | <p>The threshold allowing shareholder to require special audit of a JSC should be lowered to 5% in order to improve the level of protection of minority shareholders, at least in public companies.</p> |

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
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| Economic Code of Ukraine | | |
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| SECTION II. BUSINESS ENTITIES | | |
| Chapter 6. GENERAL PROVISIONS | | |
| Article 55. Notion of a Business Entity | | |
| <p>1. Parties to business relations that exercise business activities by exercising their business competence (combination of business rights and duties), have separate property and are liable for their obligations within the scope of referred property, except for cases provided by the legislation, shall be deemed to be business entities.</p> <p>2. The following shall be business entities:</p> <p>1) business organizations – legal entities established under the Civil Code of Ukraine, state-owned, community-owned and other enterprises established in accordance with this Code as well as other legal entities engaged into business activities and are registered in accordance with the procedure prescribed by the law;</p> <p>2) citizens of Ukraine, foreigners and stateless individuals who exercise business activities and are registered as entrepreneurs according to the law.</p> <p>3. Business entities depending on the number of employees and revenues from any activities over a year can be categorized as small enterprises, including micro enterprises, medium or large enterprises.</p> <p>Micro enterprises shall be as follows:</p> <p>individuals registered in accordance with the procedure prescribed by the law as individual - entrepreneurs, which have an average number of employees over reporting period (calendar year) not exceeding 10 persons and annual income from any activity of which does not exceed the equivalent of two million Euros determined at the annual average rate of the National Bank of Ukraine;</p> <p>legal entities being business entities of any company type and ownership form, which have an average number of employees over reporting period (calendar year) not exceeding 10 persons and annual income from any activity of which does not exceed the equivalent of two million Euros determined at the annual average rate of the National Bank of Ukraine.</p> | | |

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| <p>Small enterprises shall be as follows:</p> <p>individuals registered in accordance with the procedure prescribed by the law as individual - entrepreneurs, which have an average number of employees over reporting period (calendar year) not exceeding 50 persons and annual income from any activity of which does not exceed the equivalent of 10 million Euros determined at the annual average rate of the National Bank of Ukraine;</p> <p>legal entities being business entities of any company type and ownership form, which have an average number of employees over the reporting period (calendar year) not exceeding 50 persons and annual income from any activity of which does not exceed the equivalent of 10 million Euros determined at the annual average rate of the National Bank of Ukraine.</p> <p>Large enterprises shall be legal entities being business entities of any company type and ownership form, which have an average number of employees over the reporting period (calendar year) exceeding 250 persons and annual income from any activity of which exceeds the equivalent of 50 million Euros determined at the annual average rate of the National Bank of Ukraine.</p> <p>Other business entities shall be categorized as medium enterprises.</p> <p>3. Business entities shall exercise their business competence on basis of the ownership right, the economic management right, the operative management right in line with the definition of referred competence in this Code and other laws.</p> <p>4. Business entities being business organizations operating on basis of the ownership right, the economic management right or the operative management right shall have a status of legal entity as defined by the civil legislation and this Code.</p> <p>5. Business entities referred to in item 1 of part two of this article are entitled to open their branches, representative offices and other separated subdivisions without establishing a legal entity.</p> | | |
| <p>Article 55-1. Fictitious Activity of a Business Entity</p> | | |
| <p>1. Features of fictitious activity giving a ground for claiming to court in order to terminate the legal entity or terminate the activity of individual-private entrepreneur, including to invalidate the registration documents, shall be as follows:</p> <p>registered (re-registered) on the basis of invalid (lost, waived) and</p> | <p>2009/101/EC (First Directive) Art. 12 The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:</p> | |

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| <p>counterfeited documents;</p> <p>not registered with state authorities, if the legislation provides for the obligatory registration;</p> <p>registered (re-registered) with state registration agencies by individuals with the subsequent transfer (conveyance) into the ownership or management to nominees (non-existing people), deceased or missing individuals or individuals who had no intention to exercise financial and business activities or to make use of their powers;</p> <p>registered (re-registered) and exercised the financial and business activities without the knowledge and the consent of its founders and managers appointed in accordance with the established procedure.</p> | <p>(a) nullity must be ordered by decision of a court of law;</p> <p>(b) nullity may be ordered only on the grounds:</p> <p>(i) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;</p> <p>(ii) that the objects of the company are unlawful or contrary to public policy;</p> <p>(iii) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;</p> <p>(iv) of failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;</p> <p>(v) of the incapacity of all the founder members;</p> <p>(vi) that, contrary to the national law governing the company, the number of founder members is less than two.</p> <p>Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of non-existence, absolute nullity, relative nullity or declaration of nullity.</p> | |
| <p>Article 56. Establishment of a Business Entity</p> | | |
| <p>1. Business entity shall be defined as a business organization that may be established by decision of the owner (owners) of the property or the body authorized thereby or in cases specifically referred to by the legislation by decisions of other agencies, organizations and individuals by establishment of a new business organization, by merger, accession, spin-off, division, transformation of the existing business organization (organizations) in accordance with requirements of the legislation.</p> <p>2. Business entities may be established by involuntary division (spin-off) of the existing business entity by instruction of antimonopoly agencies in accordance with the antimonopoly and competition legislation of Ukraine.</p> <p>3. Business entities shall be established in compliance with requirements of the antimonopoly and competition legislation.</p> <p>4. A business entity can be established and can operate on the basis of</p> | | |

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| <p>a model charter approved by the Cabinet of Ministers of Ukraine, which becomes an incorporation document after the adoption thereof by the participants.</p> <p>5. If a business entity is established and operates on the basis of a model charter, the information about its name, objective and subject matter of business activity, information about conduction of business on the basis of the model charter shall be stated in decision on establishment of the business entity to be signed by all founders.</p> | | |
| <p>Article 57. Incorporation Documents</p> | | |
| <p>1. A decision on establishment of the business entity or a foundation agreement or in cases provided for by the law a charter (regulation) of the business entity shall be incorporation documents of the business entity.</p> <p>2. The incorporation documents shall specify the name of business entity, objective and subject matter of the business activity, composition and competence of its management bodies, their decision-making procedure, the procedure of the asset formation, distribution of profit and losses, conditions of reorganization and liquidation thereof, unless otherwise provided for by the law.</p> <p>3. Founders undertake in the foundation agreement to establish a business entity, specify the procedure of joint activity in respect of establishment thereof, conditions of their property transfer thereto, procedure of profit and losses distribution, management of the business entity activity and participation of the founders therein, the procedure of withdrawal and acceptance of new founders, other conditions of business entity operation envisaged by law, and the procedure of reorganization and liquidation thereof in accordance with the law.</p> <p>4. A charter of the business entity shall contain information about its name, objective and subject matter of activities, the amount and procedure of charter capital and other funds formation, the procedure of distribution of profit and losses, the management and control bodies, their competence, conditions of reorganization and liquidation of the business entity as well as other details associated with the specific features of the company type of the business entity envisaged by the legislation. The charter can also contain other information not contradicting the legislation.</p> | | |

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| <p>A regulation shall specify a business competence of state authorities, local self-government bodies or other entities in cases defined by the law.</p> <p>5. The charter shall be approved by the property owner (founder) of the business entity or representatives thereof, agencies or other entities in accordance with the law.</p> | | |
| <p>Article 58. State Registration of a Business Entity</p> | | |
| <p>1. A business entity shall be subject to the state registration as a legal entity or an individual-entrepreneur in accordance with the procedure prescribed by law.</p> <p>2. Opening branches (departments) and representative offices by the business entity without establishing a legal entity shall not require their state registration.</p> <p>Information about separated subdivisions of business entities shall be included into their registration file and entered into the Unified State Register in accordance with the procedure prescribed by law.</p> | | |
| <p>Article 59. Termination of a Business Entity</p> | | |
| <p>1. Termination of the business entity shall be undertaken by reorganization thereof (merger, accession, division or transformation) or liquidation thereof by decision of the owner (owners) or bodies authorized thereby, by decision of other parties being founders of the business entity or successors thereof or in cases provided for by laws by court decision.</p> <p>2. In case of business entities merger all property rights and duties of each of them shall be vested in the business entity created as a result of the merger.</p> <p>3. In case of accession of one or several business entities to another business entity, the latter shall be vested with all property rights and duties of the acceded business entities.</p> <p>4. In case of division of the business entity, all its property rights and duties shall be vested in appropriate percentages on the basis of the division act (balance sheet) in each of new business entities established as a result of referred division. In case of spin-off of one or several new business entities each of them shall be vested with property rights and duties of the reorganized entity in appropriate percentages on the basis of the division act (balance sheet).</p> | | |

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| <p>5. In case of transformation of one business entity into another a newly established business entity shall be vested with all property rights and duties of the prior business entity.</p> <p>6. The business entity shall be liquidated: on initiative of persons referred to in part one of this article; in connection with the expiry of its establishment period or fulfillment of objective, for which it was established; in case of declaration as bankrupt in accordance with established procedure, except for cases envisaged by law; by court decision to liquidate a business entity in cases specified by law.</p> <p>8. An announcement on reorganization or liquidation of the business organization or termination of entrepreneurial activities by the individual – entrepreneur shall be published in a bulletin of the specially authorized agency in charge of the state registration with information from the Unified State Register within ten business days from the entry of relevant record into the said register.</p> <p>9. The business entity termination procedure shall be specified by the legislation.</p> | | |
| <p>Article 60. General Procedure of Business Entity Liquidation</p> | | |
| <p>1. A business entity shall be liquidated in accordance with the procedure prescribed by law.</p> <p>2. The body (person) that has made a decision to liquidate the business entity shall specify the procedure and time frames of the liquidation as well as the time frames for the presentation of claims by creditors; the latter may not be shorter than two months from the date of the liquidation announcement.</p> <p>3. The liquidation commission or another body that performs the business entity liquidation shall place a notice of liquidation in printed media in accordance with the law and the notice of the procedure and time frames of the presentation of claims by creditors and shall notify the evident (known) creditors thereof in writing personally within time frames prescribed by this Code or a special law.</p> <p>4. At the same time, the liquidation commission shall take appropriate measures aimed at collecting accounts receivable of the business entity to be liquidated and at detecting claims of creditors on the basis</p> | | |

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| <p>of written notification of each creditor about the liquidation of the business entity.</p> <p>5. The liquidation commission shall assess the available property of the business entity to be liquidated and settle accounts with creditors, draw up a liquidation balance sheet and submit the same to the owner or the body that has appointed the liquidation commission. The accuracy and completeness of the liquidation balance sheet shall be verified in accordance with the procedure prescribed by the legislation with obligatory inspection by the revenue and duties agency, in records of which the business entity has been entered.</p> <p>Article 61. Settlement Procedure with Creditors in Case of Business Entity Liquidation</p> | | |
| <p>1. Claims of creditors to the business entity to be liquidated shall be satisfied from the property of the said entity unless otherwise provided for by this Code and other laws.</p> <p>2. In case of the liquidation of a solvent business entity the claims of its creditors shall be satisfied in the sequence specified by the Civil Code of Ukraine.</p> <p>In case of the declaration of the business entity bankrupt the claims of its creditors shall be satisfied in the sequence prescribed by the Law of Ukraine "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt".</p> | | |
| <p>Chapter 7. ENTERPRISE</p> <p>Article 62. Enterprise as an Organizational Form of Business Activity</p> | | |
| <p>1. "Enterprise" shall be understood as an independent business entity established by a competent state authority or local self-government body, or by other bodies for satisfaction of public and personal needs by means of regular exercise of production, scientific research, trade, other business activities in accordance with the procedure prescribed by this Code and other laws.</p> <p>2. Enterprises can be established both for the exercise of entrepreneurship and for non-commercial business activities.</p> <p>3. The enterprise shall operate on the basis of a charter or a model charter. Enterprises shall enjoy equal rights and duties regardless of the ownership form, the organisational and legal form, incorporation</p> | | |

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| <p>documents, on the basis of which they are established and operate.</p> <p>4. The enterprise shall be a legal entity with separate property, independent balance sheet, accounts with banks, seal with its name and identification code.</p> <p>5. The enterprise shall not contain other legal entities as a part thereof.</p> | | |
| <p>Article 63. Types and Organizational Forms of Enterprises</p> | | |
| <p>1. Enterprises of the following types can operate in Ukraine depending on forms of property envisaged by the law:</p> <p>a private enterprise operating on the basis of private property of individuals or a business entity (legal entity);</p> <p>an enterprise based on the collective property (collectively owned enterprise);</p> <p>a community-owned enterprise operating on the basis of the property owned by a territorial community;</p> <p>a state-owned enterprise operating on the basis of the state-owned property;</p> <p>an enterprise based on the mixed form of property (based on the combination of property of various forms of ownership).</p> <p>Other types of enterprises envisaged by law can also operate in Ukraine.</p> <p>2. If foreign investment makes up at least ten per cent of the charter capital of the enterprise, it shall be deemed to be an enterprise with foreign investments. An enterprise, the charter capital of which is composed of foreign investments for one hundred per cent, shall be deemed to be a foreign enterprise.</p> <p>3. Unitary and corporate enterprises shall operate in Ukraine depending on the method of the creation (establishment) and the formation of the charter capital.</p> <p>4. A unitary enterprise shall be established by a single founder, which allocates the required property, forms the charter capital in accordance with the law without dividing it into units (interests), approves the charter, allocates revenues, manages the enterprise and sets up its labour collective on the employment basis either directly or via a manager appointed thereby, and decide upon the enterprise</p> | | |

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| <p>reorganization and liquidation. State-owned enterprises, community-owned enterprises, enterprises based on the property of associations of individuals, religious organization or private property of the founder shall be unitary.</p> <p>5. A corporate enterprise shall be established as a rule by two or more founders by their joint decision (agreement); it shall operate on the basis of property combination and/or entrepreneurial or labour activities of founders (participants), the joint management of affairs by them on the basis of corporate rights, for instance, via bodies established by them, and the participation of founders (participants) in the allocation of revenues and risks of the enterprise. Co-operative enterprises, enterprises established in a form of corporation and other enterprises, including those established on the basis of the private property of two or more persons shall be categorized as corporate enterprises.</p> <p>6. Specific features of the legal status of unitary and corporate enterprises shall be specified by this Code and other legislative acts.</p> <p>8. In case of dependence on another enterprise as provided for by Article 126 hereof, an enterprise shall be categorized as a subsidiary enterprise.</p> <p>9. Specific features of the exercise of business may be specified by laws for enterprises of a certain type and organisational form.</p> | | |
| <p>Article 64. Organisational Structure of an Enterprise</p> | | |
| <p>1. An enterprise can consist of production structural units (production facilities, shops, units, sections, work teams, bureaux, laboratories, etc.) and functional structural units of the management staff (directorates, departments, bureaux, service offices etc.).</p> <p>2. Functions, rights and duties of structural units of the enterprise shall be specified in their charters to be approved in accordance with the procedure prescribed by the charter of enterprise or other incorporation documents.</p> <p>3. The enterprise shall determine its organizational structure, specify number of employees and staff list on its own.</p> <p>4. The enterprise is entitled to establish branches, representative offices, departments and other separate subdivisions, while obtaining concurrence to issues related to the placement of such subdivisions from appropriate local self-government bodies in accordance with the</p> | | |

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| <p>procedure prescribed by the legislation. Such separate subdivisions shall not have a status of legal entity; they shall operate on the basis of their charters approved by the enterprise. Enterprises can open accounts with banks via their separate subdivisions in accordance with the law.</p> <p>5. The operation of separate subdivisions located on the territory of Ukraine of enterprises located outside Ukraine shall be governed by this Code and other laws.</p> | | |
| <p>Article 65. Management of an Enterprise</p> | | |
| <p>1. An enterprise shall be managed in accordance with its incorporation documents on the basis of combination of owner's rights connected with economical use of its/his/her property and involvement of labour collective into the management.</p> <p>2. The owner shall exercise its enterprise management rights either directly or via bodies authorized thereby in accordance with the charter of the enterprise or other incorporation documents.</p> <p>3. The owner (owners) or the body authorized by the owner shall appoint (elect) a chief executive officer of the enterprise for managing business activities of the enterprise.</p> <p>4. If the chief executive officer of the enterprise is employed, a respective contract shall be concluded specifying a period of employment, rights, duties and liability of the chief executive officer, remuneration conditions, dismissal reasons and other employment conditions accepted by the parties.</p> <p>5. The chief executive officer shall act on behalf of the enterprise without a power of attorney, represent its interests with state authorities and local self-government bodies, other organizations, in relations with legal entities and individuals, set up the administration of the enterprise and decide on issues of the enterprise operation within the scope and in accordance with the procedure specified by incorporation documents.</p> <p>6. The chief executive officer of the enterprise can be dismissed earlier on grounds specified in the contract in accordance with the law.</p> <p>7. A collective agreement that governs production, labour and social relations of the labour collective with the administration of the enterprise shall be concluded between the owner or the body</p> | | |

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| <p>authorized thereby and the labour collective or the body authorized thereby at all enterprises that make use of hired labour. Requirements to contents and the procedure of the entry into collective agreements shall be defined by the legislation regarding collective agreements.</p> <p>8. All individuals, who take part in the enterprise activity with their labour on the basis of labour agreement (contract) or other forms regulating labour relations of employees with the enterprise, shall make up a labour collective of the enterprise. Powers of the labour collective regarding its participation in management of the enterprise shall be specified by the charter or other incorporation documents in accordance with requirements hereof, the legislation on specific types of enterprises, and the law on labour collectives.</p> <p>9. Decisions on social and economic issues applicable to activities of the enterprise shall be produced and made by its management bodies with involvement of the labour collective and bodies authorized thereby.</p> <p>10. Specific features of the management of enterprises of specific types (organizational forms) shall be specified by this Code and laws on such enterprises.</p> | | |
| <p>Article 66. Property of an Enterprise</p> | | |
| <p>1. Property of an enterprise shall consist of productive and non-productive assets and other valuables, the value of which is stated in an independent balance sheet of the enterprise.</p> <p>2. Sources of the enterprise property shall be:</p> <ul style="list-style-type: none"> pecuniary and in-kind contributions of founders; income obtained from sale of products, services, other types of business activities; income from securities; loans of banks and other creditors; capital investments and grants from budgets; property procured from other business entities, organizations and individuals in accordance with the procedure prescribed by the legislation; other sources not prohibited by the legislation of Ukraine. <p>3. An integral property complex of the enterprise shall be treated as</p> | | |

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| <p>real estate and can be an object of sale and purchase contracts and other contracts on conditions and in accordance with the procedure specified by this Code and laws adopted under this Code.</p> <p>4. Property rights of the enterprise shall be exercised in accordance with the procedure prescribed by this Code and other legislative acts of Ukraine.</p> <p>5. The enterprise shall possess and use natural resources in accordance with the procedure prescribed by the legislation for a fee or in cases envisaged by law on a preferential basis.</p> <p>6. The enterprise shall issue, sell and acquire securities in accordance with the legislation of Ukraine.</p> <p>7. The state shall guarantee protection of property rights of the enterprise. The state can seize the property used by the enterprise from the said enterprise solely in cases and in accordance with the procedure specified by law.</p> | | |
| <p>Article 67. Business Relations of an Enterprise with Other Enterprises, Organizations and Individuals</p> | | |
| <p>1. Relations of an enterprise with other enterprises, organizations and individuals in all fields of business shall be exercised on the basis of agreements.</p> <p>2. Enterprises shall be free to choose the subject matter of any agreement, to determine liabilities and other conditions of business relations that do not contradict the legislation of Ukraine.</p> <p>3. The enterprise is entitled to sell all its products on its own in Ukraine and outside Ukraine, unless otherwise provided for by the law.</p> <p>4. State-owned enterprises, including business companies (other than banks), in whose charter capital the state owns 50 and more per cent of shares (units, interests), shall obtain long-term (longer than one year) domestic and foreign credit (loans), provide guarantees or act as sureties under referred liabilities in concurrence with the central executive agency in charge of the implementation of the state finance policy, obtain short-term (under one year) domestic credits (loans), provide guarantees or act as sureties under referred liabilities in concurrence with the executive agency, which performs functions of the state-owned property management. The procedure of obtaining such concurrence shall be specified by the Cabinet of Ministers of</p> | | |

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| Ukraine. | | |
| Article 68. Foreign Economic Activity of an Enterprise | | |
| <p>1. An enterprise shall exercise foreign economic activity on its own as a part of the foreign economic activity of Ukraine that are governed by laws of Ukraine and other regulatory acts adopted thereunder.</p> <p>2. The procedure of foreign-currency use of the enterprise shall be specified by this Code and other laws.</p> <p>3. The enterprise that exercises foreign economic activity can open its representative offices, branches and production facilities outside Ukraine maintained at expense of the enterprise.</p> | | |
| Article 69. Social Activities of an Enterprise | | |
| <p>1. Issues related to improvement of labour, life and health conditions, guarantees of the obligatory medical insurance of employees of the enterprise and their families as well as other issues of the social development shall be solved by the labour collective with involvement of the owner or the body authorized by the owner in accordance with the legislation, incorporation documents of the enterprise and the collective agreement.</p> <p>2. The enterprise ensure the training of qualified workers and specialists, their economic and professional training both in own educational establishments and in other educational establishments on the basis of relevant agreements. The enterprise grants benefits to its employees who study while continuing to work in accordance with the law.</p> <p>3. Pensioners and disabled persons, who worked at the enterprise until the retirement, shall use available opportunities for the medical service, housing provision, tours to healthcare and prevention establishments and other social services and privileges envisaged by the charter of the enterprise on the same basis with employees.</p> <p>4. The owner and the enterprise management bodies shall provide all employees of the enterprise with appropriate and safe labour conditions. The enterprise shall be liable for damages caused to the health and work capacity of its employees in accordance with the procedure prescribed by law.</p> <p>5. The enterprise shall provide favourable labour conditions for women and minors; supply them with work mainly during daytime hours; transfer women with minor children and pregnant women to</p> | | |

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| <p>easier work with non-harmful labour conditions; grant them other privileges envisaged by the law. The enterprise with harmful labour conditions shall set up dedicated guilds and sections for provision of easier work to women, minors and employees of specific categories.</p> <p>6. The enterprise shall grant additional leaves, short working days and other privileges for its employees on its own; it also shall have the right to encourage employees of other enterprises, institutions and organizations that provide services thereto.</p> <p>7. The enterprise shall have the right to provide additional pensions regardless of the amount of state pension to employees disabled at the said enterprise as a result of an accident or occupational disease. In case of death of an employee during performing his/her work duties, the owner and the enterprise shall provide the employee's family with assistance in accordance with the law on voluntary basis or on the basis of a court decision.</p> <p>8. The enterprise entitled to hire employees shall assign an appropriate number of working places determined according to the law for the employment of minors, disabled people and citizens of other categories being in need of social protection. The liability of the enterprise for the failure to meet this requirement shall be specified by law.</p> | | |
| <p>Article 70. Associations of Enterprises</p> | | |
| <p>1. Enterprises shall have the right to unite their business (production, commercial and other) activity on voluntary basis on conditions and in accordance with the procedure prescribed by this Code and other laws.</p> <p>2. Associations of enterprises can be established on conditions and in accordance with the procedure prescribed by this Code and other laws by decisions of the Cabinet of Ministers of Ukraine or agencies authorized to manage state-owned or community-owned enterprises.</p> <p>3. Types of associations of enterprises, their general status and major requirements for the exercise of business by them shall be defined by this Code; other issues of their operation shall be governed by the legislation of Ukraine.</p> | | |
| <p>Article 71. Accounting and Reporting of an Enterprise</p> | | |
| <p>1. Enterprises shall keep accounts and produce reports in accordance with requirements of Article 19 of this Code and other regulatory acts.</p> | | |

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| <p>2. Information not envisaged by the law shall be provided by the enterprise to state authorities, local self-government bodies, other enterprises, institutions and organizations on a contractual basis or in accordance with the procedure prescribed by incorporation documents of the enterprise.</p> | | |
| <p>Article 72. Legislation on Enterprises</p> | | |
| <p>1. Enterprises shall exercise their activities in Ukraine in accordance with requirements of Articles 62 to 71 of this code, unless this Code and other laws adopted under this Code set forth other requirements for enterprises of specific types.</p> <p>2. If an international treaty of Ukraine accepted as binding by the Verkhovna Rada (Parliament) of Ukraine specifies rules other than those set out in the legislation on enterprises, the rules of the international treaty shall apply.</p> | | |
| <p>Chapter 8. STATE-OWNED AND COMMUNITY-OWNED UNITARY ENTERPRISE</p> <p>Chapter 9. BUSINESS COMPANIES</p> <p>Article 79. The Concept of a Business Company</p> | | |
| <p>1. Business companies shall be deemed enterprises or other business entities, set up by legal entities and/or individuals by means of uniting their property and participating in entrepreneurial activity of the company with the purpose of generating profit. The business companies in cases envisaged by the present Code may consist of one participant.</p> <p>2. Founders and participants of the company can be business entities, other parties of business relations indicated in Article 2 hereof as well as individuals that are not business entities. Restrictions as to the establishment and participation in business companies of business entities or other persons shall be established by the present Code and other laws.</p> <p>3. Business companies shall be deemed legal entities.</p> <p>4. Business entities – legal entities that became founders or participants of a business company shall retain the legal entity status.</p> <p>5. Business companies can conduct any entrepreneurial activity unless otherwise provided by the law.</p> | | |

Article 80. Types of Business Companies

1. The following shall be classified as business companies: joint-stock companies, limited liability companies, additional liability companies, full liability companies, limited partnerships.
2. A joint-stock company shall be deemed a business company that has a charter capital divided into a certain number of shares of the same par value and is held liable for its obligations only with the property of the company, whereas shareholders suffer the risk of losses associated with company activity within the value of their shares.
3. A limited liability company shall be deemed a business company that has a charter capital divided into participatory interests, the size of which is determined by incorporation documents and shall be held liable for its obligations only with its property. Participants of the company that paid their contributions in full shall suffer the risk of losses associated with activities of the company within their contributions.
4. An additional liability company shall be deemed a business company that has a charter capital divided into participatory interests, the size of which is determined by incorporation documents and which shall be held liable for its obligations with its own property. Shall the property be insufficient, participants of such company shall bear additional solidary liability within the equally multiple size proportionally to each participant's contribution as determined by incorporation documents.
5. A full liability company shall be deemed a business company, all participants of which conduct entrepreneurial activity on behalf of the company according to an agreement concluded among them and bear additional solidary liability for obligations of the company with all their property.
6. A limited partnership shall be deemed a business company, where one or more owners conduct entrepreneurial activity on behalf of the company, and bear additional solidary liability for obligations of the company with all their property, which can be seized under the law (full participants) and other participants participating in the partnership activity shall be liable with their contributions (contributors) only.
7. Participants of the full liability company, full participants of the

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| <p>limited partnership can be only persons which are registered as entrepreneurial entities.</p> | | |
| <p>Article 82. Incorporation Documents of a Business Company</p> | | |
| <p>1. Incorporation document of a full liability company and limited partnership shall be an incorporation agreement. Incorporation document of a joint-stock company, a limited liability company and an additional liability company shall be a charter.</p> <p>2. Incorporation documents of the business company shall contain information on company type, subject and purpose of its activities, its founders and participants, composition and competence of company bodies and procedure of making decisions by them, including a list of questions that require unanimity or a qualified majority of votes, other information provided by Article 57 hereof.</p> <p>3. Charter of the joint-stock company, in addition to the information stated in part two of this Article, shall also contain information on the type of shares issued, their par value, ratio of different types of shares, number of shares purchased by founders, implications of failure to fulfill obligations as to redemption of shares.</p> <p>4. The charter of the limited liability company, in addition to the information stated in part two of this Article, shall contain information about amount of participatory interest of each participant, amount, composition and procedure of making contributions by them.</p> <p>The charter can determine procedure of participants' participatory interest determination depending on the change of property values invested as a contribution and additional contributions of participants.</p> <p>5. Incorporation agreement of the full liability company and a liability partnership, in addition to the information stated in part two of this Article, shall determine amount of participatory interest of each participant and a form of their participation in company activity, amount, composition and procedure of making contributions by them. As to the contributors of the limited partnership, the incorporation agreement shall only specify total amount of their participatory interests in the company property as well as amount, composition and procedure of making contributions by them.</p> <p>6. Name of a business company shall indicate a company type, for full</p> | | |

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| <p>liability companies and limited partnerships – surname (name) of participants that bear additional liability for company obligations with all their property as well as such other required information. The name of a business company cannot refer to belonging of the company to state authorities or local governments.</p> <p>7. Incorporation documents can also specify the information about other conditions of activity of the business company that is not in conflict with the law. If incorporation documents do not specify an activity term of the business company, it shall be deemed established for an indefinite term.</p> <p>8. Incorporation documents of the business company in cases provided by the law shall be approved by the Antimonopoly Committee of Ukraine.</p> <p>9. Violation of requirements established by this Article as to the contents of incorporation documents shall be grounds for denying the state registration of the company.</p> <p>10. The business company can be established and operate under a model charter in order prescribed by law.</p> <p>If the business company is established and acts under the model charter, a decision to establish the company to be signed by all founders shall contain the information about company type, its name, registered office, object and purpose, founders and participants, amount of the charter capital, amount of participatory interest of each participants, procedure of making contributions as well as information about its business based on the model charter.</p> | | |
| <p>Article 83. State Registration of a Business Company</p> | | |
| <p>1. The state registration of a business company shall be conducted in accordance with the law.</p> <p>2. Registration peculiarities of the business company performing banking and insurance activity as well as professional activity at the stock market shall be determined by the present Code and the relevant laws.</p> <p>3. A business company shall acquire the legal entity status from the date of its state registration.</p> <p>4. Changes in incorporation documents of the business company and those made to the state register shall be subject to the state registration under same rules that established for the state registration</p> | | |

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| <p>of a company. The business company shall be obligated within five-day term to notify the registration body of changes in incorporation documents of the company.</p> | | |
| <p>Article 84. Consequences of Entering into Agreements before the State Registration of a Business Company</p> | | |
| <p>1. A business company can open accounts in banks and enter into contracts and other agreements only after its state registration. Agreements concluded by founders of the company before the day of its registration shall be deemed valid only in case of their further approval by the company in compliance with the procedure established by the law and incorporation documents.</p> <p>2. Agreements concluded by founders before the day of company registration and not approved by the company on a later date shall entail legal implications only for persons that entered into such agreements.</p> | | |
| <p>Article 85. Property of a Business Company</p> | | |
| <p>1. A business company shall be deemed the owner of:</p> <p>property transferred in its ownership by founders and participants as contributions;</p> <p>products produced in result of economic activity of the company;</p> <p>incomes received from economic activity of the company;</p> <p>other property acquired by the company on grounds not forbidden by the law.</p> | | |
| <p>Article 86. Contributions of Participants and Founders of a Business Company</p> | | |
| <p>1. Contributions of participants and founders of the business company can be houses, buildings, equipment and other material values, securities, right to use land, water and other natural resources, houses, buildings as well as other property rights (including property rights to intellectual property objects), funds, including those in foreign currency.</p> <p>2. A contribution estimated in hryvnias shall constitute a participant's and founder's participatory interest in the charter capital of the company. The procedure of contribution estimation shall be determined in incorporation documents of the business company,</p> | | |

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| <p>unless otherwise provided by the law.</p> <p>3. It is prohibited to use budget funds, funds received in credit against mortgage, notes, property of state (commune) enterprises, which according to the law (decisions of local government) is not subject to privatization and property located in operational management of budgetary institutions for purposes of forming the charter capital of the company, unless otherwise provided by the law. A financial condition of founders – legal entities as to their ability to make required contributions to the charter capital of the business company in cases envisaged by the law, shall be examined by a qualified auditor (auditing organization) in compliance with established procedure and the property condition of individual founders shall be confirmed by an income and owned property declaration (tax declaration) certified by a competent revenue and duties authority.</p> | | |
| <p>Article 87. Charter Capital and Business Company Funds</p> | | |
| <p>1. The contributions amount of founders and participants of the business company shall constitute a charter capital of the company.</p> <p>2. The company is entitled to change (increase or decrease) the amount of charter capital in compliance with the procedure established by the present Code and the law adopted pursuant to the Code.</p> <p>3. Decisions of the company as to change of the amount of charter capital shall come into force from the day of entering them to the state register.</p> <p>4. A reserve (insurance) fund shall be formed in the business company in amount determined by incorporation documents, but at least fifteen per cent of the charter capital, as well as other funds envisaged by Ukrainian legislation or incorporation documents of the company. The amount of annual deductions to the reserve (insurance) fund shall be determined by incorporation documents but shall be at least five per cent of the company profit.</p> <p>5. Profit of the business company shall be formed from receipts from its economic activity after covering material and similar expenses and payroll costs. The company shall pay from generated economic profit taxes established by laws and other obligatory payments as well as interests on banking credits and bonds. Profit remained after specified payments shall retain at disposal of the company and be allocated pursuant to incorporation documents of the company.</p> | | |

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| <p>Article 88. Rights and Obligations of Business Company Participants</p> | | |
| <p>1. Participants of the business company shall have the right to:</p> <p>take part in managing company affairs in compliance with the procedure established in the incorporation documents, except for cases envisaged by the present Code and other laws;</p> <p>take part in distribution of company profit and receive a certain part thereof (dividends);</p> <p>receive information about company activity. As may be demanded by the participant, the company shall be under obligation to provide this participant with annual balance sheets, reports on financial and economic activity of the company, audit reports, minutes of company management meetings, etc. for familiarization;</p> <p>cease his/her participation in the company as established by incorporation documents of the company.</p> <p>2. Participants of the company shall also have other rights, envisaged by the present Code, other laws and the incorporation documents of the company.</p> <p>3. Participants of the business company shall be under obligation to:</p> <p>comply with requirements laid out in incorporation documents of the company, fulfill decisions made by the management bodies;</p> <p>make contributions (pay for shares) in amount, in compliance with the procedure and by funds (means) envisaged by incorporation documents pursuant to the present Code and the law on business companies;</p> <p>bear such other obligations provided by the present Code, other laws and incorporation documents of the company.</p> | | |
| <p>Article 89. Management of a Business Company</p> | | |
| <p>1. Management of business company activities shall be conducted by its bodies and officials, the composition and election (appointment) procedure of which is determined depending on the type of company. The company can be managed by its participants in cases established by the law.</p> <p>2. Officials of the company shall be deemed the chairman and members of the executive body, the chairman of the audit</p> | | |

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| <p>commission (auditor) and in the event the company board is set up (supervisory board) – the chair and members of such board. Restrictions as to taking several positions by one person shall be determined by the law.</p> <p>3. Persons, whose office or other activity are declared as incompatible with these positions by the Constitution of Ukraine and the law, as well as persons prohibited from occupying such positions by a court judgment cannot be officials of the business company.</p> <p>4. Officials shall be held liable for the damage caused by them to the company within limits and in compliance with the procedure established by the law and incorporation documents of the company.</p> <p>5. The business company, in the charter capital of which more than 50 percent of shares (participatory interests, units) are owned by the state shall draw up and perform an annual financial plan in each subsequent year in accordance with Article 75 hereof.</p> | | |
| <p>Article 90. Accounting and Reporting of a Business Company</p> | | |
| <p>1. Accounting and reporting of business companies shall be conducted in compliance with the requirements of Article 19 hereof and other legal acts.</p> <p>2. Audits of financial activity of the company shall be conducted by state tax authorities, other state authorities within powers established by the law, audit commission (auditor) of the business company and/or auditors.</p> <p>3. Accuracy and completeness of annual balance sheets and reporting of the business company shall be confirmed by the auditor (audit organization) in cases established by the law.</p> | | |
| <p>Article 91. Termination of Business Company</p> | | |
| <p>1. Termination of business company shall be done through its liquidation or reorganization as established by Article 59 hereof.</p> <p>2. Liquidation of the business company shall be carried out by a liquidation commission appointed by the highest body and case of termination upon a court decision – by a liquidation commission formed under such decision.</p> <p>3. From the day of setting up the liquidation commission, it shall assume powers as to management of the company. The liquidation commission shall publish information about the company liquidation</p> | | |

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| <p>and take other actions as required by Articles 58-61 hereof and other laws within three days from the day it is set up.</p> <p>4. Settlements with creditors in the event of liquidation shall be performed according to Article 61 hereof in consideration of the following peculiarities:</p> <p>funds belonging to the company, including those from sale of property in the event of liquidation, once the cost of employed labour is paid and liabilities before the budget, banks, holders of bonds issued by the company and other creditors are discharged shall be distributed between participants of the company in compliance with the procedure and on conditions envisaged by the present Code, the law on business companies and incorporation documents of the company within six months after the information about company liquidation is published;</p> <p>property transferred to the company by its founders or participants for use shall be returned in kind with no compensation. Should there arise any disputes as to discharging the company debts, its funds shall not be subject to distribution between participants of the company before such disputes are settled or before creditors receive adequate guarantees of debt recovery.</p> <p>5. Liquidation of the business company shall be deemed completed and the company as terminated from the day the information about its liquidation is entered in the state register.</p> | | |
| <p>Article 92. Legislation on Business Companies</p> | | |
| <p>1. The procedure of forming and functioning of certain types of business companies shall be governed by the present Code, the Civil Code of Ukraine and other laws.</p> | | |

Approximation table

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
|--|-------------------------|-----------------------------------|
| Law of Ukraine On Business Companies | | |
| Part 1. GENERAL PROVISIONS | | |
| Article 1. Business companies | | |
| <p>A business company shall be understood to be a legal entity, which charter (combined) capital is divided into shares among participants.</p> <p>This law determines enterprises, organizations and establishments founded on the basis of agreement between legal entities and citizens, through the unification of their assets and entrepreneurial activity with an aim to gain profit as business companies.</p> <p>Business companies are joint stock companies, limited liability companies, companies with additional liability, full liability companies, and limited partnerships.</p> <p>Companies can carry out any entrepreneurial activity that does not contradict with the Ukrainian legislation.</p> <p>Business companies can enjoy property and individual non-property rights, make commitments, speak in a court, arbitration tribunal court on their own behalf.</p> <p>Purchase by a business company of stock (shares) in other business company shall be carried out allowing for the economic competition protection legislation.</p> | n/a | |
| Article 2. Name of a Company | | |
| <p>Name of a company must contain the information about its organizational and legal form (the type of the company), the name and other information envisaged by the law.</p> | n/a | |
| <p>Incorporation documents should include the name of the company.</p> | n/a | |
| <p>The name of the company should not indicate correspondent ministries, departments and public organizations under which jurisdictions the partnership acts.</p> | n/a | |

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| <p>The company must be located in the territory of Ukraine.</p> | | <p>Possible inconsistency with art. 25 of the Law of Ukraine "On Private International Law" dated 23.06.2005 № 2709-IV stipulating the incorporation theory. See also art. 93 CC</p> |
| <p>Article 3. Founders and participants of the company</p> | | |
| <p>The founders and participants of companies can be enterprises (except state-owned), organizations, institutions, as well as citizens, unless otherwise stipulated by the legislative acts of Ukraine.</p> <p>Enterprises, organizations and institutions - participants of the company do not lose their legal entities status.</p> <p>Foreign citizens, individuals without citizenship, foreign legal entities, as well as international organizations can be founders and participants of business companies along with citizens and legal entities of Ukraine, unless otherwise foreseen by the legislative acts of Ukraine.</p> <p>A company, except for an unlimited and limited partnership, may be established by a single entity, which becomes the sole participant thereof.</p> | <p>Directive 2009/102/EC</p> | <p>See also art. 141 par. 2 CC</p> |
| <p>Article 4. Constituent documents of a company</p> | | |
| <p>A joint-stock company, a limited liability company and an additional liability company shall be established and operate on the basis of a charter; a full liability company and a limited partnership shall operate on the basis of an incorporation agreement. Constituting documents of a company shall be concurred with the Antimonopoly Committee of Ukraine in cases prescribed by the current legislation.</p> <p>Constituent documents should specify the type of company, field and aims of its activity, its founders and participants, name and location, the amount and procedure for charter (combined)</p> | <p>n/a</p> | |

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| <p>capital establishment, the order of profits and losses allocation, the composition and competence of the bodies of company, the order of making decisions, including the list of issues where qualified majority is necessary, the order of introducing changes into constituent documents, and the order of liquidation and re-organization of the company.</p> <p>The constituent documents must also include the information foreseen by articles 37, 51, 65, 67, and 76 of this Law.</p> <p>The absence of above mentioned information in constituent documents can make the ground for the refusal in state registration of the company.</p> <p>Other provisions not contradicting with the legislation of Ukraine can be also included into constituent documents.</p> <p>A business company may be established and operate on the basis of the model charter in accordance with the procedure specified by law.</p> <p>If a business company is established and operates on the basis of a model charter, the information about the type of the company, its name, its location, the objective and the subject matter of business activity, the participants and founders, the amount of the charter (combined) capital, the interests of each founder, the procedure of their lodging contributions, and the information about the exercise of business on the basis of the model charter shall be stated in the decision to establish the business company to be signed by all founders.</p> | | |
| <p>Article 5. Term of the company's activity</p> | | |
| <p>If the term of the company's activity is not determined in the constituent documents, the company is considered to be established for an undetermined term.</p> | n/a | |
| <p>Article 6. State registration of the company</p> | | |
| <p>A company acquires the status of legal entity after its state</p> | n/a | See the Law of Ukraine No. 755-IV of May 15, 2003 “On State Registration of |

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| <p>registration.</p> <p>State registration of companies shall be performed in accordance with the procedure prescribed by law for the state registration of legal entities.</p> <p>The companies carrying out banking activity must be registered by the National Bank of Ukraine according to the procedure established by the legislation of Ukraine on banks and banking activity.</p> | | <p>Legal Entities and Individual Entrepreneurs”</p> |
| <p>Article 7. State registration of changes in the company's constituent documents</p> | | |
| <p>Changes that have occurred in constituting documents of the company and are to be entered into the Unified State Register of Legal Entities and Individual Entrepreneurs shall be subject to the state registration according to the rules that apply to the state registration of a company.</p> <p>A company must notify the registering agency for the purposes of the entry of the necessary changes into the state register within three business days of its decision to enter changes into constituting documents.</p> | <p>Directive 2009/101/EC art. 2 Member States shall take the measures required to ensure compulsory disclosure by companies as referred to in Article 1 of at least the following documents and particulars: (a) the instrument of constitution, and the statutes if they are contained in a separate instrument; (b) any amendments to the instruments mentioned in point (a), including any extension of the duration of the company; (c) after every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date; [...]</p> | |
| <p>Article 8. Consequences of Agreements Made Prior to Registration of the Business Association</p> | | |
| <p>A business association may open current and deposit accounts with a bank, as well as conclude contracts and other agreements only after its registration. Agreements concluded on behalf of the business association prior to its registration shall be deemed concluded with the business association only if the business association approves them in the future.</p> | <p>Directive 2009/101/EC art. 8 If, before a company being formed has acquired legal personality, action has been carried out in its name and the company does not assume the obligations arising from such action, the persons who acted shall, without limit, be jointly and severally liable therefor, unless otherwise agreed.</p> | <p>The limitation on legal actions prior to registration is economically dubious and violates the idea of the Directive, that implicitly allows for pre-registration activities of the company.</p> |

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| <p>Agreements concluded by the founders before registration of the business association and not approved by the business association in the future shall be deemed binding only upon the founders.</p> | | |
| <p>Article 9. Subsidiaries, branches and representative offices of a company</p> | | |
| <p>A company is entitled to create its branches and representative offices, on the territory of Ukraine and beyond its borders, as well as subsidiaries in accordance with the Ukrainian legislation in force.</p> | n/a | |
| <p>Article 10. Company's participants' rights</p> | | |
| <p>Participants of a company are entitled:</p> <ul style="list-style-type: none"> a) to participate in management of the company in accordance with the constituent documents with exceptions foreseen by this Law; b) to participate in division of profit of the company and to receive its part (dividends). Persons being participants of a business company at the start of payments of dividends shall have the right to receive a part of the profit (dividends) pro rata the interest of each such participant; c) to exit from the company in an established order; d) to get information on company's activity. The company shall provide annual balance sheets, activity reports of the company, and minutes of the meetings on request of the participant of the company. e) to alienate shares in the charter (combined) capital of the company, securities, which certify the participation in the company, in accordance with the procedure prescribed by law; <p>The participants can also enjoy other rights foreseen by the legislation and constituent documents of the company.</p> | n/a | |
| <p>Article 11. Duties of the participants of the company</p> | | |

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| <p>The participants are obliged</p> <p>a) to follow the constituent documents of the company and to implement the decisions of general assemblies and other management bodies of the company;</p> <p>b) to carry out their duties including connected with ownership participation, as well as to make contributions (to pay the shares) in amount, order and by means foreseen by the constituent documents;</p> <p>c) not to divulge commercial secrets and confidential information on company's activity;</p> <p>d) to carry other responsibilities provided they are foreseen by this Law, other legislative acts of Ukraine and constituent documents.</p> | n/a | |
| <p>Article 11-1. Legislation on business companies</p> | | |
| <p>Legislation on business companies shall be based upon standards introduced by the Constitution of Ukraine, and consists of the Civil Code of Ukraine, the Commercial Code of Ukraine, this Law, other regulatory acts adopted in accordance with these legislative acts.</p> | n/a | <p>Exhaustive enlisting is pointless and empty – see e.g. the 2008 Law on Joint Stock Companies, which is not listed in art. 11-1.</p> |
| <p>Article 12. Title to the assets of the company</p> | | |
| <p>The company is the owner of</p> <ul style="list-style-type: none"> - the property conveyed thereto by participants into the ownership as the contribution to the charter (combined) capital; - the products produced by the company in the result of business activity; - the gained profit; - and other assets acquired by means not prohibited by law. <p>The company is responsible for the risk of unexpected destruction or damage of assets owned by the company or</p> | n/a | |

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| <p>assigned to it unless otherwise foreseen by constituent documents.</p> | | |
| <p>Article 13. Contributions of the founders and participants of companies</p> | | |
| <p>The contributions of to the charter (combined) capital may include money, securities, other property or non-property rights which have, unless otherwise provided by law.</p> <p>The monetary valuation of a contribution of a participant of a business company shall be carried out by the consent of participants of the company; in cases prescribed by law, it shall be subject to the independent expert valuation.</p> <p>It is prohibited to use budget funds, funds received as a loan or against pledge, promissory notes, property of state-owned (community-owned) enterprises, which is not subject to the privatization in accordance with the law (the decision of a local self-government body), and the property, which is under the operative management by budget funded institutions, for setting up the authorized (combined) capital of a business company, unless otherwise provided by law.</p> <p>Financial position of founders of open joint-stock companies (except individuals) shall undergo audit (by an auditing organization) as for their capability to make respective contributions to the charter capital.</p> | <p>n/a</p> | <p>With regard to the JSC art. 10 of the Directive 2012/30/EU (“Capital Directive”) applies, whenever shareholders bring non-cash contributions.</p> |
| <p>Article 14. Funds of the company</p> | | |
| <p>The reserve (insurance) fund is created within the company in the amount determined by the constituent documents but not less than 25% of the charter (combined) capital, as well as other funds foreseen by the legislation of Ukraine or constituent documents of the company.</p> <p>The amount of annual allocation to the reserve (insurance) fund is foreseen by the constituent documents but not less 5% of net income.</p> | <p>n/a</p> | |

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| Article 15. The profit of the company | | |
| <p>The profit of company shall consist of proceeds from business activities after the coverage of material and equivalent expenses, and labor remuneration expenses. The interest on bank loans and bonds, the taxes and other fees payable to the budget in accordance with the legislation of Ukraine shall be paid from the balance-sheet profit of the company. The net profit obtained after the above settlements and the payment of dividends shall remain at the full disposal of the company; the latter shall determine the lines of the use thereof in accordance with constituting documents.</p> | n/a | With regard to the JSC art. 17 of the Directive 2012/30/EU (“Capital Directive”) applies |
| Article 16. Changes in the charter (combined) capital | | |
| <p>A company has a right to change (increase or reduce) the charter (combined) capital.</p> <p>Increase of the charter (combined) capital can be done only after complete assignment of contributions by all participants (payment of the shares) with exceptions foreseen by this Law.</p> <p>Reduction of the charter (combined) capital is not allowed when there are objections on the company's creditors part.</p> <p>The decision to change the value of the charter (combined) capital of a company shall come into effect from the date of entry of such changes into the Unified State Register of Legal Entities and Individual Entrepreneurs.</p> | | |
| Article 17. Audit of the financial activity of the company | | |
| <p>Audit of financial activities of companies shall be carried out by state tax inspectorates, state bodies within their jurisdiction, revision bodies of the companies and auditing organizations.</p> <p>Audits should not interfere with the company's work routine.</p> | | |
| Article 18. Accountancy and reporting of the company | | |

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| <p>A company shall keep accounts, compile and submit the statistical information and administrative data according to the procedure specified by law.</p> <p>The authenticity and completeness of the company's annual financial accounts shall be confirmed by the auditor (an auditing organization). The mandatory annual balance and accounts auditing of companies with annual turnover not exceeding 250 tax-free minimums shall be carried out once in three years.</p> | | |
| <p>Article 19. Termination of company's activity</p> | | |
| <p>A company shall be terminated in accordance with the procedure prescribed by law.</p> | | |
| <p>Article 21. Sequence of the Satisfaction of Claims of Creditors</p> | | |
| <p>In case of the liquidation of a solvent company, the claims of its creditors shall be satisfied in the sequence specified by the Civil Code of Ukraine.</p> <p>In case a company is declared bankrupt, the claims of its creditors shall be satisfied in the sequence prescribed by the Law of Ukraine "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt"</p> | | |
| <p>Article 23. Management and officials of business companies</p> | | |
| <p>Management of a company is carried out by its bodies, the structure and election (appointment) of which is determined by the company type.</p> <p>The chairman and members of executive body, the head of revision commission, head and members of supervisory board (in companies where they are established) are considered to be the managerial officials [executives] of the company.</p> <p>People's deputies of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central and other executive agencies, military servicemen, notaries, deputies of local councils</p> | | |

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| <p>working at such councils on a permanent basis, officers of public prosecution, judicial, state security, internal affairs agencies, officers of state authorities and local self-government bodies, unless state officials exercise functions of the management of shares (interests, units) owned by the State and represent interests of the State in the supervisory council or the revision commission of the company, may not be officers of managing bodies of a company. Individuals prohibited by court from engaging into certain activities may not be officers of the companies that exercise the activity in question. Individuals, who have non-lifted convictions for theft, the obtainment of illegitimate benefits and other acquisitive offences, may not occupy managing positions and positions associated with the pecuniary responsibility in companies.</p> <p>The officials are responsible for the damage caused to the company in accordance with the legislation of Ukraine.</p> <p>The officials must keep the commercial secret and confidential information, and are accountable for their divulging in accordance with the current legislation of Ukraine and constituent documents of the company.</p> | | |
| <p>Article 24. Concept of a joint-stock company</p> | | |
| <p>A joint-stock company is a company with charter (combined) capital divided into determined number of shares of equal nominal value that carries responsibility for the commitments by its assets.</p> <p>Shareholders are responsible for company's commitments only within the shares owned by them.</p> <p>In cases foreseen by the charter, the shareholders who have not fully paid their shares carry the responsibility for the company's commitments also within the limits of an unpaid sum.</p> <p>General nominal value of issued shares forms the charter (combined) capital of joint stock company, and should be not less than the amount equal to 1250 of minimum wages actual on</p> | | |

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| the moment of establishment of joint stock company. | | |
| Article 25. Types of joint-stock companies | | |
| <p>Joint-stock companies include: open joint-stock company, the shares of which can be distributed through the open subscription and buy-sale on stock exchange; closed joint-stock company, the shares of which are divided between the founders and cannot be distributed through subscription, buy or sale on stock exchange.</p> <p>Closed joint-stock company may be re-organized into open joint-stock company though the registration of its shares in order foreseen by the legislation on securities and stock exchange, and through the introduction of changes into the charter of the company.</p> | | |
| Article 26. Founders of joint-stock company | | |
| <p>Founders of a joint-stock company may be legal entities and individuals.</p> <p>Founders of a joint-stock company make an agreement which defines the order of their joint activity on establishment of the joint stock company, liability before individuals subscribed for shares and third parties.</p> <p>The founders carry joint responsibility for the commitments made before the registration of the joint-stock company.</p> <p>In order to establish a joint-stock company its founders must make announcement about their intention to establish a joint-stock company, open a subscription for shares, to conduct establishment meeting and state registration of the joint-stock company.</p> | | |
| Article 27. Issue of securities by a joint-stock company | | |
| <p>A joint-stock company is entitled to issue securities in accordance with the requirements of the National Commission for Securities and Stock Market. Should a company declare an additional issue before registration of the previous one, all</p> | | |

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| <p>purchase and sale contracts relating to the additional issue shall be considered invalid, with consequences set forth in Section 5, Article 30 hereunder.</p> <p>The joint-stock company shall be under the obligation to supply the shareholders with shares (share certificates) not later than six months from the date of registration of the issue.</p> <p>A closed joint-stock company shall issue only registered shares.</p> | | |
| <p>Article 28. Purchase of shares</p> | | |
| <p>Shares are purchased by the participants on establishment of joint-stock company on the basis of agreement with its founders, and on case of additional issue of shares with the aim to increase the charter (combined) capital - with the company.</p> <p>A share may be purchased also as per contract made with its owner or holder, at a price determined between the parties thereto, or at a price formed at the stock exchange, as well as in keeping with inheritance procedures with regard to citizens or juridical persons, or on other legal grounds.</p> <p>Transfer and sale of the title to shares shall be affected in accordance with the laws of Ukraine.</p> | | |
| <p>Article 29. Distribution of shares</p> | | |
| <p>On establishment of joint-stock company the shares can be distributed by means of open subscription (for open joint-stock companies) or division of all shares between the founders (for closed joint-stock companies).</p> | | |
| <p>Article 30. Open subscription to shares</p> | | |
| <p>Open subscription to shares on establishment of a joint-stock company is organized by the founders. The founders in all cases are obliged to be the holders of shares in the amount not less than 25% of charter (combined) capital and for the term not less than 2 years.</p> | | |

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| <p>The founders of an open joint-stock company (issuers) shall be under the obligation, in keeping with legally set procedures, to publish information on the issue of shares, with registration procedures instituted by the National Commission for Securities and Stock Market..</p> <p>The term of an open subscription for shares shall not exceed 6 months.</p> <p>Persons wishing to purchase shares must transfer not less than 10 % of share's value for which they subscribe on an account of founders, in exchange for the written obligation on sell of the correspondent number of shares.</p> <p>After the expiration of the term determined by the announcement, the subscription stops. If by this time less than 60% of shares are covered by the subscription, the joint-stock company is considered as not established. Persons that have subscribed to shares receive their money or other assets back not later than within 30 days. The founders carry joint accountancy for failing to fulfil this commitment.</p> <p>Should the subscription to shares exceed the amount of charter (combined) capital, the founders can decline the application for subscription if so provided by the terms of the issue. The decline for subscription is carried out in accordance to the list of subscribers from the end of it. When the founders do not decline the application for subscription, the decision on acceptance or decline of extra subscription is made by the founders' meeting. In case of decline for extra subscription by the founders or the founders' meeting the contributed sums should be reimbursed in order foreseen by part four of this article.</p> <p>The persons subscribed to shares should pay not less than 30% of nominal value including the initial contribution by the day of calling of the founders' meeting. The founders provide temporary certificates to confirm the contributions.</p> | | |
| <p>Article 31. Division of shares between the founders of a</p> | | |

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| joint-stock company | | |
| In cases when all shares of a joint-stock company are divided between the founders, they should pay not less than 50% of nominal value of the share by the day of calling of founders' meeting. | | |
| Article 32. Purchase by joint-stock company of its own shares | | |
| A joint-stock company has the right to purchase from the shareholder paid off shares only on the account of sums that exceed the charter (combined) capital for their further sell, distribution among its staff or for annulment. The above mentioned shares must be sold or annulled within the term not more than one year. During this period the division of profit, as well as voting and definition of quorum at the shareholders meeting is carried out without taking into consideration its own shares purchased by the joint-stock company. | | |
| Article 33. Payment for shares | | |
| Shareholders within the terms established by founders' meeting, but not later than one year after the registration of the joint-stock company, are obliged to pay full value of the shares. In case of payment default within the established term, a shareholder pays for a period of an overdue 10 annual per cent of total sum of overdue payment. In case of payment default for more than three months after the established term for payment, the joint-stock company has the right to sell the shares in order determined by the company's charter. | | |
| Article 34. Prohibition of shares' issuance for covering of loses | | |
| A joint-stock company is prohibited to issue shares with the aim to cover losses resulted from its business activity. | | |

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| <p>Article 35. Founders' meeting of a joint-stock company</p> <p>Founders' meeting of a joint-stock company is called on term mentioned in the announcement, but not later than 2 months from the moment of finishing of subscription to shares.</p> <p>If the term was exceeded, a person subscribed to share has the right to demand the refund of the paid value of the share.</p> <p>Founders' meeting of a joint-stock company is considered competent if individuals who subscribed to 60% of shares participate in it.</p> <p>If the founders' meeting was not held because of absence of quorum, during next two weeks the founders meeting should be called again. If the repeated calling of the meeting failed to gather quorum, the joint-stock company is considered not to be established.</p> <p>Voting at founders' meeting is carried out on the principle one share - one vote.</p> <p>Decision on establishment of a joint-stock company, its subsidiary, branches and representatives, on election of the supervisory council of a joint-stock company, executive and controlling bodies of joint-stock company, and on giving privileges to the founders at the account of joint-stock company should be supported by the majority of 3/4 votes of individuals present at the founders' meeting, who subscribed to shares, as to other issues - by simple majority of votes.</p> | | |
| <p>Article 36. Competence of founders meeting of a joint-stock company</p> <p>Founders meeting of a joint-stock company may decide on the following issues</p> <ul style="list-style-type: none"> a) to adopt the decision on establishment of joint-stock company and adoption of its statutory; b) to adopt or decline the proposal for subscription for shares | | |

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| <p>that exceed the number of shares to which it was announced the subscription (in case of adoption of the decision on subscription, that exceeds the amount to which it was announced the subscription, the charter (combined) capital is increasing correspondingly);</p> <p>c) to reduce the charter (combined) capital when the subscription to shares did not cover all the necessary sum mentioned in the announcement within the established term;</p> <p>d) to elect supervisory council of a joint-stock company, executive and controlling body of joint-stock company;</p> <p>e) to confirm the agreements made by the founders before the establishment of joint-stock company;</p> <p>f) to determine privileges for the founders;</p> <p>g) to approve the evaluation of contributions assigned in natural form;</p> <p>h) other issues in accordance with the constituent documents.</p> | | |
| <p>Article 37. The content of charter of joint-stock company</p> | | |
| <p>Charter of a joint-stock company, in addition to the information mentioned in article 4 of this Law, must include information on type of shares issued, their nominal value, correlation between different types of shares, the number of shares that are bought by founders, the consequences of breaking the commitment to buy out the shares terms and conditions of payments of part of the income (dividends) once a year, as per results of the calendar year.</p> | | |
| <p>Article 38. Order of increasing the charter (combined) capital of a joint-stock company</p> | | |
| <p>A joint-stock company shall have the right to increase its charter (combined) capital by decision of the general meeting of shareholders, if all shares issued earlier have been paid in full at least at the par value.</p> | | |

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| <p>Increase in the charter (combined) capital shall be carried out according to the procedure prescribed by the National Commission for Securities and Stock Market by means of the issue of new shares or the increase in the par value of shares.</p> <p>The subscription to additionally issued shares is carried out in order foreseen by article 30 of this Law. Shareholders have a priority right to obtain additionally issued shares. Persons subscribed for shares shall take part in voting on the results of subscription for the additional issue.</p> <p>Changes in the charter connected with the increase of charter (combined) capital must be registered by the body that registered the charter of joint-stock company after the sale of additionally issued shares.</p> <p>Charters of banking and insurance institutions existing in the form of joint-stock companies may envisage another order to increase the charter (combined) capital than mentioned in this article.</p> | | |
| <p>Article 39. Order of reduction of charter (combined) capital of joint-stock company</p> | | |
| <p>The decision on the reduction of charter (combined) capital of a joint-stock company is adopted in the same order as for the increase of charter (combined) capital.</p> <p>Decrease of charter (combined) capital is carried out by the means of decrease of nominal value of the share or by decrease of the number of shares through the buyout of shares from their owners with the aim to annul them.</p> <p>The reduction in the charter capital of a joint-stock company shall be allowed after the notification of all its creditors thereof according to the procedure specified by law. In this case, the creditors shall have the right to require the early termination or performance of the relevant liabilities of the company, and to claim the reimbursement for their losses.</p> | | |

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| <p>By the decision of a joint-stock company on reduction of charter (combined) capital, the shares that are not submitted for annulment are determined invalid but not before the term of six months after notifying all shareholders on it as it is foreseen by the charter.</p> <p>Joint-stock company reimburse loses to the owner of shares that are connected with changes in the charter (combined) capital. Controversies as to compensation of those loses are solved by courts.</p> <p>If the value of net assets of a joint-stock company turns out to be less than the charter capital after the end of the second or every subsequent financial year, the company must announce the reduction in its charter capital and register the appropriate changes in the charter in accordance with the established procedure. If the value of net assets of the company becomes less than the minimum charter capital value prescribed by law, the company shall be subject to liquidation.</p> | | |
| <p>Article 40. Announcement on general meeting on the changes in charter (combined) capital of a joint-stock company</p> | | |
| <p>The announcement on holding of a general meeting on the issue of changes in charter (combined) capital of a joint- stock company must include:</p> <ul style="list-style-type: none"> a) motives, means and minimum amount of increase or decrease in the charter (combined) capital; b) draft changes of charter of the joint-stock company connected with increase or decrease of charter (combined) capital; c) data on the number of shares additionally issued or annulled, and their total value; d) information on new nominal value of shares; e) rights of shareholders on additional issue of shares or their | | |

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| <p>annulling;</p> <p>f) date of beginning or end of subscription to shares that are additionally issued or annulled;</p> <p>g) order of reimbursement of losses to the owners of shares that are connected with changes in charter (combined) capital.</p> | | |
| <p>Article 41. The highest body of a joint-stock company</p> | | |
| <p>The company's general meeting shall be the highest body. All shareholders, regardless of the number and type of shares in their possession, shall have the right to participate in the general meeting. Members of executive bodies, other than shareholders, shall also have the right to participate, but with an advisory vote. Shareholders (their proxies) participating in the general meeting shall be registered, specifying the number of votes of each shareholder. Registration of shareholders (their proxies) arriving to participate in the general meeting shall be carried out by the company's executive body or registrar, in accordance with the register of shareholders on the date of the meeting, as per contract made with this registrar. The said register shall be signed by the chairman and secretary of the general meeting.</p> <p>Owners of shares to bearer shall be registered upon presence of these shares (share certificates) or bank statements. Persons in possession of shares on the date of the general meeting shall have the right to participate (except in the case of the founders' meeting).</p> <p>Delegation of its authorities by the shareholder shall be conducted in accordance with law. The right of proxy at the general meeting may be certified [attested to] by the registrar or the board of the joint-stock company.</p> <p>Shareholders holding over 10% of votes and/or the National Commission for Securities and Stock Market may appoint their representatives to monitor the registration of shareholders participating in the general meeting, provided the executive body</p> | | |

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| <p>of the company is notified before the registration starts.</p> <p>The general meeting shall have the authority to:</p> <ul style="list-style-type: none">(a) determine the joint-stock company's guidelines and approve its plans and delivery reports;(b) introduce changes in the charter of the company, including the modification of its charter capital;(c) elect and revoke members of the supervisory board;(d) set up and revoke the executive and other bodies of the company;(e) approve annual performance results of a joint-stock company, including its subsidiaries, approve reports and opinions of the revision commission, the procedure of the profit allocation, the time frame and the procedure of the disbursement of part of profit (dividends) in compliance with the requirements of this Law and other laws, and to determine the loss coverage procedure;(f) establish, reorganize, and liquidate subsidiaries, branches, and representative offices; approve their charters and bylaws;(g) make decisions on financial liabilities of company's executives;(h) approve the company's rules of procedure and other internal documents of the company, determination of the company's organization chart;(i) decide on acquisition of the company's stocks;(j) decide on remuneration of the officials of the company, its subsidiaries, branches, and representative offices;(k) approve contracts (agreements) which amount exceeds the limits set by the charter;(l) decide on termination of the company, appointment of the | | |
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| <p>liquidation commission, and approve the liquidation balance;</p> <p>(m) adopt decisions on the election of an authorized agent of shareholders to represent interests of shareholders in cases covered by law.</p> <p>The authority provided for by items "b", "c", "d", "f", "g", "m" and "n" shall be within the sole competence of the general shareholders meeting and may not be conveyed to other bodies of a company.</p> <p>The charter may refer other matters to the general meeting's jurisdiction.</p> <p>The general meeting shall be considered valid when attended by shareholders with over 60% of votes under the charter.</p> <p>The general meeting's minutes shall be signed by the chairman and secretary of the meeting and shall be submitted to the joint-stock company's executive body not later than three working days after the end of the meeting.</p> | | |
| <p>Article 42. Illegibility of general meeting's decisions</p> | | |
| <p>Decisions of the general shareholders meetings on the following matter must be adopted by the majority of 3/4 votes of shareholders participating in the meeting:</p> <p>a) change of the company's charter;</p> <p>b) adoption of decisions on termination of the company;</p> <p>The rest of matters are decided by simple majority of shareholders who take part in the meeting.</p> | | |
| <p>Article 43. Calling of the shareholders meeting</p> | | |
| <p>Each holder of registered shares shall be notified personally on the general meeting, in accordance with procedures set forth in the charter. In addition, a general notice shall be published by the local press at the company's registered address and in one of the official periodicals run by the Supreme Council of Ukraine,</p> | | |

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| <p>Cabinet of Ministers of Ukraine or the National Commission for Securities and Stock Market, specifying the time and place of the general meeting and its agenda. Should the agenda envisage changes in the charter capital, the general notice shall be supplemented with information envisaged by Article 40 hereinbefore. The said notice shall be published at least 45 days prior to the general meeting. In case of need, a repeated notice may be published. The general shareholders meeting shall be held on the territory of Ukraine and, as a rule, at the location of the joint-stock company, except if foreigners, stateless individuals, foreign legal entities, as well as international organizations own 100 per cent of shares of a company as of the date of the general meeting.</p> <p>Each shareholder shall have the right to submit proposals concerning the general meeting's agenda, but not later than 30 days prior to the date of the meeting. The executive body shall decide whether or not such proposals will be included in the agenda. Proposals made by shareholders holding over 10% of the votes shall obligatory be entered in the agenda. Decisions on changes in the agenda shall be notified to all shareholders no later than 10 days before the date of the meeting, in accordance with procedures set forth in the charter.</p> <p>The shareholders must have an opportunity to get acquainted with documents related to the agenda of the meeting.</p> <p>The general meeting has no right to make decisions on matters that were not included in its agenda.</p> | | |
| <p>Article 44. Voting at general shareholders meeting</p> | | |
| <p>Voting at general shareholders meetings is carried out on the principle one share - one vote.</p> <p>The representative can be permanent or appointed for certain terms. The shareholder has the right to change his representative in the highest body any time, after informing the executive body of joint-stock company about it.</p> | | |

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| <p>Article 45. Frequency of calling the shareholders' meeting. Extraordinary meeting</p> | | |
| <p>The general shareholders meeting is called at least once a year unless otherwise foreseen by the charter of the company.</p> <p>The extraordinary meeting is called in case of insolvency of the company, as well as on the occurrence of circumstances indicated by the charter of the company, and in any other case when it is in demand of the interests of the joint-stock company.</p> <p>An extraordinary meeting shall also be convened by the executive body if so requested in writing by the supervisory council of a joint-stock company or the revision commission. The executive body of the company shall decide on the convocation of such extraordinary meeting, along with the agenda proposed by the supervisory board of a joint-stock company or revision commission, within 20 days from the date of receipt of such written request.</p> <p>Shareholders holding more than 10% of votes shall have the right to demand convocation of an extraordinary meeting any time and for any reasons whatsoever. Should the board fail to comply within 20 days, these shareholders shall be within their right to convene an extraordinary meeting, as per Section 1, Article 43 hereinbefore.</p> <p>Article 46. Supervisory board of a Joint-stock Company</p> | | |
| <p>A supervisory board of a joint-stock company may be set up in a joint-stock company from among shareholders to represent interests of shareholders during the period between the general meeting and within the competence specified by the charter, control and regulate the activities of the executive body.</p> <p>Representatives of the trade union or other body designated by the labour collective which signed the collective agreement on behalf of the labour collective shall attend the meetings of the supervisory council of a joint-stock company in advisory</p> | | |

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| <p>capacity.</p> <p>A joint-stock stock company numbering over 50 shareholders must establish a supervisory council of a joint-stock company.</p> <p>Under the charter or the resolution of the general shareholders the supervisory board may be vested with some of the functions being otherwise the prerogative of the general meeting.</p> <p>Matters referred to the exclusive authority of the supervisory board of a joint-stock company by the charter shall not be delegated to the company's executive body.</p> <p>Members of the supervisory board of a joint-stock company shall not be members of the executive body or the revision commission.</p> | | |
| <p>Article 47. Executive Body of a Joint-Stock Company</p> | | |
| <p>Executive body of a joint-stock company is its management board or other body, which manages its day-to-day activities.</p> <p>The executive body shall solve all the issues related to activities of the joint-stock company, except for those, which belong to the competence of the general meeting and the supervisory board of the company.</p> <p>The executive body shall report to the general shareholders meeting and the supervisory council of the joint stock company, and organize the implementation of their decisions. The executive body shall act on behalf of the joint-stock company within the scope specified by the charter of the joint-stock company and the law.</p> <p>The executive body of a joint-stock company may be either a collegiate body (management board, a directorate) or a single body (director, general director).</p> | | |
| <p>Article 48. Chairman and members of management board of joint-stock company</p> | | |
| <p>The chairman of management board of joint-stock company has</p> | | |

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| <p>the right to act on behalf of the company without power of attorney. Other members of management board can also be provided with this right, in accordance with the charter.</p> <p>Chairman of management board of a company organizes keeping of minutes of the board's meetings. The minutes book should be always on disposal to every shareholder at any time. Certified extracts from the minutes should be provided upon their request.</p> <p>The chairman and members of management board can be individuals who are in labor relations with the company.</p> | | |
| <p>Article 49. Revision commission of joint-stock company</p> | | |
| <p>Control over financial and business activity of management board of joint-stock company is carried out by revision commission which is elected among the shareholders.</p> <p>Members of the supervisory board of a joint-stock company, as well as any other executives of the company shall not be members of the revision commission.</p> <p>Activity of revision commission and its structure should be confirmed by general shareholders meeting in accordance with the charter of the company.</p> <p>Revision of financial and business activity of management board is carried out by revision commission upon instruction of general shareholders meeting, supervisory board of a joint-stock company, and on its own initiative or on request of shareholders owning in total more than 10% of votes. The revision commissions of joint-stock company can obtain all the documents, accounting or any other documentation, and personal explanations of the officials on its demand.</p> <p>The revision commission reports on results of conducted reviews to the general shareholders meeting of joint-stock company or to the supervisory board of a joint-stock company.</p> <p>The members of revision commission have the right to take part</p> | | |

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| <p>at the sittings of the management board in consultative capacity.</p> <p>The revision commission presents conclusions on annual reports and balance sheets. The general shareholders meeting cannot confirm the balance sheet without conclusions of revision commission.</p> <p>The revision commission is obliged to call extraordinary general shareholders meeting in case of danger to the essential interests of the joint-stock company or discovery of abuses by the officials of joint-stock company.</p> | | |
| <p>Article 50. Concept of limited liability company</p> | | |
| <p>Limited liability company is an company with charter capital divided into shares the amount of which is determined by the charter documents.</p> <p>Maximum number of participants of a limited liability company is 100.</p> <p>Participants of a limited liability company bear responsibility within the amount of their contributions.</p> <p>Company participants, which have not made their contributions in full, shall be jointly liable under the company's liabilities within the scope of the value of the non-contributed portion of the contribution of each participant.</p> | | |
| <p>Article 51. Features of the charter documents of limited liability companies</p> | | |
| <p>Charter documents of a limited liability company, in addition to the information specified in Article 4 of this Law, must contain the information about the percentage of interests of each participant, the amount, composition and the procedure of making contributions by them, the amount and the procedure of the formation of the reserve fund, the procedure of the transfer of interests in the charter capital.</p> <p>Changes in value of assets assigned as a contribution and</p> | | |

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| <p>additional contributions of participants do not influence on the amount of their share in the charter capital determined by the charter documents unless otherwise foreseen by the charter documents.</p> | | |
| <p>Article 52. Charter capital of limited liability company</p> | | |
| <p>Charter capital of a limited liability company must be paid in by participants of the company within one year following state registration of the company.</p> <p>If participants have failed to make contributions within one year following state registration of the company (failed to make them in full), the general participants meeting shall make one of the following decisions:</p> <ul style="list-style-type: none"> to exclude the participants, that failed to make their contributions (failed to make them in full), and to specify the procedure of the re-allocation of interests in the charter capital; to reduce the charter capital and to specify the procedure of the re-allocation of interests in the charter capital; to liquidate the company. <p>Changes to the charter associated with the modification of the charter capital and/or the changes in participants shall require state registration in accordance with the procedure prescribed by law.</p> <p>A decision to reduce the charter capital of the company shall be sent by mail to all creditors of the company within three days following making of the decision.</p> <p>Participants of limited liability company receive certificate of the partnership upon complete payment of their contributions.</p> <p>Reduction in the charter capital of a limited liability company shall be allowed after the notification of all its creditors according to the procedure specified by the charter. In this case, the creditors shall have the right to require the early termination</p> | | |

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| <p>or performance of the relevant liabilities of the company, and reimbursement for their losses.</p> <p>The increase in the charter capital of a limited liability company shall be allowed after all its participants have made their contributions in full.</p> | | |
| <p>Article 53. Transfer of participatory interest (a part thereof) of a participant in the charter capital of a limited liability company to another person</p> | | |
| <p>Participant of a limited liability company shall have the right to sell or otherwise transfer its interest (a part thereof) in the charter capital to one or several participants of the company.</p> <p>The alienation of its participatory interest (a part thereof) by a participant of a limited liability company to third parties shall be allowed, unless otherwise provided by the charter of the company.</p> <p>Participants of the company shall enjoy the pre-emptive right to buy the participatory interest (a part thereof) of the participant in proportion to the values of their participatory interests, unless the charter of the company or an agreement among participants has established a different procedure for the enjoyment of the said right. The purchase shall be effected for the price and on conditions, at/on which the participatory interest (a part thereof) has been offered for sale to third parties. If the participants of the company fail to make use of their pre-emptive right during one month of the date of notification of the participant's intention to sell the interest (a part thereof) or during another term instituted by the charter of the company or an agreement between the participants thereof, then the participatory interest (a part thereof) of the participant may be alienated to a third party.</p> <p>The participatory interest of a participant of a limited liability company may be alienated before the full payment thereof only to the extent of its having been paid.</p> | | |

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| <p>In case of the acquisition of the participatory interest (a part thereof) of the participant by the limited liability company itself, it must sell it to other participants or third parties during the period not exceeding one year, or reduce its charter capital in accordance with Article 52 hereof. During the said period, the allocation of the profit and voting and quorum definition at the supreme body shall be carried out disregarding the participatory interest acquired by the company.</p> | | |
| <p>Article 54. Payment of assets' value following exit of the participant from the limited liability company</p> | | |
| <p>Following exit of a participant from the limited liability company the letter must pay the value of the part of company's assets proportionally to the participatory interest of the exiting participant in the charter capital. The payment is made following adoption of annual report for the year when the exiting participant has left the company, and within 12 months form the day of the exit. On request of the participant and on agreement with the company the contribution can be reimbursed fully or partially in the natural form.</p> <p>The exiting participant is paid his share in the income gained by the company in the year of exit. The assets assigned by the participant to the company for use only should be returned in the natural form without compensation.</p> | | |
| <p>Article 55. Successors (heirs) of the participant of limited liability company</p> | | |
| <p>Successors (heirs) enjoy the priority right to joint the company in case of re-organization of participant - legal entity or death of an individual - participant of the company.</p> <p>In case of refuse of the successor (heir) to join the limited liability company or refuse of the company to accept the successor (heir) the latter is given the share in assets in the form of money or property that belonged to re-organized or liquidated legal entity (deceased individual), the value of which is</p> | | |

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| determined as of the day of re-organization or liquidation (death) of the participant. In this cases the amount of charter capital of the partnership must be reduced. | | |
| Article 56. The term in which the decision on reduction of charter capital of limited liability company comes into force | | |
| The decision of limited liability company on reduction of its charter capital comes into force no sooner than 3 months after state registration and publication of the fact in the established order. | | |
| Article 57. Proceeding for recovery of the share of limited partnership participant | | |
| <p>Debt collection upon a participant's respective interest in a limited liability company with respect to the participant's personal obligations may be imposed only in case of insufficiency of other assets for the satisfaction of the creditors' claims. In case of insufficiency of participant's property for covering his debts, the creditors have the right to demand from the company either payment of a part of company's assets in proportion to the participatory interest of the debtor, or separation of the share of participant-in-debt for the debt collection. Part of the assets subject to separation or its monetary equivalent shall be determined based on the balance sheet as of the date of the creditors' claims presenting.</p> <p>Collection upon the whole participatory interest of a participant in the charter capital of a participant of a limited liability company terminates its participation in the company.</p> | | |
| Article 58. The highest body of a limited liability company | | |
| The highest body of a limited liability company is the general participants' meeting. It consists of the participants or representatives appointed by them. | | |

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| <p>The representatives of participants may be permanent or appointed for a certain term. The participant may change its representative at the general participants' meeting at any time having informed other participants about it.</p> <p>A participant of a limited liability company is entitled to assign its authorities at the general participants' meeting to other participant or to the representative of other participant.</p> <p>The participants have the number of votes in proportion to the amount of their shares in the charter capital.</p> <p>The general participants' meeting elects the head of the company.</p> <p>Article 59. Competence of general participants' meeting of limited liability company</p> | | |
| <p>In addition to the matters indicated in items "a", "b", "d-g", "j-m" of Article 41 of this Law the authority of the general participants' meeting of a limited liability company shall include following matters:</p> <ul style="list-style-type: none"> a) determination of amount, form and order of additional contributions; b) decisions on purchasing of participant's participatory interest by the company; c) exclusion of participant from the company; d) determination of forms of control over activities of the executive body, creation of appropriate control bodies and definition of their powers. <p>As regards issues listed in items 'a' and 'b' of Article 41 hereof, as well as in case of resolving the issue of expulsion of a participant from a company, a decision shall be deemed to have been adopted, if it is supported by participants owning more than 50 per cent of the total number of votes in the company.</p> <p>On the rest of matters the decisions are adopted by simple</p> | | |

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| majority of votes. | | |
| Article 60. Decision-making by the general participants' meeting of a limited liability company | | |
| <p>The general participants' meeting is considered to be competent, if the participants (representatives of participants) owning in total over 60% of votes are present.</p> <p>Members of executive bodies, not being participants of the company may participate in the general participants meeting in advisory capacity. Participants of the general participants' meeting should be registered notifying the number of votes each participant has. This list must be signed by the head and secretary of the meeting.</p> <p>Any participant of a limited liability company has the right to demand the consideration of the matter on the general participants' meeting if the matter was suggested not later than 25 days before the beginning of the meeting.</p> <p>In cases foreseen by the constituent documents or by approved procedures of the company, it is allowed to adopt decisions by absentee voting. In this case the participants should receive the draft of the decision, and they should inform in a written form on their opinion as to the matter. In 10 days term from the moment of receiving the information from the last voting participant, all of the participants should be informed on adopted decision by the head.</p> <p>Chairman of the general participants' meeting organizes keeping of the minutes. Minutes book must be in disposal to the participant at any moment. Certified extracts from the minutes book must be given to the participants upon their request.</p> | | |
| Article 61. Periodicity of convening of general participants' meeting of a limited liability company. Extraordinary meeting. | | |
| General participants' meeting of a limited liability company is | | |

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| <p>convened not less than twice a year unless otherwise foreseen by the constituent documents.</p> <p>Extraordinary meeting is called by the head of the company in case of occurrence of the circumstances mentioned in the charter documents, in case of insolvency of the partnership, as well as in any other case when the interests of the company as a whole demand it, particularly if there is a danger of drastic reduction of charter capital.</p> <p>General participants meeting of a limited liability company must also be convened on demand of executive body.</p> <p>Participants of the company owning in total more than 20% of votes are entitled to demand convening of an extraordinary general participants' meeting at any time and on any reason concerning the company's activity. If in 25 days the head of the company has not fulfilled the above mentioned demand, the participants have the right to call the meeting themselves.</p> <p>Participants should be informed about holding of the general participants meeting of a company in a way foreseen by the charter notifying the time, place and agenda of the meeting. The announcement should be made not less than 30 days before convening of the general assembly. Any participant of a limited liability company has the right to demand the consideration of the matter on the general participants' meeting if the matter was suggested not later than 25 days before the beginning of the meeting. Not later than 7 days before the general participants meeting the participants of the company must be given an opportunity to get acquainted with the documents that are included into the agenda of the meeting. Decisions on matters not included into agenda can be made only upon agreement of all of the participants present on the meeting.</p> | | |
| <p>Article 62. Executive body of limited liability company</p> | | |
| <p>Limited liability company establishes an executive body: either collegial (management board) or sole (director). The</p> | | |

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| <p>management board is headed by general director. Members of the executive body can be individuals not being participants of the company.</p> <p>Management board decides on all issues of company's activity except for matters that are under exclusive competence of general participants' meeting. General participants' meeting of a company can make a decision to transfer part of its authorities to the competence of the management board (director).</p> <p>Management board is accountable to the general participants' meeting and ensure the implementation of its decisions. The management board (director) has no right to make decisions obligatory for the participants of the company.</p> <p>Management board (director) acts on behalf of the company within the limits determined by this Law and the charter documents.</p> <p>General director has the right to act on behalf of the company without power of attorney. Other members of the management board can also be provided with such right.</p> <p>The general director (director) cannot be the chairman of the general participants meeting at the same time.</p> | | |
| <p>Article 63. Control over the activity of the management board (director) of limited liability company</p> | | |
| <p>The control over the activity of the management board (director) of limited liability company is carried out by revision commission which is established by the general participants meeting of the company from among themselves, in number foreseen by the charter documents, but not less than 3 persons. Members of the management board (director) cannot be members of the revision commission.</p> <p>Audit of activity of the management board (director) of the company is carried out by the revision commission upon instruction of the meeting, on their own initiative, or on demand</p> | | |

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| <p>of the company's participants. The revision commission has the right to demand from the officials of the company the submission of all necessary materials, book-keeping or other documents, and personal explanations.</p> <p>The revision commission reports on results of conducted revisions to the highest body of the company.</p> <p>The revision commission makes conclusions on the basis of annual reports and balance sheets. The general participants' meeting of a company cannot approve the balance of the company without conclusions of the revision commission.</p> <p>The revision commission has the right to demand convening of the extraordinary general participants' meeting of a company if the danger to the essential interests of the company appears or abuses by the officials are discovered.</p> | | |
| <p>Article 64. Exclusion from the limited liability company</p> | | |
| <p>A participant of a limited liability company which systematically ignores its duties or fulfils them not in a proper way, or else interferes with reaching the aims of the company with his actions can be excluded from the company on the ground of a decision supported by participants owning more than 50 per cent of the total number of votes of the company's participants. In this case this participant (or representative) does not participate in voting.</p> <p>Exclusion of participant from the company entails the consequences foreseen by Articles 54 and 55 of this Law.</p> | | |
| <p>Article 65. Concept of additional liability company</p> | | |
| <p>Additional liability company is a limited liability company the charter (combined) capital of which is divided into shares in amount determined by the charter documents. The participants of such company are responsible for its debts with their contributions to the charter (combined) capital, and, in case of insufficiency of this sums, with their property, in addition, in amount equal for all participants correspondent to the</p> | | |

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| <p>contributions of each participant.</p> <p>The limit of responsibility of the participant is foreseen by the charter documents.</p> <p>Provisions of articles 4, 11, 52-64 of this Law including the peculiarities foreseen by this article are applied to limited liability company.</p> | | |
| <p>Article 66. Concept of full liability company</p> | | |
| <p>Full liability company is a company all participants of which conduct joint entrepreneurial activity and carry joint responsibility for commitments of the company with all their property.</p> <p>A person may be a participant of only one full liability company.</p> <p>Name of a full liability company must contain names of all its participants, the words "full liability company" or contain a name of one or several participants with the addition of words "and company", and the words "full liability company".</p> <p>Article 67. Content of the incorporation agreement of the full liability company</p> | | |
| <p>In addition to the provisions foreseen by articles 4 and 66 of this Law, incorporation agreement of a full liability company, must determine the amount of the participatory interest of each of the participants, amount, kind and order of contributions, and the form of their participation in the operations of the company.</p> | | |
| <p>Article 68. Administration of full liability company</p> | | |
| <p>Administration of full liability company is carried out upon mutual consent of all participants.</p> <p>Administration of full liability company is conducted either by all participants or by one or several of them who act on behalf of the company. In the latter case the scope of authorities of the participants is determined by the power of attorney signed by the rest of the participants of the company.</p> | | |

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| <p>If the incorporation agreement determines several participants who are authorized to administrate the company it is foreseen that each of them can act on behalf of the company independently. The incorporation agreement can also point out that those participants can take certain actions only jointly.</p> <p>The participants who are authorized to administrate the affairs of the full liability company are obliged to provide the rest of the participants on their demand with the complete information on actions that are performed on behalf and for the sake of the company.</p> <p>The authority of the participant to administrate the affairs of the company is fully or partially cancelled along with termination of the company itself in connection with the refusal of the participant from the authorities or cancellation of the authorization on demand at least of one of the rest of the participants.</p> <p>The participant who acted in the common interests without the respective authority, and whose actions were not approved by the rest of the participants, has the right to demand from the company to cover the expenses, under the condition that it is proved that as the result of his actions the company preserved or gained assets the value of which exceeds the expenses taken by the company.</p> | | |
| <p>Article 69. Transfer of the participatory interest (its part) of the participant of full liability company</p> | | |
| <p>Transfer of a participatory interest (its part) by the participant of the full liability company to other participants of this company or to third parties can be carried out only upon consent of all of the participants.</p> <p>Transfer of participatory interest (its part) to a third party is accompanied by the transfer of all rights and commitments of the former participant who left the company or transferred a part of its participatory interest.</p> | | |

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| <p>Following re-organization of a legal entity, the participant of the full liability company, or death of the citizen, the participant of the full liability company, his/her successor (heir) enjoys the priority in becoming the participant of the company upon consent of the rest of the participants.</p> <p>The successor (heir) is responsible for debts of the participant of the full liability company, as well as debts of the company to third parties resulting from the operations of the company.</p> <p>In case of refusal of successor (heir) to join the full liability company or of the company's refusal to accept the successor (heir), it is paid the value of the participatory interest that belongs to re-organized legal entity (deceased individual) the amount of which is determined on the day of re-organization (death) of the participant. In such cases the amount of the company's assets determined by the incorporation agreement must be reduced.</p> | | |
| <p>Article 70. On prohibition the participants of full liability company to compete with the full liability company</p> | | |
| <p>Participants of a full liability company has no right to make agreements on their behalf and in their interests, that are similar with the aims of activity of the company, as well as to take part in any companies (except joint-stock companies) which has the same aims as the full liability company.</p> <p>In case of violation of provisions established by this article, the participants of the full liability company are obliged to compensate the losses caused to the company by those actions.</p> | | |
| <p>Article 71. Exit of a participant from the full liability company</p> | | |
| <p>Participant of a full liability company established for undetermined term, may leave the partnership any time having informed on it not less 3 months beforehand.</p> <p>Exiting from the company established for determined term, is</p> | | |

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| <p>possible only on valid reasons and under the condition that the announcement was made not less than 6 months beforehand.</p> <p>If a full liability company continues its business after exit of the participant, the latter is paid the value of its contribution in accordance to the balance sheet made on the day of exit. Upon request of the participant and on agreement of the company the contribution can be returned in full amount or partially in a natural form.</p> <p>The exiting participant is paid its part of income obtained by the company in the current year. The assets, allocated to the participants of the company for use, should be returned in a natural form without compensation.</p> | | |
| <p>Article 72. Exclusion of participant of full liability company</p> | | |
| <p>Participant of a full liability company that systematically neglects or not properly fulfils the duties, or otherwise prevents from reaching the aims by the company may be excluded from the company in the order foreseen by the charter documents.</p> <p>Exclusion of a participant from the full liability company entails the consequences foreseen by article 71 of this Law.</p> | | |
| <p>Article 73. Proceeding for recovery of the share of the participant of full liability company</p> | | |
| <p>It is prohibited to collect the participatory interest of a participant in a full liability company for his personal liabilities. Creditors may require the allocation of a participatory interest of the indebted participant's according to the established procedure in case insufficiency of the property of a participant for the coverage of the debt under its liabilities.</p> <p>The rest of the participants have the right to separate the participatory interest of the participant-in-debt in money or natural form with the aim to save the company in accordance to the balance sheet calculated on the day of leaving of such participant from the company.</p> | | |

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| <p>Article 74. Responsibility of participants for debts of full liability company</p> | | |
| <p>If on liquidation of the full liability company the amount of the available assets turns out to be insufficient to pay debts, the participants take joint responsibility with all their property, which in accordance to the legislation of Ukraine can be proceeded for recovery. The participant of the company is responsible for the debts of the company disregarding whether they appeared before or after its joining the company.</p> <p>The participant who paid completely the company's debts has the right to apply with regress claim according to the corresponding part of the participatory interest of the participants who are responsible to him in proportion to their share in the property of the company.</p> | | |
| <p>Article 75. Concept of the limited partnership</p> | | |
| <p>A company, in which there are one or more participants, whose liability is limited with the contribution to the property of the company (investors) that do not take part in activities of the company, together with one or more participants who exercise business on behalf of the company and are liable with all their property under liabilities of the company, shall be considered a limited partnership.</p> <p>If there are two or more participants with full responsibility within the partnership, they carry out joint responsibility for the debts of the partnership.</p> <p>A person may be a full member in one limited partnership only. A full member of a limited partnership may not be a member of a full liability company. A full member of a limited partnership may not be an investor of the same partnership.</p> <p>The name of a limited partnership must contain names of all its full participants, the words "limited partnership" or contain a name of at least one full participant with the addition of words</p> | | |

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| <p>"and company", and the words "limited partnership".</p> <p>If the name of a limited partnership contains a name of an investor, the said investor shall become a full member of the partnership.</p> | | |
| <p>Article 76. The content of incorporation agreement of limited partnership</p> | | |
| <p>Incorporation agreement of limited partnership in addition to conditions foreseen by article 4 of this Law must include the amount of participatory interests of each of the participant with full responsibility, amount, kind and order of making contributions, as well as form of their participation in partnership's activity.</p> <p>As to the investors, only total amount of their participatory interest in the assets of the partnership, as well as the amount, kind and order of making their contributions are notified in the incorporation agreement.</p> | | |
| <p>Article 77. Application of the provisions regulating full liability company to limited partnerships</p> | | |
| <p>Provisions of articles 67 - 74 are applicable to limited partnerships taking into account the peculiarities foreseen by articles 78 - 83 of this Law.</p> | | |
| <p>Article 78. Investor's access to limited partnership.</p> | | |
| <p>The investor can join limited partnership through making cash or in-kind contribution.</p> | | |
| <p>Article 79. Rights of investors of a limited partnership</p> | | |
| <p>An investor of a limited partnership shall be entitled:</p> <p>a) to obtain a part of the profit of the partnership in accordance with his participatory interest in the combined capital of the company according to the procedure prescribed by the incorporation agreement (memorandum);</p> <p>b) to act on behalf of the partnership in case of the issue of the</p> | | |

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| <p>power of attorney thereto and in accordance therewith;</p> <p>c) to have the priority in acquiring an alienable participatory interest (a part thereof) in the combined capital of the partnership in accordance with provisions of this Law.</p> <p>If several investors are wishing to buy a participatory interest (a part thereof), the said participatory interest shall be divided among them pro rata their participatory interests in the combined capital of the partnership;</p> <p>d) to request the priority repayment of the contribution in case of the liquidation of the partnership;</p> <p>e) to get familiarized with annual statements and balance sheets of the partnership;</p> <p>f) to leave the partnership after the end of the financial year and receive the contribution according to the procedure prescribed by the incorporation agreement (memorandum);</p> <p>g) to transfer participatory interest (a part thereof) in the combined capital to another investor or the third party having notified the partnership thereof.</p> <p>Transfer of the whole participatory interest by an investor to another person shall terminate its participation in a limited partnership.</p> <p>Incorporation agreement (memorandum) of a limited partnership may also provide for other rights of an investor.</p> | | |
| <p>Article 80. Obligations of the limited partnership's investors</p> | | |
| <p>Investors of a full partnership are obliged to make contributions and additional payments in the amount, by the means and in the order foreseen by incorporation agreement.</p> <p>Total amount of shares of the investors must not exceed 50% of the assets of the partnership mentioned in the incorporation agreement.</p> | | |

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| <p>Combined capital of a limited partnership shall be paid in by members thereof before the expiry of the first year of the date of the state registration of the partnership.</p> | | |
| <p>Article 81. Management of limited partnership</p> | | |
| <p>Management of limited partnership is carried out only by the participants with full responsibility.</p> <p>In a limited partnership with only one participant with full responsibility, the management can be carried out by this participant on his own.</p> <p>The investors has no right to interfere with the activity of the participants with full responsibility in management of the limited partnership.</p> | | |
| <p>Article 82. Responsibility of investor of limited partnership</p> | | |
| <p>If an investor of a limited partnership enters into an agreement on behalf and in the interest of the partnership without the appropriate authority, then he shall be relieved from the liability to the creditors for the agreement in case of the approval of its acts by the limited partnership.</p> <p>If the approval is not received, the investor is responsible to the third party alone with all of his/ her property, which can be preceded for recovery in accordance with the legislation.</p> <p>Investor of the limited partnership is responsible for the debts of the partnership which appeared before it joined the partnership before the third parties in the same order as the other investors.</p> | | |
| <p>Article 83. Peculiarities of termination of a limited partnership</p> | | |
| <p>In addition to the grounds envisaged by article 19 of this Law a limited partnership terminates its activity in the case all participants with full responsibility has exited the partnership.</p> | | |

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| <p>A limited partnership shall be liquidated in case of the withdrawal of all investors. Full partners in a limited partnership shall have the right to transform the limited partnership into a full liability company in case of the withdrawal of all investors. A limited partnership shall also be liquidated on the grounds specified by law.</p> <p>The available sums of money of the partnership including the earnings from selling its assets on liquidation, after making all payments to employees, and fulfilment of obligations before banks, budget, and other creditors are distributed first of all among the investors to return their contributions, and only after that among the participants with full responsibility in the order and under conditions foreseen by this Law and by the incorporation agreement. In case of insufficiency of the funds of the partnership to return to the investors their contributions in full the available sums are distributed among the investors in correspondence to their participatory interests in assets of the partnership.</p> | | |
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| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
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| Law of Ukraine On State Registration of Legal Entities and Individual Entrepreneurs | | |
| Preamble | | |
| The Law regulates the relations in the sphere of state registration of legal entities as well as individual entrepreneurs. | | |
| Article 1. Definitions | | |
| <p>1. The terms in the present Law shall be used in the following meanings:</p> <p>separate subdivision of a legal entity – is a subsidiary, another subdivision of a legal entity that is situated outside its location and produces, performs work and operations, provides services on behalf of a legal entity, or an agency that provides representation or protection of interests of a legal entity;</p> <p>excerpt from Unified State Register of Legal Entities and Individual Entrepreneurs - a document that contains information about legal entity or its separate subdivisions or individual entrepreneur hereof, and is used for their identification during carrying out business activities and opening a bank account;</p> <p>state registrar – an official of the central executive body that implements the state policy in the sphere of public registration of legal entities and individual entrepreneurs who, hereof, on behalf of the State shall conduct the registration of legal entities and individual entrepreneurs;</p> <p>Unified State Register of Legal Entities and Individual Entrepreneurs (hereinafter – the Unified State Register) - computer-aided system of collection, storage, protection, registration and supplying information on legal entities and individual entrepreneurs;</p> <p>residency of an individual – house, apartment, other premises suitable for living (hostel, hotel and other) in the proper housing estate, where an individual resides permanently, mainly or temporarily at an address suitable to contact with an individual entrepreneur;</p> <p>location of a legal entity – address of a body or person that according to the foundation documents of a legal entity or the law acts on its behalf (hereinafter – executive body);</p> <p>model statute – a typical foundation document, approved by the</p> | | |

Cabinet of Ministers of Ukraine, used to form and conduct the activity of legal entities of the corresponding organizational and legal forms, that contains the rules, prescribed by the law, regulating legal status, rights, responsibilities and relations, connected with forming, management and conduct of business activity of the corresponding legal entities;

registration card – a document of the prescribed sample, confirming the will of a person for introducing corresponding entries to the Unified State Register;

registration file – a folder of organizational and registration type with documents or electronic documents, submitted to the state registrar according to the Law;

posting – a registered letter, parcel, postal card, book post, secogramme, small package, bag, accepted for sending without assessing by the sender the value of mail with the guarantee of documents security according to the legislation of Ukraine;

tacit consent principle in the sphere of state registration – a principle of introducing an entry by the state registrar to the Unified State Register on state registration of legal entity termination in the result of liquidation, merger, division, affiliation or transformation or state registration of termination of entrepreneurial activity of an individual entrepreneur at his/her request;

specialized printed mass media – edition of the central executive body that implements the state policy in the sphere of public registration of legal entities and individual entrepreneurs in which, hereof, information from the Unified State Register is published;

social insurance funds – the Social Insurance Fund for Temporary Work Ability, Ukrainian Obligatory State Social Insurance Fund for Unemployment Cases, Ukrainian Social Insurance Fund against Accidents at Work and Occupational Diseases.

The terms "substantial interest" and "ultimate beneficiary owner" will have the meaning specified in the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime or Terrorist Financing".

Article 2. Legislation in the sphere of state registration of legal

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| entities and individual entrepreneurs | | |
| 1. Relations in the sphere of state registration of legal entities and individual entrepreneurs shall be regulated by the Constitution of Ukraine, the present Law and normative and legal acts, adopted according to the present Law. | | |
| Article 3. Scope of the Law | | |
| <p>1. The present Law shall be applied for state registration of all legal entities, regardless of the organizational and legal form, ownership pattern and subordination, as well as individual entrepreneurs.</p> <p>2. The Law may establish some peculiarities of state registration of public associations (including professional unions, organizations of employers, their associations), political parties, government and local self-government bodies, associations of local self-government bodies, banks, chambers of industry and commerce, financial establishments (including credit unions), exchanges, as well as other institutions and organizations.</p> <p>3. Public associations, political parties, government and local self-government bodies, associations of local self-government bodies, banks, chambers of industry and commerce, financial establishments (including credit unions), exchanges, other institutions and organizations with peculiarities of state registration, prescribed by law, shall acquire status of a legal entity only after their state registration in the order, prescribed by the present Law.</p> <p>4. The central executive body that implements the state policy in the sphere of public registration of legal entities and individual entrepreneurs shall register (legalize) public associations (including professional unions and their associations), charitable organizations, political parties, creative unions and their territorial centers, bar associations, chambers of industry and commerce, associations of local self-government bodies, other institutions and organizations, prescribed by law, and shall hand an excerpt from the Unified State Register, formed by the state registrar of the central executive body that implements the state policy in the sphere of public registration of legal entities and individual entrepreneurs by the location of a legal entity.</p> | | |

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| <p>Article 4. The notion of state registration of legal entities and individual entrepreneurs</p> | | |
| <p>1. State registration of legal entities and individual entrepreneurs shall certify the fact of creation or termination of a legal entity, certify the fact of acquirement or deprivation of the individual entrepreneur status, as well as any other registration actions, envisaged by the present Law, by introducing appropriate entries to the Unified State Register.</p> <p>2. The procedure of state registration of legal entities and individual entrepreneurs includes, in particular: check of the completeness of documents, submitted to the state registrar, and completeness of information, provided in the registration card; verification of the documents, submitted to the state registrar, for the absence of grounds to refuse the state registration; introducing of data on the legal entity or individual entrepreneur to the Unified State Register; registration and issue of an excerpt from the Unified State Register.</p> <p>3. Amendments to the incorporation documents of a legal entity, as well as change of surname and/or name, and/or patronymic (hereinafter - name) or residency of an individual entrepreneur shall be subject to obligatory state registration by making appropriate amendments to the entries of the Unified State Register in the order, prescribed by the present Law.</p> <p>4. Separate subdivisions of a legal entity shall not be subject to state registration.</p> <p>5. Representative offices, branch offices of foreign companies in Ukraine shall be subject to accreditation on the territory of Ukraine in the order, prescribed by law.</p> <p>Article 5. Place of state registration of legal entities and individual entrepreneurs</p> | | |
| <p>1. State registration of legal entities and individual entrepreneurs shall be conducted by the state registrar at the location of a legal entity or residency of an individual entrepreneur.</p> | | |
| <p>Article 6. State registrar</p> | | |

1. State registrar shall:

conduct state registration of legal entities and individual entrepreneurs;

transfer to the state statistical agencies (hereinafter – agencies of statistics), the State Tax Administration, the Pension Fund of Ukraine notifications and data from the registration cards on registration actions, envisaged by the present Law, including creation and liquidation of separate subdivisions of legal entities;

form and maintain of registration files (except registration files of legal entities, registered according to Part four Article 3 of the present Law).

register and issue excerpts, extracts and certificates from the Unified State Register;

conduct state registration of amendments to the incorporation documents of legal entities and state registration of change in the name or residency of individual entrepreneurs;

perform state registration of termination of legal entities and state registration of termination of the business activity of individual entrepreneurs;

apply to the court with a petition on change of the purpose of an establishment in the order, prescribed by law;

perform registration, issuance and certification of duplicates of the original incorporation documents and amendments to them for the legal entities;

insert data to the Unified State Register on state registration of an individual on the basis of a court decision;

register the electronic document, submitted by the requestor from the applicant, and send the applicant a confirmation of receipt of the electronic document, conduct the necessary registration actions in cases, envisaged by the present Law, and send to the requestor an appropriate document as an electronic document or on paper carrier.

In case there are grounds for refusal in state registration, the requestor shall be appropriately notified in electronic form;

report to the law enforcing bodies on infringement of the term, prescribed by law, for filing to the state registrar by the respective

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| <p>officials of the legal entity or individual entrepreneur the decisions on termination of a legal entity</p> <p>in cases, envisaged by the present Law, conduct the simplified procedure of state registration of legal entity termination by means of liquidation and termination of entrepreneurial activity of an individual entrepreneur;</p> <p>perform other actions, prescribed by the present Law.</p> <p>2. A person with a higher law education shall be appointed as a state registrar. The state registrar shall have a state registrar certificate and his/her own seal, description of which is approved by the Ministry of Justice of Ukraine.</p> | | |
| <p>Article 7. Competence of the central executive body that implements the state policy in the sphere of states registration of legal entities and individual entrepreneurs</p> | | |
| <p>1. The central executive body that implements the state policy in the sphere of state registration of legal entities and individual entrepreneurs shall:</p> <p>participate in the formation and provide realization of the state policy on state registration of legal entities and individual entrepreneurs;</p> <p>exercise the public supervision of the legislation adherence in the sphere of state registration of legal entities and individual entrepreneurs;</p> <p>summarize the practice of application of normative and legal acts on state registration and develop the draft normative and legal acts in this sphere;</p> <p>provide formation and maintenance of the Unified State Register;</p> <p>organize training and refresher training for state registrars;</p> <p>provide ordering, delivery, accounting and reporting of expenditure of forms for certificates of state registration and forms for excerpts from the Unified State Register;</p> <p>publish the special printed mass media;</p> <p>provide the public authorities with information from the Unified State Register in the order, established by the Ministry of Justice;</p> <p>provide the methodological and information support of state registrars activities.</p> | | |

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| <p>2. The Central body of executive power that realizes the state politics in the sphere of state registration of legal entities and individual entrepreneurs provides free access to the data from the Unified State Register, approves the list of the documents, necessary for the licenses and permission documents being granted, for conclusion of civil contracts, including the presence of a note about the state registration of termination or about the legal entity being in process of termination, state registration of termination or staying in the process of termination of entrepreneur activity of individual entrepreneur, about the location or place of residency, types of activity, central body of executive power which has the authority over the state enterprise or the share of state in a statute capital of a legal entity if such share is not less than 25 %, about the legal entities, legal successors of which is a registered legal entity, about legal entities – successors, about separate subdivisions of the legal entity, about persons that can act on behalf of a legal entity, including the information about the property manager, reorganization manager, head of the commission on termination, liquidator, property administrator, restrictions concerning representation, about the commence of enforcement procedure and provides the opportunity for searching information concerning all registered persons, particularly by the full and shortened designation, name, identity code, registration number of the registration card for a taxpayer, series and number of a passport (for those, who due to their religious beliefs refused to accept the registration number of registration card for a taxpayer in the order prescribed by law), copy and print of such information.</p> | | |
| <p>Article 8. Requirements for documents to be submitted to the state registrar</p> | | |
| <p>1. Documents, that according to the requirements of the present Law shall be submitted (sent by posting or as an electronic document) to the state registrar, shall be stated in the official language.</p> <p>2. Registration card shall be filled in computer print or in block-letters. If documents are sent to the state registrar by posting, authenticity of the signature of the requestor on the registration card (inquiry, notification) shall be certified notary.</p> <p>Signature of a person, authorized to act on behalf of a legal entity (executive body), on the registration card and inquiry on loss (replacement) of documents must be certified by an appropriate official in the prescribed order.</p> | | |

3. Foundation documents (incorporation act, statute or constituent treaty, regulations) of the legal entity must contain information, envisaged by law. The founders (participants) of the legal entity shall be liable for compliance of the foundation documents with the legislation.

4. Statutes of banks, foundation documents of other legal entities, which according to the law shall be subject to approval of the National Bank of Ukraine, other governmental bodies, shall be submitted with a mark of their approval according to the National Bank of Ukraine, other public authorities.

5. Foundation documents of the legal entity, as well as amendments to them, shall be stated in written form, sewn, enumerated and signed by the founders (participants) or authorized persons, if other order of their approval is not envisaged by law. The foundation documents must be conciliated with the appropriate public authorities in cases, prescribed by law.

Amendments to the foundation documents of the legal entity shall be drawn as a separate annex or by rendering the foundation documents in a new wording. The front page of the annex to the statutory documents of the legal entity shall contain a mark that the above-mentioned documents are an integral part of the appropriate foundation documents.

6. The document, confirming the registration of a foreign legal entity in the country of its location, must be legalized in the established order.

7. The requirements as for writing of the legal entity name or its separate subdivision shall be established by the Ministry of Justice of Ukraine.

8. Electronic documents, submitted to state registration in cases, prescribed by the present Law, shall be drawn in accordance with the requirements of legislation in the sphere of electronic documents and circulation of electronic documents, as well as electronic digital signature.

9. An electronic copy of documents, submitted to the state registrars for state registration on paper, shall be made obligatory by means of

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| <p>scanning.</p> <p>11. An electronic document shall be considered received by the state registrar from the moment of receipt by the requestor of a notification in electronic form on receipt of such an electronic document by the state registrar. The state registrar shall automatically send to the requestor the electronic document with confirmation of the receipt of an electronic document after the receipt of such an electronic document.</p> | | |
| <p>Article 10. Registration fee for state registration</p> | | |
| <p>1. For state registration of the changes: to incorporation documents of the legal entity a registration fee shall be charged in the amount of three exemption limits of the citizens; to the name or place of residence of individual entrepreneur a registration fee shall be charged in the amount of one exemption limits of the citizens;</p> <p>2. Registration fee for state registration of the changes to the foundation documents of charitable organizations shall not be charged.</p> <p>3. Registration fee that amounts to one exemption fee of the citizens shall be charged for handing a duplicate of the original foundation documents and amendments to them, certified by the state registrar.</p> <p>4. Costs, charged according to the present Law as registration fee, shall be credited to the state budget.</p> <p>5. The document, confirming payment of the registration fee shall be a copy of the receipt, issued by a bank, or a copy of the payment order, checked by a bank or a copy of the receipt from the payment terminal.</p> <p>In case of electronic documents submission, confirmation of the registration fee payment shall be a copy made by scanning of one of the documents envisaged by the p. 1 of this part.</p> | | |
| <p>Article 11. Maintenance of registration files</p> | | |
| <p>1. After introduction of an entry on state registration of a legal entity or an individual entrepreneur to the Unified State Register the state registrar shall be obliged to form a registration files.</p> <p>2. Registration files shall possess a registration number that shall be</p> | <p>Directive 2009/101/EC P. 1, 2 of the Article 3 1. In each Member State, a file shall be opened in a central register, commercial register or companies register, for each of the companies registered</p> | <p>Requirements about maintenance of registration files are met.</p> |

assigned during the conduction of the state registration entry to the Unified State Register.

3. The following shall be preserved in the registration files of a legal entity:

documents, submitted for state registration of a legal entity, particularly one copy of the original foundation documents;

documents, submitted for state registration of amendments to the foundation documents, particularly one copy of the originals of amendments to the foundation documents and/or one copy of the foundation documents in a new wording;

documents, submitted for inserting data on separate subdivisions of a legal entity to the Unified State Register;

documents, submitted for introduction of an entry to the Unified State Register on the decision of the founders (participants) or authorized body as for the legal entity termination;

documents, submitted for state registration of the legal entity termination;

court decisions on abolition of state registration of amendments to the foundation documents of a legal entity;

documents, submitted for introduction of a court decision to the Unified State Register on abolition of state registration of the legal entity termination;

copies of notifications, particularly on refusal in state registration of amendments to the foundation documents;

documents on change of the location of the registration files;

court decisions that became the basis for an introduction of an entry on the legal entity termination to the Unified State Register;

applications, inquiries on access to the documents from the registration files;

decisions to seize documents from the registration files, copies of seizure protocols and copies of lists of documents that are seized;

court decisions on demand of documents from the registration files, cover letters or documents, by which the court authorized the persons to receive them, copies of lists of documents, that are seized;

documents, submitted for introducing amendments to the data on the

therein.

2. For the purposes of this Article, 'by electronic means' shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received in a manner to be determined by Member States by wire, by radio, by optical means or by other electromagnetic means.

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| <p>legal entity in the Unified State Register;</p> <p>cash check or payment receipt, issued to the sender (state registrar or other official) on acceptance of posting for sending;</p> <p>documents, according to which a commission on termination of legal entity (reorganization commission, liquidation commission) or liquidator is appointed, information on the commissions staff, the presiding commissioner or a liquidator, registration numbers of registration cards for taxpayers of all the commission members (or information on series and number of passport for persons or passport document for foreigner, who due to their religious beliefs refused to accept the registration number of registration card for a taxpayer, informed the appropriate State Tax Administration body and have a check in the passport of possessing a right to conduct payments on the series and number of passport);</p> <p>notification to the State Incomes and Duties bodies, the Pension Fund of Ukraine on the beginning of an extraordinary inspection, appointed in connection with the legal entity termination;</p> <p>notification to the State Incomes and Duties bodies, the Pension Fund of Ukraine on impossibility of an extraordinary inspection, appointed in connection with the legal entity termination;</p> <p>notification to the State Incomes and Duties bodies, the Pension Fund of Ukraine on availability of objections of the State Incomes and Duties bodies and/or the Pension Fund of Ukraine against the conduct of the state registration of the legal entity termination in the result of its liquidation and on withdrawal of such a notice;</p> <p>the second copy of notification on state registration of the legal entity termination, sent by the state registrar to the legal entity in the order, prescribed by law.</p> <p>4. The following shall be preserved in the registration files of an individual entrepreneur:</p> <p>documents, submitted for state registration of an individual entrepreneur;</p> <p>documents, submitted for state registration of the change of the name of an individual entrepreneur;</p> <p>documents, submitted for state registration of the change to the</p> | | |
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| <p>residency of an individual entrepreneur;</p> <p>documents on appointment of the property manager of an individual entrepreneur;</p> <p>documents, submitted for state registration of termination of entrepreneurial activity of an individual entrepreneur;</p> <p>documents, submitted for introduction to the Unified State Register of a court decision on abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur;</p> <p>copies of notifications, particularly on refusal of state registration of the change to the name and/or residency of an individual entrepreneur;</p> <p>documents on change of the location of the registration files;</p> <p>court decisions, that became the basis for introduction of the corresponding entries to the Unified State Register;</p> <p>applications, inquiries on access to the documents from the registration files;</p> <p>decisions to seize documents from the registration files, copies of seizure protocols and copies of lists of documents that are seized;</p> <p>court decisions on demand of documents from the registration files, cover letters or documents, by which the court authorized the persons to receive them, copies of lists of documents, that are seized;</p> <p>cash check or payment receipt, issued to the sender (state registrar or other official) on acceptance of posting for sending;</p> <p>notification to the State Incomes and Duties bodies, the Pension Fund of Ukraine on the beginning of an extraordinary inspection, appointed in connection with termination of entrepreneurial activity of an individual entrepreneur;</p> <p>notification to the State Incomes and Duties bodies, the Pension Fund of Ukraine on impossibility to conduct an extraordinary inspection, appointed in connection with termination of entrepreneurial activity of an individual entrepreneur;</p> <p>notification to the State Incomes and Duties bodies, the Pension Fund of Ukraine on availability of objections of the State Incomes and Duties bodies and/or the Pension Fund of Ukraine against the state registration of the termination of entrepreneurial activity of an</p> | | |
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| <p>individual entrepreneur and on withdrawal of such a notice; the second copy of the notification on state registration of termination of entrepreneurial activity of an individual entrepreneur, sent by the state registrar to an individual entrepreneur in the order, prescribed by law.</p> <p>5. Documents from the registration files shall not be subject to seizure or uncomplementing, except for cases, envisaged by the present Law.</p> <p>6. The right of access to the documents, that are in the corresponding registration files, shall be granted to the founders (participants) of a legal entity, an individual entrepreneur, as well as authorized persons and persons that according to the information, introduced to the Unified State Register, are entitled to perform legal actions on behalf of the legal entity without power of attorney, on the basis of a written application and the personnel of supervisory and law enforcement bodies on the basis of the appropriate written inquiry, if such an inquiry is filed in connection with exercising the authorities, prescribed by law.</p> <p>The state registrar shall be prohibited to issue copies of the documents from the corresponding registration files.</p> | | |
| <p>Article 12. Seizure of documents from registration files</p> | | |
| <p>1. Seizure of documents from registration files shall be accomplished exceptionally by a motivated decision of an investigator according to law.</p> <p>2. The state registrar shall make copies of documents, which are seized from registration files, enumerate, sew and certify them with their own seal. A copy of the inquisitor decision on seizure of documents, a copy of the documents seizure protocol, as well as a copy of the list of documents, that are seized, shall be inserted to the registration files.</p> <p>3. Seizure of documents from registration files shall not be the basis for refusal of the state registrar to perform registration actions, envisaged by the present Law, except for the case of receipt of the corresponding court decision by the state registrar.</p> | | |
| <p>Article 13. Seizure of documents from the registration files</p> | | |

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| <p>1. Seizure of documents from registration files shall be accomplished on the basis of a court decision.</p> <p>2. The state registrar shall make copies of documents, which are seized from the registration files, enumerate, sew and certify them with their own seal. A court decision on discovery of documents, a cover letter or a document, by which the court authorized a person to receive them, as well as a copy of the list of documents, that are seized, shall be inserted to the registration files. Original documents, seized from the registration files, shall be sent by posting with the list of inventory to the court or shall be handed directly to the person, authorized by court to receive them.</p> <p>3. Seizure of documents from registration files shall not be the basis for refusal of the state registrar to perform registration actions, envisaged by the present Law, except for the case of receipt of the corresponding court decision by the state registrar.</p> | | |
| <p>Article 14. Transmission of the registration files</p> | | |
| <p>1. Transmission of the registration files shall be accomplished in case of: change to the location of a legal entity, change to the residency of an individual entrepreneur, if the new location of a legal entity or the residency of an individual entrepreneur is situated on the territory of another administrative-territorial unit; formation, alteration of boundaries or liquidation of an administrative-territorial unit.</p> <p>2. Transmission of registration files in case, envisaged by Paragraph two of Part one of the present Article, shall be accomplished on the basis of state registration of the corresponding changes to the foundation documents of a legal entity or state registration of change to the residency of an individual entrepreneur.</p> <p>3. Transmission of registration files in case, envisaged by Paragraph three of Part one of the present Article, shall be accomplished exceptionally on the basis of the appropriate decision of the body, vested with the appropriate powers.</p> <p>4. Under the terms of presence of basis, envisaged by Paragraph two of Part one of the present Article, the state registrar within ten</p> | | |

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| <p>working days from the date of state registration of amendments to the location of a legal entity, change to the residency of an individual entrepreneur shall be obliged to send by a posting with the description of the registration files to the state registrar by the new location of a legal entity or by the new residency of an individual entrepreneur.</p> <p>5. Transmission of registration files in the case, envisaged by Paragraph three of Part one of the present Article, shall be accomplished within ten working days from the date of the corresponding decision of the body, commissioned appropriately, by a deed of conveyance, drawn up in triplicate, for the state registrars and the central executive body, that realizes the states policy in the sphere of the state registration of legal entities and individual entrepreneurs.</p> <p>6. The state registrar, who received the registration files, shall inform by posting the legal entity or individual entrepreneur on the change to the location of registration files and introduce an entry to the Unified State Register on the change to the location of registration files within ten working days from the date of its reception.</p> | | |
| <p>Article 15. Order of registration files storage</p> | | |
| <p>1. Registration files shall be stored at the state registrar within five years from the day of the entry introduction to the Unified State Register on termination of a legal entity or termination of entrepreneurial activity of an individual entrepreneur. Registration files on paper carriers shall be destroyed in the due course of law after the expiration of the term, if they are not included to the National Archival Fund by the results of examination of their value.</p> <p>2. Registration files of a legal entity or an individual entrepreneur on electronic carrier shall be registered on the server of a technical manager of the Unified State Register. Reservation term of registration files on electronic carrier is determined by the present Law.</p> <p>3. The state registrar that creates, conducts and provides storage of registration files according to the order of storage and transmission of registration files of legal entities and individual entrepreneurs,</p> | | |

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| <p>approved by the Ministry of Justice of Ukraine, and/or an official of the appropriate structural subdivision (division, administration), which provides storage of registration files, shall keep record and exercise control of the volume and movement in units of account.</p> <p>4. Registration files shall be stored in the specially allocated premises, which must be equipped with means to provide limited access to the premises (bars on the windows, locks and bolts, fire alarms etc).</p> <p>5. The head of an appropriate structural subdivision shall bear responsibility in the structural subdivisions of the bodies that conduct state registration of legal entities and individual entrepreneurs, where an official, responsible for storage of registration files (state registrar or other official) is not appointed.</p> <p>6. The current movement of registration files outside the specially allocated premises (issuance to the temporary usage of the state registrar) shall be recorded in the deed registers of the current movement of registration files of legal entities and individual entrepreneurs, accepted for storage.</p> <p>7. The fact of issuance of registration files in the cases, prescribed by law, shall be recorded in the deed register of the current movement of registration files.</p> <p>8. Registration files of the terminated legal entities and termination of entrepreneurial activity of individual entrepreneurs shall be created within a year and registered in the deed registers by years and shall be stored separately.</p> | | |
| <p>Chapter II THE UNIFIED STATE REGISTER Article 16. The Unified State Register</p> | | |
| <p>1. The Unified State Register shall be created to provide the public authorities, as well as the participants of the civil turnover with authoritative information on legal entities and individual entrepreneurs from the Unified State Register.</p> <p>2. The Unified State Register shall be maintained on the electronic carrier according to the government standards that provide its compatibility and interaction with other informational systems and networks, constituting state information resources.</p> | <p>Directive 2009/101/EC P. 1, 2 of the Article 3</p> <p>1. In each Member State, a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.</p> <p>2. For the purposes of this Article, 'by electronic means' shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including</p> | <p>Requirements about maintenance of registration files are met.</p> |

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| <p>3. Technical and software tools of the Unified State Register maintenance shall provide the following:</p> <ul style="list-style-type: none">automatized maintenance of the Unified State Register etalon;control over the completeness of introduced entries to the Unified State Register;transmission to the appropriate agencies of statistics, the State Incomes and Duties, the Pension Fund of Ukraine of messages and information from registration cards during registration actions, envisaged by the present Law, including registration, removal of legal entities and individual entrepreneurs from the register;data receipt in the order of the interchange of information from the departmental registers of the agencies of statistics, the State of Incomes and Duties, the Pension Fund of Ukraine;fulfilment of the functions of administrator of the Unified State Register data base in the full scope (accumulation, data analysis, data actualization, access rights etc);storage of data on legal entities and individual entrepreneurs within 75 years from the date of introducing an entry on termination of a legal entity or termination of entrepreneurial activity by an individual entrepreneur;data protection according to the law;adequacy and completeness of data in the registration cards;monitoring of registration actions;efficient issuance of excerpts and certificates from the Unified State Register, as well as documentary reconstruction of the state registration procedures. <p>4. Data, constituting the State secret, shall not be entered to the Unified State Register.</p> <p>5. The administrator of the Unified State Register is a state enterprise that belongs to the authority of the central body of executive power that realizes the state policy in the sphere of state registration of legal entities and individual entrepreneurs.</p> <p>6. The Unified State Register shall be subject to the state property right.</p> | <p>digital compression) and storage of data, and entirely transmitted, conveyed and received in a manner to be determined by Member States by wire, by radio, by optical means or by other electromagnetic means.</p> | |
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| n/a | <p>Directive 2009/101/EC</p> <p><i>Article 4</i></p> <p>1. Documents and particulars which must be disclosed pursuant to Article 2 shall be drawn up and filed in one of the languages permitted by the language rules applicable in the Member State in which the file referred to in Article 3(1) is opened.</p> <p>2. In addition to the mandatory disclosure referred to in Article 3, Member States shall allow documents and particulars referred to in Article 2 to be disclosed voluntarily in accordance with Article 3 in any official language(s) of the Community. Member States may prescribe that the translation of such documents and particulars be certified. Member States shall take the necessary measures to facilitate access by third parties to the translations voluntarily disclosed.</p> <p>3. In addition to the mandatory disclosure referred to in Article 3, and to the voluntary disclosure provided for under paragraph 2 of this Article, Member States may allow the documents and particulars concerned to be disclosed, in accordance with Article 3, in any other language(s). Member States may prescribe that the translation of such documents and particulars be certified.</p> <p>4. In cases of discrepancy between the documents and particulars disclosed in the official languages of the register and the translation voluntarily disclosed, the latter may not be relied upon as against third parties. Third parties may nevertheless rely on the translations voluntarily disclosed, unless the company proves that the third parties had knowledge of the version which was the subject of the mandatory disclosure.</p> | This provision must be implemented in the Ukrainian legislation. |
| Article 17. Data from the Unified State Register | | |
| 1. Data on a legal entity or an individual entrepreneur shall be inserted to the Unified State Register by introducing entries on the basis of data from the corresponding registration cards and data, provided by legal entities to the state registrar by location of registration files according to the legislation of Ukraine. | <p>Directive 2009/101/EC</p> <p><i>Article 2</i></p> <p>Member States shall take the measures required to ensure compulsory disclosure by companies as referred to in Article 1 of at least the following</p> | Requirements regarding compulsory disclosure by companies are met. |

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| <p>The registration card's samples are approved by the Ministry of Justice of Ukraine.</p> <p>2. The Unified State Register shall contain the following information on the legal entity:</p> <p>full name of the legal entity and short name if available;</p> <p>identification code of the legal entity;</p> <p>organizational and legal form;</p> <p>central or local body of executive power with the jurisdiction over the state-owned legal entity or the legal entity with the state share of more than 25 percent of the statutory fund;</p> <p>location of the legal entity;</p> <p>the list of founders (participants) of the legal entity, including name, residency country, residency location, series and number of passport of citizen of Ukraine or passport of the foreigner, registration number of the registration card for a taxpayer, if the founder is a natural person; name, residency country, location country and identification code, if the founder is a legal entity;</p> <p>data on ultimate beneficial owner of a legal entity, including the ultimate beneficial owner of its founder if the founder is a legal entity: name, residency country, residency location, series and number of passport of citizen of Ukraine or passport of the foreigner, registration number of the registration card for a taxpayer (if available);</p> <p>data on the corporate structure of founders - legal entities (other than political parties, creative unions and their local branches, lawyers' associations, chambers of commerce, state agencies, local authorities and their associations), which makes it possible to identify individuals - owners of substantial interest in these entities, namely: name, residency country, residency location, series and number of passport of citizen of Ukraine or passport of the foreigner, registration number of the registration card for a taxpayer (if available); activity kinds;</p> <p>data on the governing bodies of the legal entity;</p> <p>surname, name, patronymic, date of election (appointment) and registration numbers of registration cards for taxpayers that are elected (appointed) to the governing board of the legal entity,</p> | <p>documents and particulars:</p> <ul style="list-style-type: none"> (a) the instrument of constitution, and the statutes if they are contained in a separate instrument; (b) any amendments to the instruments mentioned in point (a), including any extension of the duration of the company; (c) after every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date; (d) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body: <ul style="list-style-type: none"> (i) are authorised to represent the company in dealings with third parties and in legal proceedings; it must be apparent from the disclosure whether the persons authorised to represent the company may do so alone or must act jointly; (ii) take part in the administration, supervision or control of the company; (e) at least once a year, the amount of the capital subscribed, where the instrument of constitution or the statutes mention an authorised capital, unless any increase in the capital subscribed necessitates an amendment of the statutes; (f) the accounting documents for each financial year which are required to be published in accordance with Council Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC; (g) any change of the registered office of the company; (h) the winding-up of the company; (i) any declaration of nullity of the company by the courts; | |
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| <p>authorized to represent the legal entity in legal relationships with the third party, or persons that are entitled to perform legal acts on behalf of the legal entity without power of attorney, including signing treaties;</p> <p>data on availability of restrictions on the representation on behalf of the legal entity;</p> <p>data on the charter capital (statutory or composite funds), including shares of each of the founders (participants), and on date of the end of its formation</p> <p>date and number of entry into the state registration of a legal entity, dates and numbers of entries on introducing amendments to it;</p> <p>grounds for refusal of the state registration;</p> <p>data on foundation documents, dates and numbers of entries on introducing amendments to it;</p> <p>data on the availability of a mark that a legal entity is created and functions under the model statute;</p> <p>grounds for refusal of the state registration of amendments to the foundation documents;</p> <p>date and number of entry of abolition of the state registration of amendments to the foundation documents of a legal entity;</p> <p>date and number of entry on loss of the original foundation documents;</p> <p>data on the separate subdivisions of the legal entity;</p> <p>data on the proceedings of bankruptcy, readjustment, particularly information on the property manager, turnaround manager;</p> <p>data on legal person being in the process of termination, particularly date of the registration of the decision of the founders (participants) or authorized persons on termination of the legal entity, data on the commission on the termination (property manager, liquidation commission etc.);</p> <p>date and number of entry on the beginning of the process of the simplified procedure of the state registration of the legal entity termination by means of its liquidation;</p> <p>date and number of entry on the suspension of the process of the simplified procedure of state registration of the legal entity</p> | <p>(j) the appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company;</p> <p>(k) the termination of the liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off.</p> <p>Part 3 of the Article 3</p> <p>3. All documents and particulars which must be disclosed pursuant to Article 2 shall be kept in the file, or entered in the register; the subject matter of the entries in the register must in every case appear in the file.</p> <p>Member States shall ensure that the filing by companies, as well as by other persons and bodies required to make or assist in making notifications, of all documents and particulars which must be disclosed pursuant to Article 2 is possible by electronic means. In addition, Member States may require all, or certain categories of, companies to file all, or certain types of, such documents and particulars by electronic means.</p> <p>All documents and particulars referred to in Article 2 which are filed, whether by paper means or by electronic means, shall be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means are converted by the register to electronic form.</p> <p>The documents and particulars referred to in Article 2 that have been filed by paper means up to 31 December 2006 shall not be required to be converted automatically into electronic form by the register. Member States shall nevertheless ensure that they are converted into electronic form by the register upon receipt of an application for disclosure by electronic means submitted in accordance with the measures adopted to give effect to paragraph 4</p> | |
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termination due to the beginning of the process of taking measures for the legal entity termination by means of its liquidation as a general measure or due to the objections of the interested persons (bodies) against the simplified procedure of state registration of the legal entity termination;

date and number of the state registration of legal entity termination, that is conducted through the simplified procedure by its liquidation and of the foundation documents invalidity of the legal entity;

information on the legal entity being in the process of termination, particularly on the date of registration of the decision of founders (participants) or the authorized body on the legal entity termination;

date of the publication in the report publication on the decision as for the legal entity termination in the publication of the specially authorized body on state registration; commission panel on termination (reorganization commission, liquidation commission), the presiding commissioner, date of election (appointment) or date of election (appointment) of a liquidator; registration numbers of registration cards for taxpayers of all members of the commission panel (or information on series and number of passport for persons, who due to their religious beliefs refused to accept the registration number of registration card for a taxpayer, informed the appropriate government tax service body and have a check in the passport);

date of approval of the deed of assignment or distributive balance;

data on legal entities with a legal successor that is a registered legal entity;

data on legal entities – legal successors;

date of judicial decision-making, date of acquiring the force and number of judicial decision as for the legal entity termination that is not connected to the bankruptcy, as for commencement (suspension) of the proceedings on bankruptcy, readjustment, as for recognition of bankruptcy, as for abolition of state registration of termination;

date and number of entry on state registration of the legal entity termination, grounds for its introduction;

date and number of entry on abolition of state registration of the legal entity termination, grounds for its introduction;

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| <p>number and date of decision on abolition of registration of the shares issue, issued by the authorized person in the National Securities and Stock Market Commission;</p> <p>place of state registration, as well as place of other registration actions, envisaged by the present Law;</p> <p>location of registration files;</p> <p>data on issuance of excerpts, extracts, certificates from the Unified State Register;</p> <p>surname, name and patronymic of the official that made an entry to the Unified State Register on state registration of a legal entity, inserted amendments to this entry or introduced an entry on state registration of the legal entity termination;</p> <p>data, obtained in the order of interchanging of information from the departmental registers of the agencies of statistics, the State Incomes and Duties bodies, the Pension Fund of Ukraine: dates and numbers of entries on registration and removal from register, name and identification codes of statistics bodies, of incomes and duties bodies, the Pension Fund of Ukraine, in which the legal entity is registered;</p> <p>date of receipt from the State Incomes and Duties bodies, the Pension Fund of Ukraine to the state registrar documents (notifications, information), envisaged by the present Law, due to the legal entity termination with the statement of surname, name and patronymic of the official that signed the document, data of the agencies of statistics on the major economic activity of enterprises, determined on the basis of data of the state statistical monitoring according to the statistical methodology by the results of activity during the year; Pension Fund data on the payer registration number of the unite deposit, the professional risk class of the unite deposit payer on the main kind of its economic activity; in case of legal entity change – term, before which it shall be registered in the State Incomes and Duties bodies by its earlier registration location.</p> <p>other additional information on contacts with the legal entity;</p> <p>financial reports on economic activity of the legal entity (except for budget-funded entities), composed of balance and report on annual financial results;</p> | | |
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| <p>data on opening and closure of accounts of the legal entities;</p> <p>data on blocking accounts and removal of attachments on the accounts of legal entities and their property (including vested by the separate subdivisions);</p> <p>data on opening a court enforcement action as for the legal entities;</p> <p>data on the term, prescribed by the founders (participants) of the legal entity, court or body that has passed a decision on the legal entity termination, for the creditors to announce their claims;</p> <p>data on the beginning of an extraordinary inspection, appointed due to the legal entity termination, by the government incomes and duties bodies, the Pension Fund of Ukraine;</p> <p>data on impossibility of extraordinary inspection, appointed due to the legal entity termination, by the government tax service bodies, the Pension Fund of Ukraine;</p> <p>data on availability of objections of the government incomes and duties bodies, the Pension Fund of Ukraine against the state registration of the legal entity termination;</p> <p>data on withdrawal of the notification on availability of objections of the government incomes and duties bodies, the Pension Fund of Ukraine against the state registration of the legal entity termination.</p> <p>date of handing in the application on choosing the simplified tax system, the tax address of the business company, the location of business activity, the chosen group of unite tax, date of sending the electronic copy of such application to the incomes and duties body, if such an application is given as an appendix to the registration card;</p> <p>date of handing in the application on free registration as a tax payer on the VAT, date of sending the electronic copy of such application to the incomes and duties body, if such an application is given as an appendix to the registration card.</p> <p>3. The Unified State Register shall contain the following data on the public authorities and local self-government bodies as legal entities:</p> <p>complete name of the legal entity and short name if available;</p> <p>identification code of the legal entity;</p> <p>location of the legal entity;</p> <p>data on the order act under which the legal entity is created;</p> | | |
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date of the legal entity creation;
date of the legal entity state registration;
data on the separate subdivisions of the legal entity;
data on the termination proceedings of the legal entity;
date and number of entry on state registration of the legal entity termination, grounds for its introduction.
data, received due to the interchange of the information between the departmental registers of statistics bodies, incomes and duties, Pension Fund of Ukraine: date and number of entry to the state registry and removal from it, name and identification codes of statistics bodies , incomes and duties bodies, Pension Fund of Ukraine, in which the legal entity is registered; date of receiving from the incomes and duties bodies, Pension Fund of Ukraine to the state registrar, documents (notifications, information), envisaged by this Law, due to the termination of the legal entity with the mentioning of the surname, name and patronymic of the official, that signed the document; the state statistics bodies data on the major economic activity of the legal entity, defined by the data of the state statistical monitoring according to the statistical methodology based on the annual activity results; the Pension Fund of Ukraine data on the registration number of the unite deposit payer, the production professional risk class of the unite deposit payer on the main kind of its economic activity; in case of legal entity change – term, before which it shall be registered in the State In comes and Duties bodies by its earlier registration location.

4. The Unified State Register shall contain the following data on an individual entrepreneur:
name of an individual entrepreneur;
registration number of the registration card for a taxpayer or number and series of passport (for persons, who due to their religious beliefs refused to accept the registration number of registration card for a taxpayer, informed the appropriate government tax service body and have a check in the passport that allows them to conduct payments by the series and passport number);
country of citizenship of the physical entity;

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| <p>residence location;</p> <p>activity categories;</p> <p>date and number of entry on state registration of an individual entrepreneur, dates and numbers of entries on introduction of amendments to it;</p> <p>grounds for refusal in state registration;</p> <p>grounds for refusal in state registration of amendments to the data on an individual entrepreneur;</p> <p>data on the termination of entrepreneurial activity, data on opening (termination) of proceedings concerning bankruptcy, proclaiming a bankrupt, abolishing the state registration of termination of the entrepreneurial activity;</p> <p>surname, name and patronymic, registration number of registration cards for a taxpayer of the person, appointed as a property manager of an individual entrepreneur;</p> <p>date and number of an entry on state registration of termination of entrepreneurial activity by an individual entrepreneur, and grounds for its introduction;</p> <p>date and number of an entry on abolition of state registration of termination of entrepreneurial activity by an individual entrepreneur, and grounds for its introduction;</p> <p>place of state registration, as well as place of other registration actions, envisaged by the present Law;</p> <p>location of the registration files;</p> <p>surname, name and patronymic of the official that introduced an entry to the Unified State Register on state registration of an individual entrepreneur, introduced amendments to the entry or introduced an entry on state registration of termination of entrepreneurial activity by an individual entrepreneur;</p> <p>data, obtained in the order of reciprocity of information from the departmental registers of the agencies of statistics, the State Incomes and Duties bodies, the Pension Fund of Ukraine: dates and numbers of entries on registration and removal from register in the mentioned bodies, where the individual entrepreneur is registered; data on the main type of activity; data on the statistics agencies on the main type</p> | | |
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| <p>of economic activity of individual entrepreneur, defined on the basis of state statistics observations according to the statistics methodology as for results of the activities for year. the Pension Fund of Ukraine data on the registration number of the unite deposit payer, the production professional risk class of the unite deposit payer on the main kind of its economic activity; in case of change of the residence of the individual entrepreneur – term by which individual entrepreneur individual entrepreneur is registered in the State Incomes and Duties bodies in the place of previous registration;</p> <p>data on opening and closing of bank accounts of individual entrepreneur in banks and other financial and other financial institutions;</p> <p>data on imposition and removal of arrest on the accounts and property of individuals - entrepreneurs;</p> <p>data on opening a court enforcement action as for individual entrepreneurs;</p> <p>other additional information on contacts with an individual entrepreneur;</p> <p>date of handing in the application on choosing the simplified tax system, the tax address of the business company, the location of business activity, the chosen group of unite tax, chosen activity kinds according to the KVED DK 009:2010 (for the payers of the unit tax of the first and the second group), date of sending the electronic copy of such application to the incomes and duties body, if such an application is given as an appendix to the registration card;</p> <p>date of handing in the application on free registration as a tax payer on the VAT, date of sending the electronic copy of such application to the incomes and duties body, if such an application is given as an appendix to the registration card.</p> <p>5. The Unified State Register also contains data on absence of a legal entity by its location, absence of confirmation of data on a legal entity, as well as data on the reserved names of legal entities.</p> <p>6. The interchanging information order between the departmental registers of the statistics bodies, incomes and duties bodies, the Pension Fund of Ukraine as well as by means of electronic</p> | | |
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| <p>documents, envisaged by this Law, between the central body of executive power that realizes the policy in the sphere of state registration of legal entities and individual entrepreneurs, statistics agencies, incomes and duties bodies, Pension Fund of Ukraine, are approved by the Ministry of justice of Ukraine along with Pension Fund of Ukraine, central bodies of executive power that realize the policy in the respective sphere.</p> | | |
| <p>Article 18. Status of the data from the Unified State Register</p> | | |
| <p>1. If the data that are subject to inserting to the Unified State Register have been inserted, these data are considered reliable and can be used in a dispute with a third party, as long as they are not amended.</p> <p>2. If the data, that are subject to inserting to the Unified State Register, are unreliable and have been inserted, the third party can refer to them during a dispute. The third party is ineligible to refer to them during a dispute in case, if he/she knew or could have known about the unreliability of those data.</p> <p>3. If the data, that are subject for inserting to the Unified State Register, have not been inserted to it, they cannot be used in a dispute with the third party, except for cases, when the third party knew or could have known these data.</p> | | |
| <p>Article 19. Amendments to the data on a legal entity from the Unified State Register</p> | | |
| <p>1. In case if the amendment to the data on a legal entity, contained in the Unified State Register, is not connected with amendments, introduced to the foundation documents of a legal entity, or is not subject to state registration, a person, authorized to act on behalf of a legal entity (executive body), shall submit (send by posting with a list of inventory) to the state registrar by the location of the registration files of a legal entity a completed registration card on introduction of amendments to the data on a legal entity, contained in the Unified State Register.</p> <p>2. In case if the amendments to the data on a legal entity, contained in the Unified State Register, are connected with the shift of the manager or persons, elected (appointed) to the governing body of the legal entity, or persons, entitled to perform actions on behalf of the</p> | | |

legal entity without the power of attorney, including signing agreements, except for the documents, envisaged by Part one of the present Article, a person, authorized to act on behalf of the legal entity (executive body), shall submit an extra duplicate (copy, notarized copy) of the decision of the authorized governing body of the legal entity on the shift of the mentioned persons and/or a duplicate of the original (copy, notarized copy) of the order document on their appointment.

In case if the amendments to the data on a legal entity, contained in the Unified State Register, are inserted in connection with the change of the panel of founders (participants) of the legal entity, formed on the basis of a model statute, except for the documents, envisaged by Part one of the present Article, a person, authorized to act on behalf of the legal entity (executive body), shall submit an extra duplicate of the original or a notarized copy of the decision of the authorized governing body of the legal entity on introducing changes to the panel of founders (participants) and one of the documents, envisaged by Part three of Article 29 of the present Law.

In case of changing the ultimate beneficial owners and / or the ultimate controllers of legal entity, including the ultimate beneficial owners and / or the ultimate controllers of its founder if the founder is a legal entity the documents specified in paragraph one of this article should be submitted. In case if amendments to the data on the legal entity, contained in the Unified State Register, are inserted in connection with the change to the location and/or legal entity name, formed on the basis of a model statute, except for the documents, envisaged by Part one of the present Article, a person, authorized to act on behalf of the legal entity (executive body), shall submit an extra copy of the original or an authorized copy of the decision of the authorized governing body of the legal entity on introducing the mentioned amendments.

In case if the amendments to the data on the legal entity, contained in the Unified State Register, are connected with the amendment of the charter capital (statutory or composite funds) of the legal entity, operating under a model statute, approved by the Cabinet of Ministers

of Ukraine, except for the documents, envisaged by Part one of the present Article, a person, authorized to act on behalf of the legal entity (executive body), shall submit an extra duplicate of the original or an authorized copy of the decision of the authorized governing body of the legal entity on the mentioned amendments, and in case of reduction of the charter capital (statutory or composite funds) of the legal entity, additionally to the mentioned documents, a document, confirming the payment for publishing a corresponding report in a specialized print mass media , shall be submitted.

3. In case if the amendments to the data on the legal entity, contained in the Unified State Register, are connected with the change of restrictions as for representation on behalf of the legal entity, a person, authorized to act on behalf of the legal entity (executive body), shall submit an extra duplicate of the original (copy, notarized copy) of the decision of the authorized governing body of the legal entity, which set the limits mentioned.

4. The state registrar shall be prohibited to require additional documents to introduce amendments to the data on the legal entity, contained in the Unified State Register, if they are not envisaged by Parts one – three of the present Article.

5. Documents, submitted for introduction of amendments to the data on a legal entity, contained in the Unified State Register, shall be accepted according to the inventory, with a copy, handed (sent by posting with the list of inventory) in the day of the documents receipt by the requestor with a mark of the date of receipt.

The date of receipt of the documents on introduction of amendments to the data on the legal entity, contained in the Unified State Register, shall be introduced to the deed register of the registration actions.

6. The state registrar shall shelve the documents, submitted for introduction of amendments to the data on the legal entity, contained in the Unified State Register, in the following cases:

documents are not submitted by the place of state registration;

documents do not meet the requirements, established by Parts one – five of Article 8 of the present Law;

documents are submitted not in a full scale;

documents are submitted by a person without appropriate authorities.
In case if the state registrar receives a court decision on prohibition of registration actions, which acquired the force of the law, the state registrar shall shelve the documents, submitted for introduction of amendments to the data on the legal entity, contained in the Unified State Register.

7. If the documents on introduction of amendments to the data on the legal entity, contained in the Unified State Register, are shelved, the state registrar shall hand (send by posting with the list of inventory) to the requestor the corresponding notification, indicating the grounds for shelving, and the submitted documents within one working day from the date of their receipt.

8. If the documents, submitted for introduction of amendments to the data on the legal entity, contained in the Unified State Register, are shelved, the requestor can repeatedly apply to the state registrar in a general order after eliminating the reasons that have been the grounds for shelving the documents mentioned.

9. The state registrar, in the absence of grounds for shelving the documents for introduction of amendments to the data on the legal entity, contained in the Unified State Register, shall introduce an entry on introducing amendments within the next working day from the date of their receipt and on the same day submit to the agencies of statistics, the State Incomes and Duties body, the Pension Fund of Ukraine information from the registration card on introduction of amendments to the data on the legal entity, contained in the Unified State Register, indicating the number and dates of introduction of the corresponding entry.

10. Along with the introduction of an entry to the Unified State Register on the amendments to the data on the legal entity, which according to the present Law shall be specified in an excerpt from the Unified State Register, the state registrar shall hand (send by posting with the list of inventory) an excerpt from the Unified State Register to the requestor within the next working day after receiving from the agencies of statistics, the State Incomes and Duties body, the Pension Fund of Ukraine information on entry of amendments to the

departmental registers.

11. A legal entity shall submit (send) a registration card, confirming the data on the legal entity, to the state registrar to confirm the data on the legal entity annually during the month, following the date of state registration, starting from the next year.

In case if the legal entity, with an approved statute by the founders (participants), has made decision to continue its activity on the basis of a model statute, a legal entity shall submit to the state registrar the decision, the registration card to confirm the data on the legal entity with an appropriate mark and a duplicate of the original statute for putting s stamp that a legal entity carries out activity on the basis of a model statute from a proper date. This stamp shall be also put by the state registrar on the duplicate of the original statute of the legal entity that shall be stored in the registration files.

In case if the founders (participants) of the legal entity, operating on the basis of a model statute, make decision to continue the activity on the basis of drawn up incorporation documents, the legal entity shall submit the decision and registration card to confirm the data on the legal entity with an appropriate mark to the state registrar. The legal entity shall be considered the one, operating on the basis of foundation documents from the moment of state registration of amendments to the foundation documents of the legal entity in the order, prescribed by Article 29 of the present Law.

12. In case of non-delivery, within the term, prescribed by Part eleven of the present Article, of the registration card on confirmation of data on the legal entity, the state registrar shall send by posting, within five working days from the date, prescribed for submission of a registration card, a notification to the legal entity as for necessity to submit the mentioned registration card to the state registrar.

In case if the state registrar receives from the Incomes and Duties body a notification of the prescribed standard on the absence of the legal entity by its location, the state registrar shall send by posting, within five working days from the date of receipt of the mentioned notification, a message as for the necessity to submit a registration card to the state registrar.

13. The state registrar shall shelve the registration card on confirmation of data on the legal entity, inform the requestor about it in the cases, envisaged by Part 6 of the present Article, and in the order, prescribed by Part seven of the present Article.

14. In case of failure to submit by the legal entity, within a month from the date of receipt of the appropriate notification, a registration card on confirmation of data on the legal entity, the state registrar shall introduce an entry to the Unified State Register on absence of confirmation of these data by the date, set for the next submission of the registration card on confirmation of data on the legal entity.

If the state registrar receives the posting back, the state registrar shall introduce an entry to the Unified State Register on absence of the legal entity by its location.

15. In case of loss of the original foundation documents, the founders (participants) of the legal entity or the authorized body or person shall submit to the state registrar by the location of registration files of the legal entity an application on the loss of the original foundation documents of the prescribed standard.

The following shall be added to the application:

document, confirming payment for publishing a report on loss of the original foundation documents in the specialized print mass media;
certificate, issued by a police department, on the registration of an application on the loss of the original foundation documents.

If an application on loss of the original foundation documents is submitted by a person, which according to the data, introduced to the Unified State Register, is eligible to perform legal actions on behalf of the legal entity without power of attorney, a passport of the citizen of Ukraine or the passport document of the foreigner shall be additionally shown to the state registrar.

If the documents are submitted by a representative of the legal entity, a passport of the citizen of Ukraine or the passport document of the foreigner and a document, certifying the authorities of a representative shall be additionally shown to the state registrar.

The state registrar shall be entitled to shelve the application on loss of the original foundation documents, if the application is drawn up with

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| <p>breach of the requirements, prescribed by Parts one and two of the Article 8 of the present Law, or if the documents, prescribed by the present Part, are not added to the application, or if the state registrar has received a court decision on denial of registration actions.</p> <p>In case of shelving the application on loss of the documents, a corresponding notification with the statement of the grounds for shelving the application on loss of the original foundation documents shall be handed (sent by posting with the list of inventory) to the requestor by the state registrar within the next working day from the day of its receipt.</p> <p>In case of absence of the grounds for shelving the application on loss of the original foundation documents, the state registrar shall introduce an entry to the Unified State Register on loss of the original foundation documents of the legal entity within the next working day after the date of its receipt.</p> | | |
| <p>Article 20. Supplying data from the Unified State Register</p> | | |
| <p>1. Data, contained in the Unified State Register, shall be open and accessible to everyone, except for the registration numbers of registration cards for taxpayers, data on opening and closing of accounts, data on blocked accounts and removal of attachments on the accounts of legal entities and their property</p> <p>2. Data, contained in the Unified State Register, shall be supplied in the form of the following: an extract from the Unified State Register; certificate on presence or absence of the requested information in the Unified State Register; data base (collection of information of the Unified State Register in the electronic form), for the purposes of credit bureaus; data in the electronic form for the public authorities in connection with their exercising the powers, prescribed by law.</p> <p>3. The form of an extract and a certificate from the Unified State Register shall be determined by Ministry of Justice of Ukraine. An extract or a certificate from the Unified State Register shall be signed by the state registrar and certified by his seal.</p> <p>The procedure of supplying data from the Unified State Register in</p> | <p>Directive 2009/101/EC <i>Article 2, Part 3 of the Article 3</i></p> <p>Eleventh Council Directive 89/666/EEC <i>Art.2, 3</i></p> <p>Article 2 1. The compulsory disclosure provided for in Article 1 shall cover the following documents and particulars only: (a) the address of the branch; (b) the activities of the branch; (c) the register in which the company file mentioned in Article 3 of Council Directive 68/151/EEC is kept, together with the registration number in that register; (d) the name and legal form of the company and the name of the branch if that is different from the name of the company; (e) the appointment, termination of office and particulars of the persons who are authorized to</p> | <p>n/a</p> |

the electronic form and their list shall be determined by the Ministry of Justice of Ukraine with the consent with the appropriate state agency.

4. The term for supplying data from the Unified State Register shall not exceed five working days from the date of the inquiry receipt.

5. A fee shall be charged for issue of an extract and a certificate from the Unified State Register, the amount and procedure of its payment shall be defined by Ministry of Justice of Ukraine. The procedure of transferring information from the Unified State Register to the Credit bureau in the form of a data base, as well as the payment rate and other provisions shall be determined by a specially authorized body on state registration and a Credit bureau under the provisions of an agreement. The payment rate shall not exceed the rate of the administrative expenses.

6. Costs, charged for obtaining data from the Unified State Register, shall be directed on funding the expenditures, connected with its maintenance.

7. The document, confirming payment for information from the Unified State Register, shall be a copy of the receipt, issued by a bank, or a copy of the payment order, checked by a bank.

8. The public authorities shall be exempt from the fee for obtaining data from the Unified State Register on their inquiry, if this inquiry is filed due to the exercising the powers, prescribed by law.

9. Transferring data from the Unified State Register to the third party on commercial principles shall be prohibited, with the exception of transferring data to the Credit bureau.

10. The public authorities shall be prohibited to supply data from the Unified State Register to other persons on their inquiry, received in the order, prescribed by the present Law.

represent the company in dealings with third parties and in legal proceedings;

- as a company organ constituted pursuant to law or as members of any such organ, in accordance with the disclosure by the company as provided for in Article 2 (1) (d) of Directive 68/151/EEC,

- as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;

(f) the winding-up of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 2 (1) (h), (j) and (k) of Directive 68/151/EEC,

- insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;

(g) the accounting documents in accordance with Article 3;

(h) the closure of the branch.

2. The Member State in which the branch has been opened may provide for the disclosure, as referred to in Article 1, of

(a) the signature of the persons referred to in paragraph 1 (e) and (f) of this Article;

(b) the instruments of constitution and the memorandum and articles of association if they are contained in a separate instrument in accordance with Article 2 (1) (a), (b) and (c) of Directive 68/151/EEC, together with amendments to those documents;

(c) an attestation from the register referred to in paragraph 1 (c) of this Article relating to the existence of the company;

(d) an indication of the securities on the company's property situated in that Member State, provided such disclosure relates to the validity of those

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| | <p>securities.</p> <p>Article 3</p> <p>The compulsory disclosure provided for by Article 2 (1) (g) shall be limited to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed in accordance with Directives 78/660/EEC, 83/349/EEC and 84/253/EEC.</p> | |
| Article 21. Excerpt from the Unified State Register | | |
| <p>1. An excerpt from the Unified State Register shall be issued to a legal entity or an individual entrepreneur on their written inquiry within two working days from the date of submitting the inquiry, and in cases, prescribed by the present Law.</p> <p>2. The state registrars shall use the form of an excerpt from the Unified State Register of the prescribed standard. Inventory of the form of an excerpt from the Unified State Register, as well as the procedure of its execution shall be determined by the Ministry of Justice of Ukraine.</p> <p>4. The following shall be specified in an excerpt:</p> <p>name of a legal entity or a separated subdivision, or an individual entrepreneur;</p> <p>identification code of a legal entity or a separated subdivision of a legal entity or the registration number of a registration card for a taxpayer or a series and number of the passport (for people, who due to their religious beliefs refused to receive the registration number of the registration card of the tax payer, informed the respective incomes and duties body and have a notice in the passport, that gives them the right to make payments by the series and the number of the passport);</p> <p>location of a legal entity or a separated subdivision or residency of an individual entrepreneur;</p> <p>surname, name and patronymic of the persons who are entitled to perform legal actions on behalf of a legal entity or an individual entrepreneur without the power of attorney, including signing the agreements, their registration numbers of registration cards for taxpayers;</p> | | |

availability of restrictions as for the representation on behalf of the legal entity or individual entrepreneur;

data, obtained in the order of reciprocity of information from the departmental registers of the agencies of statistics, the State Incomes and Duties bodies, the Pension Fund of Ukraine, including dates and numbers of entries on registration and removal from register in the mentioned bodies, name and identification codes of statistics bodies, incomes and duties bodies, Pension fund of Ukraine, in which a legal entity or a separated subdivision or an individual entrepreneur is registered; data on the major activity kind; the Pension Fund of Ukraine data on the registration number of the unite deposit payer, the production professional risk class of the unite deposit payer on the main kind of its economic activity; in case of legal entity or the separated subdivision location change or change of residence of the individual entrepreneur – term, before which it shall be registered in the State In comes and Duties bodies by its earlier registration location;

date and number of an entry in the Unified State Register;

date of an excerpt issue.

5. An excerpt from the Unified State Register shall be signed by the state registrar and certified by his/her seal.

6. In case if a legal entity is in the process of termination or an individual entrepreneur is in the process of termination of entrepreneurial activity, as well as in case if entrepreneurial activity of an individual entrepreneur was terminated, a corresponding entry shall be introduced to an excerpt.

8. An excerpt from the Unified State Register shall not be issued to a legal entity in case of availability in the Unified State Register of an entry on the following:

absence of the legal entity by its location;

absence of confirmation of the data on the legal entity.

10. A fee in the rate of one exemption fee of the income of citizens shall be charged for the issue of an excerpt from the Unified State Register. The fee shall not be charged for the issue of an excerpt from the Unified State Register during the state registration of a legal entity;

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| <p>individual entrepreneur; inserting information on the existing legal entities and individual entrepreneurs; introduction of amendments to the data on a legal entity, contained in the Unified State Register, but not connected to the amendments, introduced to the foundation documents of a legal entity; amendments to the foundation documents of a legal entity; introducing data on opening (closing) of a separate subdivision of the legal entity; amendments to the data on an individual entrepreneur, contained in the Unified State register; introducing to the Unified State Register of a court decision on abolition of state registration of the termination of entrepreneurial activity of an individual entrepreneur.</p> <p>11. Costs, charged for issue of an excerpt from the Unified State Register, shall be directed on funding the expenditures, connected with its maintenance.</p> <p>12. The document, confirming payment for issue of an excerpt from the Unified State Register, shall be a copy of the receipt, issued by a bank, or a copy of the payment order, checked by a bank.</p> | | |
| <p>Article 22. Publication of data from the Unified State Register</p> | | |
| <p>1. Information on state registration of a legal entity, change of location of the legal entity, change of the legal entity name, decision-making by the founders (participants), court or authorized body on allotment, decision-making by the founders (participants) or authorized body as for the legal entity termination, on loss of the original foundation documents, on the penal of a commission on termination (reorganization commission, liquidation commission) and its presiding commissioner or appointment of a liquidator, court ruling as for the legal entity termination, if such a ruling is not connected with bankruptcy of the legal entity, court ruling as for commencement of proceedings on the legal entity bankruptcy, on reduction of the charter (composite) capital of the legal entity, state registration of the legal entity termination, state registration of the legal entity termination by the principle of tacit consent, on surname, name, patronymic of a heritor, tutor, custodian or trustee of an individual entrepreneur, date of their appointment, on court ruling as for commencement of proceedings on bankruptcy of an individual</p> | <p>Directive 2009/101/EC Part 4,5 of the Article 3</p> <p>4. A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable on application. Applications may be submitted to the register by paper means or by electronic means as the applicant chooses. Copies as referred to in the first subparagraph must be obtainable from the register by paper means or by electronic means as the applicant chooses. This shall apply in the case of all documents and particulars already filed. However, Member States may decide that all, or certain types of, documents and particulars filed by paper means on or before a date which may not be later than 31 December 2006 shall not be obtainable from the register by electronic means if a specified period has elapsed between the date of filing and the date of the application submitted to the register. Such specified</p> | <p>n/a</p> |

entrepreneur, on state registration of termination of entrepreneurial activity of an individual entrepreneur, on state registration of termination of entrepreneurial activity of the individual entrepreneur, on court ruling as for suspension of proceedings on bankruptcy of the legal entity or individual entrepreneur shall be subject to obligatory publication in the specialized print mass media.

The central body of executive power that realizes the politics in the sphere of state registration of legal entities and individual Entrepreneurs shall place the data, envisaged by the p.1 of this article on it's web-site.

2. Form and content of the report on introducing data to the Unified State Register shall be determined by the Ministry of Justice of Ukraine.

3. Introduction of an entry to the Unified State Register shall be the basis for publishing reports.

4. Reports shall be subject to publishing within ten working days from the day of introducing a corresponding entry to the Unified State Register.

5. For publishing reports in the specialized print media on the information on the following:

change of the legal entity location, change of the legal entity name, decision-making by the founders (participants), court or authorized body on allotment, reduction of the charter (composite) capital of the legal entity, loss of the original foundation documents of the legal entity a fee of three exemption fees of the citizens shall be charged;

decision-making by the founders (participants) or authorized body as for the legal entity termination, as well as the penal of a commission on termination (reorganization commission, liquidation commission) and its presiding commissioner or appointment of a liquidator, on court ruling as for the legal entity termination, if such a ruling is not connected with bankruptcy of the legal entity, court ruling as for commencement of proceedings on the legal entity bankruptcy, on state registration of the legal entity termination, state registration of the legal entity termination by the principle of tacit consent the fee shall not be charged;

period may not be less than 10 years.

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 2, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Paper copies supplied shall be certified as 'true copies', unless the applicant dispenses with such certification. Electronic copies supplied shall not be certified as 'true copies', unless the applicant explicitly requests such a certification.

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means at least of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC

5. Disclosure of the documents and particulars referred to in paragraph 3 shall be effected by publication in the national gazette designated for that purpose by the Member State, either of the full text or of a partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The national gazette designated for that purpose may be kept in electronic form.

[Eleventh Council Directive 89/666/EEC](#)

Art.2, 3

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| <p>filing an application to the state registrar on termination of entrepreneurial activity by an individual entrepreneur, on state registration of termination of entrepreneurial activity of an individual entrepreneur by his/her request, state registration of termination of entrepreneurial activity of an individual entrepreneur by the principle of tacit consent, court ruling as for commencement of proceedings on bankruptcy of an individual entrepreneur, on court ruling as for suspension of proceedings on bankruptcy of an individual entrepreneur, on surname, name, patronymic of the third party (heritor, tutor, custodian or property manager of an individual entrepreneur) the fee shall not be charged.</p> <p>6. The document, confirming payment for publishing reports, shall be a copy of the receipt, issued by a bank, or a copy of the payment order, checked by a bank.</p> <p>In case of state registration on the basis of electronic documents in cases, envisaged by the present Law, the confirmation of payment for publishing the reports shall be a duplicate of the electronic payment document, certified by an electronic digital signature.</p> <p>7. Costs, charged for publishing reports, shall be directed on the recovery of expenditures, connected with the maintenance of the Unified State Register and publication of the specialized print mass media.</p> | | |
| <p align="center">Article 22-1. Providing access to the Unified State Register for the courts of general jurisdiction</p> | | |
| <p>1. The courts of general jurisdiction shall be provided an unimpeded access to the data from the Unified State Register of legal entities and individual entrepreneurs on a grant basis.</p> <p>2. Access of a court to the data on legal entities and individual entrepreneurs shall be provided by means of free of charge connection of the court to the Unified State Register of legal entities and individual entrepreneurs.</p> <p>3. Usage of information by the court shall be accomplished in the form of a particular extract, formed by a judge, who conducts the proceedings, shall be signed by him/her with the obligatory statement of date and time of its forming and the aim of receiving such</p> | | |

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| <p>information and shall be entered upon the record.</p> <p>4. The court shall be prohibited to transfer the data from the Unified State Register of legal entities and individual entrepreneur to the third parties on their application.</p> <p>5. Responsibility for organizing the access of the court to the Unified State Register of legal entities and individual entrepreneurs and monitoring of the compliance of requirements as for the information protection shall be exercised by the chief of the court staff.</p> <p>6. The procedure of access of the court to the data from the Unified State Register of legal entities and individual entrepreneurs shall be determined by the regulation, adopted by the Ministry of Justice of Ukraine with the consent of the State Judicial Administration of Ukraine.</p> | | |
| <p style="text-align: center;">Chapter III</p> <p style="text-align: center;">LEGAL ENTITY REGISTRATION</p> <p>Article 24. Documents, submitted for state registration of a legal entity</p> | | |
| <p>1. For state registration of a legal entity a founder (founders) or an authorized person shall personally submit to the state registrar (send by posting with a list of inventory or in case of filing electronic documents submit a list, containing information on the submitted electronic documents, in the electronic form) the following documents:</p> <p>completed registration card for state registration of a legal entity, to which may be given as a supplement the statement on choosing by the legal entity the simplified tax system and\or the registration statement as a taxpayer of VAT in the form, approved by the central body of the executive power, that provides the formation and realizes the states tax and customs policy;</p> <p>a copy of the original (copy, notarized copy) of the decision of founders or authorized body to create a legal entity in cases, envisaged by law;</p> <p>two copies of the foundation documents (in case of submitting electronic documents – one copy);</p> <p>document, certifying the registration fee payment for state registration</p> | | |

of a legal entity. In case of submitting electronic documents for state registration of a legal entity, the confirmation of payment for state registration of a legal entity shall be a duplicate of the electronic payment document, certified by an electronic digital signature;

Founder (founders) or authorized persons include into the registration card for the state registration of a legal the following:

data on the corporate structure of founders - legal entities, which makes it possible to identify individuals - owners of substantial interest in these entities, namely: surname, name, patronymic name (if there is one), country of citizenship, series and number of passport of citizen of Ukraine or passport of the foreigner, residency location, registration number of the registration card for a taxpayer (if available);

data on ultimate beneficial owner of a legal entity, including the ultimate beneficial owner of its founder if the founder is a legal entity: surname, name, patronymic name (if there is one), country of citizenship, series and number of passport of citizen of Ukraine or passport of the foreigner, residency location, registration number of the registration card for a taxpayer (if available). This information is not included in the registration card for the state registration of political parties, creative unions and their local branches, lawyers' associations, chambers of commerce, state agencies, local authorities and their associations.

In case of a legal entity creation on the basis of the model statute, an appropriate mark with a reference to a standard statutory document shall be put in the registration card for state registration of a legal entity.

3. In cases, envisaged by the law, except for documents, specified in Part one of the present Article, a copy of the decision of the Antimonopoly Committee of Ukraine bodies or the Cabinet of Ministers of Ukraine on granting permission for concerted actions or concentration of economic agents shall be additionally submitted (sent).

6. In case of state registration of a farm enterprise, except for the documents, that are envisaged by the Part one of this Article, also in

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addition has to be submitted the States Act on the deed of ownership of the founder in the land or the States Act on the right of the permanent usage of the land by the founder, or notarized copy of the agreement on the right of usage of the land by the founder, particularly on the land lease conditions.

7. A document, confirming the registration of a foreign person in the country of location, particularly an extract from the commercial, banking or judicial register, meeting the requirements of Part six of Article 8 of the present Law, shall be submitted additionally to the documents, specified in Part one of the present Article, in case of state registration of a legal entity with a founder (founders) that is a foreign legal entity.

8. The state registrar is prohibited to require additional documents for state registration of a legal entity, if they are not specified in Parts one – seven of the present Article.

9. If the documents for state registration of a legal entity are submitted by the founder of a legal entity, his/her passport of the citizen of Ukraine or passport document of the foreigner shall be additionally shown to the state registrar.

If the documents for state registration of a legal entity are submitted by a person, authorized by the founder (founders) of the legal entity, a passport of the citizen of Ukraine or passport document of the foreigner shall be additionally shown to the state registrar, as well as a document, certifying the authorities of the person, or in case of submitting electronic documents, a document, certifying the authorities of this person, shall be added in electronic form to the documents, specified in Parts one – seven of the present Article.

10. Documents, submitted for state registration of a legal entity, shall be accepted by an inventory, a copy of which shall be handed (sent by posting) in the day of the documents receipt to the founder or an authorized person with a mark on the date of the documents receipt.

The date of the documents receipt for state registration of a legal entity shall be inserted to the deed register of registration actions.

11. The state registrar shall be liable to shelve the documents, submitted for state registration of a legal entity, if:

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| <p>documents are submitted by an improper place of state registration; documents do not meet the requirements, specified in Parts one, two, four – seven of Article 8 and Part five of Article 10 of the present Law; the state registrar has received a court decision as for the denial of registration actions; documents are submitted not in a full scale; documents are submitted by a person with no proper authorities.</p> <p>12. In case of shelving the documents, submitted for state registration of a legal entity, the state registrar shall hand (sent by posting with the list of inventory) a corresponding notification to the founder or authorized person within the next working day from the date of their receipt, with the statement of grounds for shelving the documents, as well as the documents, submitted for state registration of a legal entity, according to the inventory.</p> <p>Shelving the documents, submitted for state registration of a legal entity, shall not prevent the founder or authorized person from the repeated application to the state registrar in a general order after eliminating the reasons, which have been the grounds for shelving the documents.</p> <p>13. Submission of electronic documents for state registration of a legal entity to the state registrar by the founder (founders) or authorized by him/her (them) person shall be accomplished exclusively for certification by the state registrar of the fact of the legal entity creation.</p> <p>Submission by the founder (founders) or authorized by him/her (them) person of the documents to the state registrar for state registration of amendments to the foundation documents of the legal entity shall be accomplished exclusively on paper media without submission of electronic documents.</p> | | |
| <p align="center">Article 24-1. Peculiarities of state registration of the central executive power bodies</p> | | |
| <p>1. State registration of a newly created and formed in the result of amalgamation, joining, division or transformation of a central executive power body as a legal entity shall be accomplished within</p> | | |

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| <p>three days from the day of enactment of the act of the President of Ukraine on the appointment of the head of the appropriate central executive power body.</p> <p>2. The following shall be submitted by the head of a central executive power body or an authorized person to the state registrar for state registration:</p> <p>completed registration card for state registration of a legal entity; certified copy of the act of the President of Ukraine on the appointment of the head of the central executive power body.</p> <p>A registration fee shall not be charged for state registration of the central executive power bodies.</p> <p>3. Documents for state registration of a newly created and formed in the result of amalgamation, joining, division or transformation of a central executive power body as a legal entity shall be submitted to the state registrar by the location of the body, that made decision to create a central executive power body, and in case of determination of location of the central executive power body – by this location.</p> <p>4. The state registrar shall introduce an entry on state registration of the central executive power body as a legal entity within the next working day after the appropriate documents receipt and shall inform the agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine about the registration.</p> <p>Not later than within the next working day after receiving be the state registrar from the agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine data on the registration of the legal entity the state registrar draws up and issues (send be posting with the inventory) an excerpt from the Unified State Register to the head of the central executive power body or an authorized person.</p> | | |
| <p>Article 25. The procedure of state registration of a legal entity</p> | | |
| <p>1. In the absence of grounds for shelving the documents, that are submitted for the state registration of a legal entity, the state registrar shall check the documents for absence of grounds for refusal in state registration of a legal entity, specified in Part on of Article 27 of the present Law.</p> <p>2. The check for absence of grounds for refusal, envisaged by</p> | | |

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| <p>Paragraphs five – eight of Part one of Article 27 of the present Law, shall be carried out, using the data from the Unified State Register.</p> <p>3. In the absence of grounds for refusal in state registration of a legal entity, the state registrar shall introduce to the registration card for state registration of a legal entity an identification code, according to the requirements of the Unified State Register of Enterprises and Organizations of Ukraine and shall introduce an entry to the Unified State Register on state registration of a legal entity on the basis of data from the registration card.</p> <p>4. The date of introduction of an entry to the Unified State Register on state registration of a legal entity shall be considered the date of state registration of a legal entity.</p> <p>5. The term of state registration of a legal entity shall not exceed three working days from the date of the documents receipt for state registration of a legal entity.</p> <p>6. Not later than within the next working day after receiving be the state registrar from the agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine data on the registration of the legal entity the state registrar issues (send be posting with the inventory) one copy of the original of the incorporation documents with the state registrar mark on the registration of the legal entity and an excerpt from the Unified State Register to the head of the central executive power body or an authorized person.</p> <p>7. The procedure of the transfer to the state registrar the identification codes of the Unified State Register of Enterprises and Organizations of Ukraine for introducing them to the registration card shall be determined by the Ministry of Justice of Ukraine and a specially authorized central executive power body in the sphere of statistics, that provides the formation of the state policy in the statistics sphere.</p> | | |
| <p>Article 26. Transfer of data on state registration of a legal entity to the agencies of statistics, the Incomes and Duties, the Pension Fund of Ukraine on registration of a legal entity</p> | | |
| <p>1. On the day of state registration of a legal entity, the state registrar shall transfer the data from the registration card on state registration of a legal entity to the agencies of statistics, the Incomes and Duties</p> | | |

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| <p>body, the Pension Fund of Ukraine, Social Insurance funds.</p> <p>To the respective body of Incomes and Duties simultaneously with the information from the registration card on the registration of a legal entity by the state registrar shall be transmitted the electronic copy of the application on choosing the simplified system of taxation and/or registration application on free registration as a taxpayer on the VAT, made by scanning, if such applications were submitted as a supplement to the registration card.</p> <p>2. The ground for registration of a legal entity in the agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine, Social Insurance funds shall be the receipt of data from the registration card for state registration of a legal entity to these bodies.</p> | | |
| <p>Article 27. Refusal in state registration of a legal entity</p> | | |
| <p>1. The grounds for refusal in state registration of a legal entity shall be the following:</p> <p>discrepancy between the data, indicated in the registration card for state registration of a legal entity, and the data, specified in the documents, submitted for state registration of a legal entity;</p> <p>inadequacy of the foundation documents to the requirements of Part three of Article 8 of the present Law;</p> <p>infringement of the procedure of creating a legal entity, prescribed by the law, in particularly:</p> <p>availability of restrictions to hold the respective positions, prescribed by law as for the persons, indicated as the officials of the governing body of a legal entity;</p> <p>discrepancy between the information on the founders (participants) and ultimate beneficial owner of the legal entity and information on them, contained in the Unified State Register;</p> <p>availability of restrictions as for performing legal actions, established by Paragraph four of Part two of Article 35 of the present Law, by the founders (participants) of the legal entity or an authorized person;</p> <p>availability in the Unified State Register of a name, identical to the name of a legal entity, contemplated to get registered;</p> <p>usage in the legal entity name of the private right of full or shortened name of the public authority or local self-government body, or</p> | | |

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| <p>derivatives from these names, or a historical national name from the list, determined by the Cabinet of Ministers of Ukraine;</p> <p>inadequacy of the legal entity name to the requirements of law as for the name of separate types of legal entities (bank, credit union, non-governmental pension fund and so forth);</p> <p>prohibition, established by other laws, for usage in the legal entity name of certain terms, abbreviations, derivative terms.</p> <p>Refusal in state registration of a legal entity for other reasons shall not be allowed.</p> <p>2. In the availability of grounds for refusal in state registration of a legal entity, the state registrar shall hand (send by posting with the list of inventory) to the founder or authorized person a notification on refusal in state registration with the statement of grounds for the refusal and the documents, submitted for state registration of a legal entity, according to the inventory, within three working days from the date of the documents receipt.</p> <p>In case of refusal in state registration of a legal entity the registration fee shall not be returned.</p> <p>3. After eliminating the reasons, that have been the grounds for refusal in state registration of a legal entity, the founder (founders) or an authorized person shall be entitled to submit one more time the documents for state registration of a legal entity, which shall be regarded in the order, prescribed by the present Law for state registration of a legal entity.</p> <p>4. Refusal in state registration of a legal entity can be litigated in court.</p> <p>5. Infraction of the term for handing (sending by posting) to the founder or authorized person a copy of the original foundation documents with a mark of the state registrar on state registration of a legal entity, notification on the refusal in state registration or notification on shelving the documents shall be considered a refusal in state registration of a legal entity and can be litigated in court.</p> | | |
| <p>Article 28. Data on the separate subdivisions of a legal entity</p> | | |
| <p>1. Data on the separate subdivisions of a legal entity shall be added to its registration files and inserted to the Unified State Register.</p> <p>2. The Unified State Register shall contain the following information</p> | <p>Eleventh Council Directive 89/666/EEC <i>Art.2, 3</i></p> | <p>These provisions refer exclusively to separate subdivisions of Ukrainian legal entities and do not extend their validity to representative offices of foreign legal</p> |

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| <p>on the separate subdivisions of a legal entity: identification code of a legal entity; identification code of a subsidiary, representative office; full name of a separate subdivision; location of a separate subdivision; activity categories of a separate subdivision; surname, name and patronymic of the persons, entitled to perform legal actions on behalf of the legal entity on the basis of power of attorney, including signing agreements, their registration numbers of the registration cards of taxpayers; data, obtained in the order of reciprocity of information from the departmental registers of the agencies of statistics, the State Incomes and Duties bodies, the Pension Fund of Ukraine, including dates and numbers of entries on registration and removal from register in the mentioned bodies, name and identification codes of statistics bodies, incomes and duties bodies, Pension fund of Ukraine, in which a legal entity or a separated subdivision or an individual entrepreneur is registered; data on the major activity kind; the Pension Fund of Ukraine data on the registration number of the unite deposit payer, the production professional risk class of the unite deposit payer on the main kind of its economic activity; in case of legal entity or the separated subdivision location change or change of residence of the individual entrepreneur – term, before which it shall be registered in the State In comes and Duties bodies by its earlier registration location; date and number of an entry on inserting data to the Unified State Register, date and numbers of the entry on introducing amendments to it; place of introducing an entry on inserting data to the Unified State Register; location of the registration files of the legal entity; surname, name and patronymic of the official that introduced an entry to the Unified State Register on inserting data on the separate subdivision of a legal entity, introduced an entry on amendments to the data on the separate subdivision or an entry on the closure of the</p> | | <p>entities. Moreover, the regulation level of non-resident's representative offices activity is very low.</p> |
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separate subdivision of a legal entity.

3. The executive body of a legal entity or an authorized person shall be liable to submit (send by posting with the list of inventory) to the state registrar by location of a legal entity a completed registration card on creation of a separate subdivision and the decision of the governing body of a legal entity on creation of a separate subdivision or a notification of the standard form on closure of a separate subdivision.

4. The state registrar shall be prohibited to require the documents, if they are not specified in Part three of the present Article, for inserting data on the separate subdivisions of a legal entity to the Unified State Register.

5. If the documents for inserting data to the Unified State Register on the separate subdivisions of a legal entity are submitted by a person, authorized by the executive body of a legal entity, the state registrar shall be additionally shown a passport of the citizen of Ukraine or passport document of the foreigner and a document, certifying its authorities.

6. Documents, submitted for inserting data to the Unified State Register on the separate subdivisions of a legal entity, shall be accepted by an inventory, and its copy shall be handed (sent by posting) on the day of the documents receipt to the executive body of a legal entity or authorized person with a mark on the date of the documents receipt.

Date of the documents receipt for inserting data to the Unified State Register on the separate subdivisions of a legal entity shall be inserted to the deed register of the registration actions.

7. The state registrar shall be entitled to shelve the documents, envisaged by Part three of the present Article, if:
documents are submitted by an improper place of registration actions;
registration card does not meet the requirements of Parts one, two and seven of Article 8 of the present Law.

8. In case of shelving the documents, submitted for inserting data to the Unified State Register on the separate subdivisions of a legal entity, without examination of the executive body of the legal entity

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| <p>or authorized person not later than the next working day from the date of the documents receipt the state registrar shall hand (send by posting with the list of inventory) a corresponding notification with the statement of grounds for shelving the documents and documents, submitted for inserting data to the Unified State Register on the separate subdivisions of a legal entity, according to the inventory, within the next working day from the date of the documents receipt. Shelving the documents, submitted for inserting data to the Unified State Register on the separate subdivisions of a legal entity, shall not prevent the executive body of a legal entity or an authorized person from the repeated application to the state registrar in a general order after eliminating the reasons, which have been grounds for shelving the documents.</p> <p>9. In the absence of grounds for shelving the documents, envisaged by Part three of the present Article, the state registrar shall, within two working days from the date of the documents receipt, add them to the registration files of the legal entity, introduce a corresponding entry to the Unified State Register, hand (send by post with the description of contents) to the requestor and on the same day transfer the appropriate data on the separate subdivisions of a legal entity to the agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine by the location of a legal entity and the location of the separate subdivision.</p> <p>10. Infraction of the term for handing (sending by posting) the notification on shelving the documents, submitted for inserting data to the Unified State Register on creation (closure) of the separate subdivision of a legal entity, has consequences, envisaged by Part five of Article 27 of the present Law.</p> | | |
| <p>Article 29. State registration of amendments to the foundation documents of a legal entity</p> | | |
| <p>1. A legal entity shall submit (send by posting with the list of inventory) the following documents for state registration of amendments to the foundation documents of a legal entity: completed registration card for state registration of amendments to the foundation documents of a legal entity;</p> | | |

a copy of the original (copy, notarized copy) of the decision to introduce amendments to the foundation documents. Document, certifying the legal rights of making decision on introducing amendments to the foundation documents;

originals of the foundation documents of a legal entity with a mark on their state registration with all the amendments, effective on the date of submission, or a copy of the published in a specialized print mass media report on the loss of all or part of the mentioned original foundation documents;

two copies of amendments to the foundation documents of a legal entity as separate annexes or two duplicates of the foundation documents in a new wording;

document, certifying the payment of a registration fee for state registration of amendments to the foundation documents, if other is not envisaged by Law.

2. In case of introducing amendments to the statute, connected with reduction of the charter capital (statutory or composite funds) of the legal entity, except for the documents, prescribed by Part one of the present Article, a document, certifying payment for publication of the corresponding report in the special print mass media, shall be submitted additionally.

3. In case of introducing amendments to the foundation documents, connected with the shift in the penal of the founders (participants) of the legal entity, except for the documents, prescribed by Part one of the present Article, a copy of the original (copy, notarized copy) of one of the following documents shall be submitted additionally:

decision of the legal entity withdrawal from the penal of the founders (participants);

application of a person for withdrawal from the penal of the founders (participants);

application, agreement, other document on transfer or passing of the equity position of the participant in the statutory capital of the company;

decision of the authorized body of the legal entity on forced exclusion of a founder (participant) from the penal of the founders

(participants) of the legal entity, if it is envisaged by law or foundation documents of the legal entity.

4. In case of introducing amendments to the foundation documents, connected with the shift in the penal of the founders (participants) of the legal entity on the basis of the fact of death of a person – founder (participant) and refusal of other founders (participants) to accept the heritor (heritors) of the deceased to the penal of the founders, except for the documents, envisaged by Part one of the present Article, a copy (notarized copy, copy, certified by the state registration body of the civil status acts) of the death certificate of the person or a document that is the basis for its issuance according to the Law of Ukraine “On State Registration of Civil Status Acts” shall be submitted additionally.

6. In case of introducing amendments to the foundation documents, connected with the change of the institution purpose, except for the document, envisaged by Part one of the present Article, a copy of the corresponding court decision shall be submitted additionally.

7. The state registrar shall be prohibited to require documents for state registration of amendments to the foundation documents of the legal entity, if they are not envisaged by Parts one – six of the present Article.

8. In case if the documents for state registration of amendments to the foundation documents of a legal entity are submitted by a person, who according to the data, introduced to the Unified State Register, is entitled to perform legal actions on behalf of the legal entity without power of attorney, the passport of the citizen of Ukraine or passport document of the foreigner shall be additionally shown to the state registrar.

If such documents are submitted by another representative of the legal entity, the passport of the citizen of Ukraine or passport document of the foreigner and document or notarized copy of the document, certifying the authorities of the representative, shall be additionally shown to the state registrar.

9. Documents, submitted for state registration of amendments to the foundation documents of the legal entity, shall be accepted according

to the inventory, with a copy, handed (sent by posting) to the requestor on the day of the documents receipt with a mark of the date of the documents receipt.

The date of the documents receipt for state registration of amendments to the foundation documents of the legal entity shall be inserted to the deed register of the registration actions.

11. The state register shall be obliged to shelve the documents, submitted for state registration of amendments to the foundation documents of a legal entity in the following cases:

documents are submitted by an improper place of state registration;
documents do not meet the requirements, prescribed by Parts one, two, four, five and seven of Article 8, Part five of Article 10 of this Law;

documents are submitted not in a full scale;

documents are submitted by a person with no proper authorities;
the state registrar has received a court decision as for the denial of registration actions.

13. State registration of amendments to the foundation documents of the legal entity shall be accomplished according to the procedures, prescribed by Parts one – five of Article 25 and Parts two – three of Article 27 of the present Law for state registration of a legal entity.

14. The state registrar, within the next working day from the date of state registration of amendments to the foundation documents of the legal entity, shall hand (send by posting with the list of inventory) to the requestor a duplicate of the original foundation documents in the old wording with marks of the state registrar on state registration of amendments to the foundation documents, and on the same day shall transfer to the appropriate agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine data from the registration card for state registration of amendments to the foundation documents of the legal entity with the statement of numbers and dates of introducing the corresponding entry to the Unified State Register.

15. In case of state registration of amendments to the foundation documents, connected with the amendment of data on the legal

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| <p>entity, which according to the present Law shall be indicated in the excerpt from the Unified State Register, the state registrar shall hand (send by posting) to the requestor an excerpt from the Unified State Register, additionally to the documents, prescribed by Part fourteen of the present Article not later than the next working day after receiving from the agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine the information on introducing amendments to the departmental registers.</p> | | |
| <p>Article 30. Refusal in state registration of amendments to the foundation documents of a legal entity</p> | | |
| <p>1. The state registrar shall refuse state registration of amendments to the foundation documents of a legal entity on the grounds, prescribed by Part one of Article 27 of the present Law.</p> | | |
| <p>Article 31. The procedure of abolition of state registration of amendments to the foundation documents of a legal entity under the reason of the court decision and the procedure of state registration of amendments to the foundation documents of the legal entity due to its bringing in line with the decision of court</p> | | |
| <p>1. In case of court decision as for abolition of the decision of the founders (participants) of a legal entity or an authorized body on introducing amendments to the foundation documents of a legal entity, or on recognizing fully or partially ineffective the amendments to the foundation documents of a legal entity, the court, on the day of the court decision acquiring the force of the law, shall send it to the state registrar for introduction of an entry on the court decision on abolition of state registration of amendments to the foundation documents of a legal entity.</p> <p>The date of receipt of the appropriate court decision shall be inserted to the deed register of the registration actions.</p> <p>If at the time of making the entry of judgment for the abolition of state registration of amendments to the incorporation documents of legal entity the state registrar determines that the Unified State Register contains information about the registrations conducted after registration actions and there is a court decision to on cancelling its</p> | | |

state registration, the state registrar shall inform about it the court that made the judgment.

Based on the message state registrar the court, that made the judgment on the abolition of state registration of amendments to the incorporation documents of a legal entity makes an additional decision to cancel the registration activities conducted after registration actions in relation to which a judgment for the abolition of state registration of amendments to the incorporation documents of legal entity was made.

The court, that made the judgment on the abolition of state registration of registration activities conducted after registration actions in relation to which a judgment on the abolition of state registration of amendments to the incorporation documents of a legal person, on the day of entry into force of the court decision sends its to the legal entity - the defendant for taking the actions until the founding documents are brought in compliance with the court decision and to the state registrar for registration in the Unified state Register an entry of the court decision on cancellation of state registration registration activities conducted after registration actions in relation to which a judgment on the abolition of state registration of amendments to the incorporation documents of the legal entity.

The state registrar within a period that not exceeds two working days from the receipt of the court decision on the cancellation of state registration registration activities conducted after the registration actions in relation to which a judgment on the abolition of state registration of amendments to the incorporation documents of the legal entity submits to the Unified State Register on the abolition of state registration registration activities conducted after registration actions in relation to which a judgment on the abolition of state registration of amendments to the incorporation documents of the legal entity and at the same day informs about the introduction of such records the statistics agencies, state tax service, the Pension Fund of Ukraine .

2. The documents submitted for the state registration of amendments to the incorporation documents of legal entities related to bringing

them into line with the court decision, taken by description, copy of which is on the day of receipt of the documents is issued (sent by registered letter) to the founder or his authorized representative with a mark of the date of receipt of the documents.

The date of receipt of the documents submitted for the state registration of amendments to the incorporation documents of legal entity shall be put into the register of registration activities.

3. State Registrar shall be entitled to shelve the documents submitted for the state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the court decision, if:

documents filed for improper venue for state registration;

documents do not meet the requirements envisaged in parts one, two and four - seven of Article 8 and part five of Article 10 of this Law;

the state registrar has received the court decision on restriction to take registration activities;

documents submitted not in full scope;

documents submitted by a person who does not have this authority;

the Unified State Register contains information about the registrations conducted after registration actions in relation to which there is the court decision to cancel its state registration.

4. On shelving the documents submitted for the state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the judgment, to the founder or his authorized representative no later than the next working day from the date of receipt of the state registrar shall issue (sent by registered letter with an inventory) documents submitted for the state registration of amendments to the incorporation documents of a legal entity according to the description and a message indicating the reason to leave the document without consideration.

Shelving the documents submitted for the state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the court decision does not prevent re-applying of the founder or his authorized representative to the state registrar by the general procedure after the elimination of reasons,

that were the ground for leaving these documents without review.

5. State Registrar at the absence of reasons for leaving without consideration the documents submitted for the state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the judgment shall verify the documents on the absence of grounds for refusal of conducting state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the judgment in accordance with Article 30 of this Law.

6. Checking the absence of grounds for refusal of the state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the judgment in accordance with the Article 30 of this Law is fulfilled by using information from the Unified State Register.

7. In case of absence of grounds for refusal of the state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the court decision, the state registrar must enter into the Unified State Register an entry of state registration of amendments to the constituent documents of legal entity connected with bringing them into line with the court decision.

8. The date of entry to the Unified State Register of state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the judgment, is the date of state registration of amendments to the incorporation documents of the legal entity.

9. The term of the state registration of amendments to the incorporation documents of a legal entity may not exceed three working days from the date of receipt of documents for the state registration of amendments to the incorporation documents of the legal entity.

10. The state registrar on the day of the state registration of amendments to the incorporation documents of legal entities related to bringing them into line with the court decision, is obliged to transfer to the relevant statistics agencies, state tax service, the Pension Fund of Ukraine information from the registration card for

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| the state registration on changes in incorporation documents. | | |
| Article 32. Peculiarities of state registration of a legal entity that is created by means of allotment | | |
| <p>1. For state registration of a legal entity that is created by means of allotment, the founders (participants) or authorized body or person shall submit a copy of the original (copy or notarized copy) of the distributive balance in addition to the documents, prescribed by Parts one – seven of Article 24 of the present Article, have to submit additionally a copy of the original (a copy or notarized copy) of the separating balance.</p> <p>2. Documents' receipt by the state registrar for state registration of a legal entity that is created by means of allotment, shall be carried out in the order, prescribed by Parts eight – twelve of Article 24 of the present Law.</p> <p>3. State registration of a legal entity that is created by means of allotment shall be carried out in the order according to the Articles 25-27 of the present Law after two months from the date of publishing the report on decision-making of the founders (participants) or an authorized body on allotment in the specialized print mass media.</p> <p>4. Introduction of an entry to the Unified State Register on the decision of the founders (participants) or an authorized body on allotment shall be carried out according to the procedures, prescribed by Article 34 of the present Law for introducing an entry to the Unified State Register on the decision of the founders (participants) or an authorized body as for the legal entity termination.</p> <p>5. If the allotment is carried out on the basis of a court decision, introduction of an entry to the Unified State Register shall be carried out according to the procedures, envisaged by Article 38 of the present Law for introducing an entry to the Unified State Register on the court decision as for the legal entity termination.</p> <p>6. The allotment shall be considered completed from the date of state registration of the legal entities, created in the result of allotment.</p> | | |
| Chapter IV STATE REGISTRATION OF THE LEGAL ENTITY | | |

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| <p>TERMINATION Article 33. The legal entity termination</p> | | |
| <p>1. The legal entity shall be terminated in the result of the transfer of all the property, rights and obligations to other legal entities – legal successors in the result of amalgamation, joining, division, transformation (reorganization) or in the result of liquidation by the decision, made by the founders (participants) of the legal entity or an authorized body, by a court decision or by the decision of a public authority, made in cases, envisaged by law.</p> <p>2. A legal entity shall be considered terminated from the date of the entry introduction to the Unified State Register on state registration of the legal entity termination.</p> | | |
| <p>Article 34. Documents, required for introduction of an entry to the Unified State Register on the decision of the founders (participants) of the legal entity or an authorized body on the legal entity termination</p> | | |
| <p>1. For introduction of an entry to the Unified State Register on the decision as for the legal entity termination, the requestor shall submit (send by posting with the list of inventory) to the state registrar the original or a notarized copy of the decision of the founders (participants) or an authorized body on the legal entity termination.</p> <p>2. In cases, prescribed by law, a document, certifying the consent of the appropriate public authorities as for the legal entity terminated, shall be submitted in addition to the documents, specified in Part one of the present Article.</p> <p>3. In case of the legal entity termination by means of amalgamation or joining, the decision on the termination of the legal entity shall be signed by the authorized persons of the legal entity or legal entities, which are terminated, and the legal entity – legal successor.</p> <p>4. The state registrar shall be prohibited to require additional documents for introduction of an entry to the Unified State Register on the decision of the founders (participants) of the legal entity or an authorized body as for the legal entity termination, if they are not prescribed by Parts one and two of the present Article.</p> <p>5. If the documents for introduction of an entry to the Unified State</p> | | |

Register on the decision as for the legal entity termination are submitted by a person, who according to the data, introduced to the Unified State Register, is entitled to perform legal actions on behalf of the legal entity without power of attorney, the passport of the citizen of Ukraine or the passport document of the foreigner shall be additionally shown to the state registrar.

If the documents are submitted by another representative of the legal entity, the passport of the citizen of Ukraine or the passport document of the foreigner and a duplicate of the original (copy, notarized copy) of the document, certifying the authorities of the representative, shall be additionally shown to the state registrar.

6. Documents, submitted for introduction of an entry to the Unified State Register on the decision as for the legal entity termination, shall be accepted according to the inventory, the copy of which shall be handed (sent by posting) to the requestor on the day of the documents receipt with a mark on the date of the documents receipt.

The date of the documents receipt for introduction of an entry to the Unified State Register on the decision as for the legal entity termination shall be inserted to the deed register of registration actions.

The state registrar shall introduce an entry to the Unified State Register on appointment of the commission on termination within the next working day from the date of obtainment (receipt) of the mentioned data.

7. The state registrar shall be entitled to shelve the documents, submitted for introduction of an entry to the Unified State Register on the decision of the founders (participants) of the legal entity or an authorized body as for the legal entity termination, in the following cases:

documents are submitted by an improper place of state registration of the legal entity termination by the decision of the founders (participants) of the legal entity or an authorized body;

documents do not meet the requirements, prescribed by Part one of Article 8 of the present Law;

the decision on the legal entity termination is drawn up with the

infringement of requirements, prescribed by Part three of the present Article;
documents are submitted not in a full scale;
decision on the legal entity termination does not contain data on the penal of the commission on termination (reorganization commission, liquidation commission), its presiding commissioner or liquidator, registration numbers of registration cards for taxpayers (or information on series and number of passport of citizen of Ukraine and the passport document for foreigners, who due to their religious beliefs refused to accept the registration number of registration card for a taxpayer, informed the appropriate incomes and duties body and have a check in the passport on having a right to make payments by the series and number of the passport), the order or term of the creditors' claim of requirements or in case if this term does not conform to law.

8. In case of shelving the documents, submitted for introduction of an entry to the Unified State Register on the decision as for the legal entity termination, the state registrar shall hand (sent by posting with the list of inventory) a corresponding notification to the requestor within the next working day from the date of their receipt, with the statement of grounds for shelving the documents, as well as the documents, submitted for introduction of an entry to the Unified State Register on the decision as for the legal entity termination, according to the inventory.

Shelving the documents, submitted for introduction of an entry to the Unified State Register on the decision as for the legal entity termination, shall not prevent from the repeated application to the state registrar in a general order after eliminating the reasons, which have been grounds for shelving the documents.

Article 35. Procedure of introducing an entry to the Unified State Register on the decision of the founders (participants) of the legal entity or an authorized body as for the legal entity termination

1. The state registrar, in the absence of grounds for shelving the documents, submitted for introduction of an entry to the Unified

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| <p>State Register on the decision of the founders (participants) of the legal entity or an authorized body as for the legal entity termination, shall, within the next working day from the date of the documents receipt, introduce an entry to the Unified State Register on the decision of the founders (participants) of the legal entity or an authorized body as for the legal entity termination and on the same day inform the agencies of statistics, the Incomes and Duties body, the Pension Fund of Ukraine on the introduction of such an entry.</p> <p>A report on introduction of an entry to the Unified State Register as for the decision of the founders (participants) of the legal entity, court or an authorized body on the legal entity termination shall be published in the specialized print mass media.</p> <p>Data on the date of the report publication, containing information on the term of the requirements claim of creditors as for the legal entity that is terminated, shall be provided to the Incomes and Duties bodies, the Pension Fund of Ukraine within the next day from the date of publication of the report.</p> <p>2. From the date of introduction of an entry to the Unified State Register on the decision of the founders (participants) of the legal entity or an authorized body as for the legal entity termination, the following shall be prohibited:</p> <ul style="list-style-type: none"> state registration of amendments to the foundation documents of the legal entity that is decided to be terminated; introduction of amendments to the Unified State Register as for the data on the separate subdivisions, except for the data on their closure; state registration of a legal entity with the founder (participant) that is a legal entity that is decided to be terminated; state registration of amendments to the data, contained in the Unified State Register, on the location of a legal entity. | | |
| <p>Article 36. Procedure of state registration of the legal entity termination in the result of its liquidation</p> | | |
| <p>1. For state registration of the legal entity termination in the result of its liquidation, the presiding commissioner, the authorized person or a liquidator, after the liquidation procedure, envisaged by law, but not before the expiration of the term of the creditors' claim of</p> | | |

requirements, shall submit (send by a registered letter with the list of inventory) the following documents to the state registrar:

- completed registration card for state registration of the legal entity termination in connection with the liquidation;
- certificate of the appropriate Incomes and Duties body on the absence of debts on payment of taxes, fees;
- certificate of the appropriate body of the Pension Fund Of Ukraine on the absence of debts on the payment of a single payment for an obligatory to all state social insurance and insurance contributions to the Pension Fund of Ukraine and social insurance funds;
- certificate of an archival institution on the acceptance of documents, which according to law shall be subject to long-term storage.

2. In cases, envisaged by law, an auditor's opinion as for the adequacy and completeness of the liquidation balance shall be submitted in addition to the documents, prescribed by Part one of the present Article.

Liquidation balance of the central executive power body shall be approved by the presiding commissioner of the liquidation commission. The notarial certificate of the authenticity of the signatures of the presiding commissioner and the penal of the liquidation commission on the liquidation balance shall not be required in this case.

In the registration card for state registration of the legal entity termination in the result of its liquidation the presiding commissioner on liquidation, an authorized person or an liquidator shall indicate in a written form and confirm with the personal signature that they have committed all the actions, prescribed by legislation, as for the procedure of the legal entity termination, including the completion of all settlements with creditors (including payment of taxes, fees, single payment for an obligatory to all state social insurance, insurance contributions to the Pension Fund of Ukraine and social insurance funds).

3. In case of state registration of termination of joint-stock companies a copy of the order on abolition of registration of the equities issue, certified by the National Commission on Securities and Stock Market,

shall be additionally submitted.

In case of the state registration of the termination of a legal entity - the issuer, except for the documents referred to in paragraph one of this article, additional information is submitted the relevant body of the National Commission on Securities and Stock Market of absence non-cancelled security issues of the legal entity.

The specially authorized body on state registration together with the National Commission for Securities and Stock Market State provides the receipt of information on the issue of securities by the entities in the order prescribed by the specially authorized body on state registration by approval of the National Commission for Securities and Stock Market.

4. The state registrar after receiving documents for the state registration of the termination of a legal entity as a result of the liquidation shall check the information on the availability of open enforcement proceedings in respect of that legal entity.

5. In case, if after the completion of the procedure of termination, envisaged by law, but not before the expiration of the term of the creditors' claim of requirements to the legal entity in the order, prescribed by law, the State Tax Administration body and/or the Pension Fund of Ukraine have not issued certificates on the absence of debts on the payment of taxes, fees, single payment for an obligatory to all state social insurance, insurance contributions to the Pension Fund of Ukraine and social insurance funds or the decision on the refusal in their issuance, the presiding commissioner on termination or an authorized person shall, not earlier than ten working days from the day of the term expiration, be entitled to submit to the state registrar the documents, prescribed by Parts one – three of Article 36 of the present Law, except for the mentioned certificates, for state registration of the legal entity termination in the result of its liquidation by the principle of tacit consent.

In the availability of grounds, prescribed by Paragraph one of the present Part, the state registrar shall conduct state registration of the legal entity termination in the result of its liquidation by the principle of tacit consent, and shall introduce a corresponding entry to the

Unified State Register.

6. The state registrar shall be prohibited to require additional documents for state registration of the legal entity termination in the result of its liquidation, if they are not prescribed by the present Article.

7. If the documents for state registration of the legal entity termination in the result of its liquidation are submitted by the presiding commissioner on liquidation or an authorized person, the state registrar shall be additionally shown a passport and a document, certifying his (her) authorities.

8. Documents, submitted for state registration of the legal entity termination in the result of liquidation, shall be accepted by an inventory, with a copy handed (sent by posting) to the presiding commissioner or an authorized person with a mark on the date of the documents receipt.

The date of the documents receipt for state registration of the legal entity termination in the result of its liquidation shall be inserted to the deed register of registration actions.

9. During the activities on the legal entity termination the State Tax Administration bodies, the Pension Fund of Ukraine shall send one of the following reports, certified by a signature of an appropriate official in the established order, to the state registrar in electronic form or on paper media within ten working days from the date of the report publication on the decision of the founders (participants) of the legal entity or an authorized body as for the legal entity termination:

report on the beginning of an extraordinary inspection, appointed in connection with the decision on the legal entity termination;

report on impossibility of an extraordinary inspection, appointed in connection with the decision on the legal entity termination.

In case of sending a notification to the state registrar on the impossibility of conducting by the State Tax Administration bodies, the Pension Fund of Ukraine of the extraordinary inspection, appointed in connection with the decision on the legal entity termination, such a notification, within two months from the date of the report publication on the decision of the founders (participants)

or an authorized body on the legal entity termination, shall be substituted by the appropriate State Tax Administration body and/or the Pension Fund of Ukraine for the notification on the extraordinary inspection or on the availability of objections against the state registration of the legal entity termination in the result of liquidation.

Notification on availability of objections against state registration of the legal entity termination in the result of its liquidation by the State Tax Administration bodies and/or the Pension Fund of Ukraine shall be sent to the state registrar in the electronic form and on the paper media with the statement of the justified grounds, certifying the conduct of inspection or impossibility of its conduct, availability of money obligations or debts on the payment of taxes, fees and/or a single payment for an obligatory to all state social insurance, insurance contributions to the Pension Fund of Ukraine and social insurance funds or availability of other circumstances, when the legal entity cannot be terminated.

The State Tax Administration bodies and/or the Pension Fund of Ukraine shall be liable to withdraw a notification on availability of such objections within ten working days from the date, when they get to know about the elimination of the circumstances that have been grounds for the objections against state registration of the legal entity termination in the result of liquidation.

These notifications shall be certified by a signature of an appropriate official in the established order.

The forms of notifications, indicated in the present Part, the order of their completion and submission to the state registrar shall be determined by the central State Tax Administration body and the Pension Fund of Ukraine respectively.

The date of receipt by the state registrar of the notifications of the State Tax Administration bodies, the Pension Fund of Ukraine shall be inserted to the deed register of the registration actions.

10. The state registrar shall shelve the documents, submitted for state registration of the legal entity termination in the result of its liquidation, in the following cases:

documents are submitted by an improper place of state registration;

documents do not meet the requirements, prescribed by Parts one and two of Article 8 of the present Law;

documents are submitted not in a full scale;

documents are submitted before the term, prescribed by Paragraph one of Part one of the present Article;

the Unified State Register contains data on the legal entity, which is terminated, on its being a participant (founder) of other legal entities and/or possessing not closed separate subdivisions;

the registration of the equities' issue is not cancelled, if the legal entity, which is terminated, is a joint-stock company;

the State Tax Administration bodies and/or the Pension Fund of Ukraine received a notification on availability of objections against state registration of the legal entity termination in the result of its liquidation, and it is not withdrawn;

data, prescribed by Part two of the present Article, is not stated and certified with a personal signature of the presiding commissioner on liquidation, liquidator or an authorized person;

there are enforcement proceedings against the legal entity;

there is a bankruptcy case in relation to the legal entity.

11. In case of shelving the documents, submitted for state registration of the legal entity termination in the result of its liquidation, the state registrar shall hand (sent by posting) a corresponding notification to the presiding commissioner on liquidation or authorized person within the next working day from the date of their receipt, with the statement of grounds for shelving the documents, as well as the documents, submitted for state registration of the legal entity termination in the result of its liquidation, according to the inventory. Shelving the documents, submitted for state registration of the legal entity termination in the result of its liquidation, shall not prevent the presiding commissioner on liquidation or authorized person from the repeated application to the state registrar in a general order after eliminating the reasons, which have been the grounds for shelving the documents.

12. In the absence of grounds for shelving the documents, submitted for state registration of the legal entity termination in the result of its

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| <p>liquidation, the state registrar shall introduce an entry to the Unified State Register on state registration of the legal entity termination in the result of its liquidation.</p> <p>The date of introduction of an entry to the Unified State Register on state registration of the legal entity termination in the result of its liquidation shall be considered the date of the state registration of the legal entity termination.</p> <p>13. The term of the state registration of the legal entity termination in the result of its liquidation shall not exceed one working day from the date of the documents receipt for state registration of the legal entity termination.</p> <p>14. The state registrar, within the next working day from the date of state registration of the legal entity termination, shall hand (send by registered letter) to the presiding commissioner on liquidation (liquidator) or an authorized person a notification on state registration of the legal entity termination, with a duplicate being added to the registration files of such a legal entity.</p> <p>15. The procedure of supplying data on state registration of the legal entity termination to the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine, National Commission on Securities and Stock Market shall be prescribed by Article 40 of the present Law.</p> | | |
| <p>Article 37. Procedure of state registration of the legal entity termination in the result of merger, accession, division or transformation</p> | | |
| <p>1. For state registration of the legal entity termination in the result of merger, joining, division or transformation, the presiding commissioner on termination or an authorized person, after the procedure of termination, envisaged by law, but not before the expiration of the term of the requirements claim of creditors, shall submit (send by a registered letter with the list of inventory) the following documents to the state registrar:</p> <p>completed registration card for state registration of the legal entity termination in connection with merger, accession, division or transformation;</p> | | |

a duplicate of the original deed of assignment, signed by the presiding commissioner and members of commission on the legal entity termination and approved by the founders (participants) of the legal entity or body that made decision on the legal entity termination, in case if the termination is conducted in the result of merger, accession or transformation, or distributive balance, if termination is conducted in the result of division, or their notarized copies;

certificate of the archival institution on acceptance of documents, which according to law are subject to a long-term storage;

document on conciliation of the reorganization plan with the State Tax Administration body (in availability of a debt burden);

certificate of the appropriate State Tax Administration body on the absence of debts on payment of taxes, fees;

certificate of the appropriate Pension Fund of Ukraine body on the absence of debts on payment of a single payment for an obligatory to all state social insurance, insurance contributions to the Pension Fund of Ukraine and social insurance funds.

2. In cases, prescribed by law, an auditor's opinion as for the adequacy and completeness of deed of assignment or distributive balance shall be submitted in addition to the documents, prescribed by Part one of the present Article.

In the registration card for state registration of the legal entity termination in the result of merger, accession, division or transformation the presiding commissioner on termination or an authorized person shall indicate and certify with the personal signature that they have committed all the actions, prescribed by legislation, as for the procedure of the legal entity termination, including the completion of all settlements with creditors (including payment of taxes, fees, single payment for an obligatory to all state social insurance, insurance contributions to the Pension Fund of Ukraine and social insurance funds).

3. In case of state registration of the legal entity termination in the result of transformation, the documents, envisaged by Paragraphs four - seven of Part one of the present Article, shall not be submitted to the state registrar.

4. Deed of assignment or distributive balance shall be approved by the founders (participants) of the legal entity or body that made decision on the legal entity termination. The notarial certificate of the authenticity of the signatures of the presiding commissioner and members of the commission on the legal entity termination on the deed of assignment or distributive balance shall not be required in this case.

Deed of assignment or distributive balance of the central executive power body shall be approved by the presiding commissioner on reorganization. The notarial certificate of the authenticity of the signatures of the presiding commissioner and members of the commission on reorganization on the deed of assignment or distributive balance shall not be required in this case.

5. In case of the state registration of the termination of joint stock companies, in addition to the documents specified in paragraph one of this article, in addition must be submitted a copy of the order of canceling of the the registration of shares, certified by the National Commission on Securities and Stock Market.

In case of the state registration of the termination of a legal entity - the issuer, in addition to the documents specified in paragraph one of this article, must be submitted the certificate of the relevant body of the National Commission on Securities and Stock Market on absence of unreversed security issues of this legal entity.

6. In case if after the completion of the procedure of termination, envisaged by law, but not before the expiration of the term of the creditors' claim of requirements to the legal entity in the order, prescribed by law, the State bodies of income and duties body and/or the Pension Fund of Ukraine have not issued the certificates on the absence of debts on the payment of taxes, fees and/or single payment for an obligatory to all state social insurance, insurance contributions to the Pension Fund of Ukraine and social insurance funds or the decision on the refusal in their issuance, the presiding commissioner on termination or an authorized person shall, not earlier than ten working days from the day of the term expiration, be entitled to submit to the state registrar the documents, prescribed by Parts one –

five of Article 37 of the present Law, except for the mentioned certificates, for state registration of the legal entity termination in the result of merger, accession, division or transformation by the principle of tacit consent.

In the availability of grounds, prescribed by Paragraph one of the present Part, the state registrar shall conduct state registration of the legal entity termination in the result of merger, accession, division or transformation by the principle of tacit consent, and shall introduce a corresponding entry to the Unified State Register.

7. The state registrar shall be prohibited to require additional documents for state registration of the legal entity termination in the result of merger, accession, division or transformation, if they are not prescribed by the present Article.

8. Acceptance of documents, submitted for state registration of the legal entity termination in the result of merger, accession, division or transformation, shall be conducted according to the requirements of Parts five – six of Article 36 of the present Law.

9. The state registrar shall be entitled to shelve the documents, submitted for state registration of the legal entity termination in the result of merger, accession, division or transformation, in the following cases:

documents are submitted by an improper place of state registration;

documents are submitted not in a full scale;

documents do not meet the requirements, prescribed by Parts one and two of Article 8 of the present Law;

the deed of assignment or distributive balance do not meet the requirements, prescribed by Part four of the present Article;

documents are submitted before the term, prescribed by Paragraph one of Part one of the present Article;

the Unified State Register contains data on the legal entity, which is terminated, on its being a participant (founder) of other legal entities and/or possessing not closed separate subdivisions;

the registration of the equities' issue is not cancelled, if the legal entity, which is terminated, is a joint-stock company;

the State Tax Administration bodies and/or the Pension Fund of

Ukraine received a notification on availability of objections against state registration of the legal entity termination in the result of merger, accession, division or transformation, and it is not withdrawn; data, prescribed by Part two of the present Article, are not stated and certified with a personal signature of the presiding commissioner on liquidation or an authorized person.

10. The procedure of shelving the documents, prescribed by Parts one and two of the present Article, shall be determined by Part nine of Article 36 of the present Law.

11. The procedure of introducing an entry by the state registrar on the legal entity termination in the result of merger, accession, division or transformation shall be determined by Parts ten – twelve of Article 36 of the present Law.

12. The procedure of supplying data on state registration of the legal entity termination to the agencies of statistics, the State Bodies of Income and Duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market shall be prescribed by Article 40 of the present Law.

13. Amendments to the statutory documents of the legal entity that is not terminated in the result of accession, shall be subject to the state registration after the state registration of the legal entity termination in the result of joining in the order, prescribed by Article 29 of the present Law. Accession shall be considered completed from the moment of state registration of termination of the legal entities that are terminated in the result of accession, and state registration of the corresponding amendments to the statutory documents.

14. State registration of the legal entity, created in the result of merger or division, shall be conducted in the order, prescribed by Articles 24-27 of the present Law.

15. Merger shall be considered completed from the moment of state registration of a newly created legal entity and state registration of termination of the legal entities that are terminated in the result of merger.

16. Division shall be considered completed from the moment of state registration of newly created legal entities and state registration of

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| <p>termination of a legal entity that is terminated in the result of division.</p> <p>17. State registration of a legal entity, created in the result of transformation, shall be conducted in the order, prescribed by Articles 24-27 of the present Law. The restrictions, prescribed by Part two of Article 35 of the present Law, shall not be applied to the legal entity that is transformed. Transformation shall be considered completed from the moment of state registration of a newly created legal entity and state registration of termination of a legal entity that is terminated in the result of transformation.</p> | | |
| <p>Article 38. Procedure of state registration of the legal entity termination on the basis of a court decision that is not connected with bankruptcy of a legal entity</p> | | |
| <p>1. The court, which has passed a decision as for the legal entity termination that is not connected with bankruptcy of a legal entity, shall send a copy of the decision, in the day of its acquiring the force of the law, to the state registrar by location of a legal entity for introduction of an entry on the court decision to the Unified State Register. The date of receipt of the corresponding court decision shall be inserted to the deed register of the registration actions by the state registrar.</p> <p>2. Grounds for court decision as for the legal entity termination that is not connected with bankruptcy of a legal entity shall be the following: invalidation of state registration of the legal entity by the court, because of the infractions made during its creation, which cannot be eliminated, as well as in other cases, prescribed by law; conduct of activity that contradicts the foundation documents, or one that is prohibited by law; discrepancy of the minimum charter capital of the legal entity with the requirements of the law; failure to submit to the State Tax Administration bodies during one year the tax declarations, documents of financial records according to law; availability of an entry in the Unified State Register on absence of the legal entity by the indicated location; court decision on recognition of the legal entity - the issuer deemed to</p> | <p>Directive 2009/101/EC</p> <p><i>Article 12</i></p> <p>The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:</p> <p>(a) nullity must be ordered by decision of a court of law;</p> <p>(b) nullity may be ordered only on the grounds:</p> <p>(i) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;</p> <p>(ii) that the objects of the company are unlawful or contrary to public policy;</p> <p>(iii) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;</p> <p>(iv) of failure to comply with the provisions of the national law concerning the minimum amount of capital to be paid up;</p> | <p>In the Law of Ukraine there are some additional grounds for nullity of the legal entity as compared to the Directive 2009/101/EC</p> |

be fictitious;
failure of submitting information of the joint stock company for two years to the National Commission on Securities and Stock Market ;
non-assembling of the joint stock company general meeting of shareholders for two consecutive years;
non-establishing of the bodies of the joint stock company for the year from the date of registration of the National Commission on Securities and Stock Market of the report on private placement of the founders of the company.

3. The state registrar, within the next working day from the date of the court decision receipt as for the legal entity termination that is not connected with bankruptcy of the legal entity, shall introduce an entry to the Unified State Register as for the court decision, and in the same day shall inform the agencies of statistics, the State Bodies of Income and Duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market and the legal entity, according to which the court decision has been made, on the entry introduction to the Unified State Register.

4. From the date of introducing an entry to the Unified State Register on the court decision as for the legal entity termination, the restrictions, prescribed by law, particularly Part two of Article 35 of the present Law, shall be applied.

5. The court shall appoint, in the decision as for the legal entity termination in the result of liquidation, a commission on termination (liquidation commission) and determine its term and procedure. The state registrar shall introduce an entry to the Unified State Register on the appointment of commission on termination (liquidation commission) within the next working day from the date of the corresponding decision receipt.

6. In case, if in the court decision as for the legal entity termination in the result of its liquidation a commission on termination (liquidation commission) is not appointed, within three working days from the date of the court decision receipt the state registrar shall introduce an entry to the Unified State Register, and indicate as a presiding commissioner on termination (liquidation commission) of the legal

- (v) of the incapacity of all the founder members;
- (vi) that, contrary to the national law governing the company, the number of founder members is less than two.

Apart from the foregoing grounds of nullity, a company shall not be subject to any cause of non-existence, absolute nullity, relative nullity or declaration of nullity.

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| <p>entity the head of the governing body or a person, which according to the data, introduced to the Unified State Register, is entitled to perform legal actions on behalf of the legal entity without power of attorney, if another is not prescribed by the court decision.</p> <p>7. Within the next working day from the date of introducing an entry to the Unified State Register, where the head of the governing body or the founder (participant) of the legal entity is indicated as the presiding commissioner on termination (liquidation) of the legal entity, the state registrar shall send a corresponding notification to such a head of the governing body or the founder (participant) of the legal entity, as well as to the court, which passed the decision on the legal entity termination in the result of its liquidation.</p> <p>8. Documents for state registration of the legal entity termination shall be submitted by the presiding commissioner on termination (liquidation) of the legal entity, appointed by the court, or the presiding commissioner on termination (liquidation commission), indicated by the state registrar in the Unified State Register, in the order, prescribed by Parts one – six of Article 36 or Parts one – eight of Article 37 of the present Law.</p> <p>9. The procedure of shelving the documents, prescribed by Parts one and two of the present Article, shall be determined by Part nine of Article 36 of the present Law.</p> <p>10. The procedure of introducing an entry by the state registrar on state registration of the legal entity termination shall be prescribed by Parts ten – twelve of Article 36 of the present Law.</p> <p>11. The procedure of supplying data on state registration of the legal entity termination to the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine, National Commission on Securities and Stock Market shall be prescribed by Article 40 of the present Law.</p> <p>12. The court decision as for the legal entity termination can be litigated in the order according to law.</p> | | |
| <p>Article 38-1. The procedure of conduct by the state registrar of the simplified procedure of state registration of the legal entity termination by means of its liquidation</p> | | |

1. The simplified procedure of state registration of the legal entity termination by means of its liquidation shall be conducted by the state registrar on the basis of a court decision on the following:
abolition (invalidation) of the state registration of the legal entity in cases, prescribed by law, if such decision is passed by a court before July 1, 2004, except for the court decision as for declaring a legal entity bankrupt;
legal entity termination, which is not connected with bankruptcy of the legal entity, if such decision is passed by a court after July 1, 2004 and in case, if the head of the liquidation commission on the legal entity termination or a liquidator of the legal entity, during three years after the date of publishing in the specialized print mass media of a report on the court decision as for the legal entity termination, which is not connected with bankruptcy of the legal entity, has not submitted to the state registrar the documents from the list, prescribed by Part one of Article 36 of the present Law.

2. In the availability of grounds, prescribed by Part one of the present Article, the state registrar shall begin the process of the simplified procedure of state registration of such a legal entity termination.
With this purpose, the state registrar shall introduce an entry to the Unified State Register on his/her beginning of the process of simplified procedure of state registration of the legal entity termination by means of its liquidation.
At the same time the state registrar shall send by posting to the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine, the National Commission on Securities and Stock Market, social insurance funds and the presiding commissioner on liquidation (liquidator) of the legal entity a notification on the beginning from the certain date the process of the simplified procedure of state registration of the legal entity termination by means of its liquidation.

3. The State Tax Administration bodies, the Pension Fund of Ukraine, the National Commission on Securities and Stock Market, social insurance funds within one month from the date of the notification receipt from the state registrar shall send him/her the following:
certificate of the appropriate State Tax Administration body on the

absence or remission of debt on the payment of taxes, fees (obligatory payments) of the legal entity or notification on availability of a debt burden and impossibility of the simplified procedure of state registration of the legal entity termination;

certificate of the appropriate Pension Fund of Ukraine body on the absence or remission of debts of the legal entity or notification on availability of a debt on payment of insurance premiums and impossibility of the simplified procedure of state registration of the legal entity termination;

certificate of the appropriate National Commission on Securities and Stock Market body on the absence of uncanceled equities' issues of the legal entity or notification on availability of uncanceled equities' issues of the legal entity and impossibility of the simplified procedure of state registration of the legal entity termination;

certificates of the appropriate bodies of the social insurance funds on the absence or remission of debts of the legal entity or notification on availability of a debt on payment of insurance premiums and impossibility of the simplified procedure of state registration of the legal entity termination.

4. After the receipt of certificates, indicated in Part three of the present Article, from the State Tax Administration bodies, the Pension Fund of Ukraine, the National Commission on Securities and Stock Market, social insurance funds the state registrar shall complete an appropriate registration card and introduce an entry to the Unified State Register on state registration of the legal entity termination by a simplified procedure by means of its liquidation and on validity loss of the foundation documents of the legal entity from the date of introduction of this entry to the Unified State Register.

5. In case of the receipt by the state registrar from the presiding commissioner on liquidation (liquidator) of the legal entity from the State Tax Administration bodies, the Pension Fund of Ukraine, social insurance funds the notifications on the beginning of the procedure of the legal entity termination or in case of the receipt of a notification from the appropriate body of the National Commission on Securities and Stock Market on the beginning of the procedure of

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| <p>circulation stoppage or cancellation of the equities' issue of the legal entity, to which the simplified procedure of the legal entity termination is applied, the state registrar shall introduce an entry to the Unified State Register on suspension of the process of simplified procedure of state registration of the legal entity termination in connection with the beginning of measures for the legal entity termination by means of its liquidation in the order, prescribed by the present Law.</p> <p>In case of the receipt by the state registrar from the interested bodies, creditors of the legal entity of notifications on their objections against the simplified procedure of state registration of the legal entity termination by means of its liquidation, the state registrar shall also introduce an entry to the Unified State Register on the suspension of the process of simplified procedure of state registration of the legal entity termination by means of its liquidation on the basis of these objections.</p> <p>In case of the receipt by the state registrar from the interested bodies, creditors of the legal entity a notification on withdrawal of objections as for the simplified procedure of state registration of the legal entity termination by means of its liquidation or in case of non-termination of the legal entity by means of liquidation within one year from the date of introduction of an entry to the Unified State Register on the suspension of the process of simplified procedure of state registration of the legal entity termination, the state registrar shall begin the repeated simplified procedure of state registration of such a legal entity termination in the order, prescribed by the present Article.</p> | | |
| <p>Article 39. The procedure of state registration of the legal entity termination by a court decision as for declaring the legal entity bankrupt</p> | | |
| <p>1. The court, which passed the decision on commencement of proceedings on the legal entity bankruptcy, on reorganization of a debtor and appointment of a reorganization manager, on declaring the legal entity bankrupt and beginning of the liquidation procedure, shall transfer them, on the day, when the decisions acquire the force of the law, to the state registrar by the location of the legal entity for</p> | | |

introduction of an entry to the Unified State Register on the corresponding court decisions.

The date of receipt of the appropriate court decisions shall be inserted by the state registrar to the deed register of registration actions.

2 The state registrar shall introduce an entry to the Unified State Register on such court decisions within the next working day after receipt of the court decisions, and on the same day shall inform the agencies of statistics, the State Bodies of Income and Duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market on introducing of such an entry to the Unified State Register.

3. From the date of introducing an entry to the Unified State Register on the court decision as for commencement of proceedings on the legal entity bankruptcy till the date of introducing an entry to the Unified State Register on declaring the legal entity bankrupt and beginning of the liquidation procedure of the registration actions, prescribed by law, particularly Part two of Article 35 of the present Law, shall be conducted either with the consent of the property manager, or according to the reorganization plan.

After the introduction of an entry to the Unified State Register on declaring the legal entity bankrupt and beginning of the liquidation procedure, the norms of Part two of Article 35 of the present Law shall be applied.

4. The procedure of appointment of an arbitration manager (property manager, reorganization manager, liquidator) is prescribed by the Law of Ukraine “On Renewal of the Debtor’s Solvency or Declaring its Bankruptcy” (2343-12).

5. In case, if after the completion of liquidation procedure in the bankruptcy proceedings, prescribed by law, the court passes a decision on liquidation of a legal entity – bankrupt, the court, that passed the corresponding decision, shall transfer it to the state registrar by the location of a legal entity – bankrupt, within the day, when it acquires the force of the law, for state registration of the legal entity termination.

The date of receipt of the court decision on the legal entity

termination in connection with declaring it bankrupt shall be inserted to the deed register of registration actions.

6. Within the next working day from the date of the court decision receipt on liquidation of a legal entity – bankrupt, the state registrar shall complete a registration card on state registration of the legal entity termination, introduce an entry to the Unified State Register on state registration of the legal entity termination, and on the same day send to the agencies of statistics, the State Bodies of Income and Duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market a notification on introducing an entry to the Unified State Register on state registration of termination for removal of the legal entity from the register.

The date of an entry introduction to the Unified State Register on state registration of the legal entity termination shall be considered the date of the legal entity termination.

7. When the state registrar receives the original foundation documents of the legal entity, that is liquidated in connection with declaration of its bankruptcy, the state registrar shall put on the mentioned documents a mark on state registration of the legal entity termination and hand (send by posting with the list of inventory) the mentioned documents to the residency address of one of the founders (participants) of the legal entity, that was terminated.

8. In case, if after the completion of liquidation procedure in the bankruptcy proceedings, prescribed by the law, the court passed a decision on abandonment of proceedings on the legal entity bankruptcy, the court, that passed the decision, shall transfer it to the state registrar by the location of a legal entity – bankrupt, within the day, when it acquires the force of the law, for introduction of an entry to the Unified State Register as for the abandonment of proceedings on the legal entity bankruptcy. The date of receipt of the court decision as for abandonment of proceedings on the legal entity bankruptcy shall be inserted to the deed register of registration actions.

9. Within the next working day from the date of the court decision receipt as for abandonment of proceedings on the legal entity

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| <p>bankruptcy, the state registrar shall introduce an entry to the Unified State Register on the abandonment of proceedings on the legal entity bankruptcy, and on the same day inform the agencies of statistics, the State Bodies of Income and Duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market on introduction of such an entry to the Unified State Register on removal of the legal entity from the register.</p> | | |
| <p>Article 39-1. Procedure of state registration of the termination of the bank on the basis of the decision of the National Bank of Ukraine on revoking of the the banking license and bank liquidation</p> | | |
| <p>1. The National Bank of Ukraine not later than the day following the date of the making of the decision on revoking of the bank licenses and liquidation of a bank sends a copy to the state registrar at the location of the bank for making an entry to the Unified State Register about the decision.</p> <p>The date of receipt of the appropriate decisions shall be inserted by the state registrar to the deed register of registration actions.</p> <p>2. The state registrar shall introduce an entry to the Unified State Register on such decisions within the next working day after receipt of the decisions, and on the same day shall inform the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine, National Commission on Securities and Stock Market on introducing of such an entry to the Unified State Register.</p> <p>3. From the date of introducing an entry to the Unified State Register on declaring the legal entity bankrupt and beginning of the liquidation procedure, the norms of Part two of Article 35 of the present Law shall be applied.</p> <p>4. The State Registrar shall not later than the next business day from the date of receipt of copy of the decision of the Depositors Insurance Fund on appointment of the authorized person of the Fund make an entry in the Unified State Register.</p> <p>5. The authorized person of the Depositors Insurance Fund after making the decision by the Depositors Insurance Fund on approving the report on the completion of the liquidation of the bank on the</p> | | |

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| <p>same day sends a copy to the state registrar at the location of the bank for the state registration of the termination of a legal entity.</p> <p>The date of receipt of the appropriate decisions shall be inserted by the state registrar to the deed register of registration actions.</p> <p>6. Within the next working day from the date of the receipt of the decision of the Depositors Insurance Fund on approving the report on completion of the liquidation of the bank, the state registrar shall complete a registration card on state of the legal entity termination, introduce an entry to the Unified State Register on state registration of the legal entity termination, and on the same day send to the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine, National Commission on Securities and Stock Market a notification on introducing an entry to the Unified State Register on state registration of termination for removal of the legal entity from the register.</p> <p>The date of an entry introduction to the Unified State Register on state registration of the legal entity termination shall be considered the date of the legal entity termination.</p> <p>7. The state registrar not later than the next business day from the date of state registration of the termination of a legal entity shall issue (send by mail) to the Depositors Insurance Fund a notice of state registration of the termination of a legal entity, a second copy of which must be attached to the registration file of the legal entity.</p> | | |
| <p>Article 40. The procedure of supplying data to the agencies that maintain records of the legal entities as for registration of the legal entity termination</p> | | |
| <p>1. On the day of state registration of the legal entity termination according to Articles 36-39 of the present Law the state registrar shall send to the appropriate agencies of statistics, the state bodies of income and duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market a notification on state registration of the legal entity termination with the statement of numbers and dates of introducing a corresponding entry to the Unified State Register and data from the registration card for state registration of the legal entity termination that is the basis for removal of the legal entity from the registers in these agencies and/or other</p> | | |

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| <p>actions concerning the termination of the defined legal entity according to the law.</p> <p>2. A notification on state registration of the legal entity termination on the basis of the court decision as for the legal entity liquidation and data of the appropriate registration card shall be the basis for removal of the legal entity from the registers in the agencies of statistics, the state bodies of income and duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market.</p> | | |
| <p>Article 41. The procedure of inserting the court decision to the Unified State Register on abolition of state registration of the legal entity termination</p> | | |
| <p>1. Court decisions for abolition of state registration of the legal entity termination shall be the basis for introduction of an entry to the Unified State Register on abolition of state registration of the legal entity termination.</p> <p>2. Court, which passed the decision as for abolition of state registration of the legal entity termination, on the day of acquiring the force of the law by this decision, shall send it to the state registrar by place of registration of the legal entity for introduction of an entry to the Unified State Register on abolition of state registration of the legal entity termination.</p> <p>The date of receipt of a court decision on abolition of state registration of the legal entity termination shall be inserted by the state registrar to the deed register of registration actions.</p> <p>3. Within the next working day from the date of the court decision receipt on the abolition of state registration of the legal entity termination, the state registrar shall introduce an entry to the Unified State Register on abolition of state registration of the legal entity termination, and on the same day inform the agencies of statistics, the state bodies of income and duties, the Pension Fund of Ukraine, National Commission on Securities and Stock Market on introduction of such an entry for registration of the legal entity and/or other actions which shall be undertaken according to law, and inform the legal entity on introduction of an entry to the Unified State Register on abolition of state registration of its termination.</p> | | |

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| <p>4. When the state registrar receives the original foundation documents of the legal entity, with the abolished state registration of termination on the basis of an appropriate court decision, the state registrar shall put on the mentioned documents a mark on abolition of state registration of the legal entity termination and transfer (send by posting with the list of inventory) to the residency address of one of the founders (participants) of the legal entity, according to which the court decision on the abolition of state registration of the legal entity termination has been passed.</p> | | |
| <p>Chapter V STATE REGISTRATION OF AN INDIVIDUAL, CONTEMPLATED TO BECOME AN ENTREPRENEUR Article 42. Documents, submitted for state registration of an individual entrepreneur, contemplated to become an entrepreneur</p> | | |
| <p>1. For state registration of an individual, contemplated to become an entrepreneur, and that possesses a registration number of the registration card for a taxpayer, or an authorized person (hereinafter - requestor) shall personally submit (send by posting with the list of inventory or in case of electronic documents submission an inventory, containing data on the submitted electronic documents, in electronic form) or through an authorized person to the state registrar by the residency the following documents:</p> <p>completed registration card for state registration of an individual entrepreneur to which a statement on choosing by the legal entity the simplified tax system and/or the registration statement on free registration as taxpayer of VAT can be given as a supplement in the form, approved by the central body of the executive power, that provides the formation and realizes the states tax and customs policy;</p> <p>copy of a document, certifying the registration in the State Register of individuals – taxpayers;</p> <p>document, certifying payment of the registration fee for state registration of an individual entrepreneur;</p> <p>notarized written consent of parents (adopters) or custodian, or agency of guardianship and care, if the requestor is an individual, who attained sixteen years and wants to conduct entrepreneurial activity.</p> | | |

In case of the electronic documents submission a notarized written consent of parents (adopters) or custodian, or agency of guardianship and care, if the requestor is an individual, who attained sixteen years and wants to conduct entrepreneurial activity, shall be submitted to the state registrar by posting. Data on the requisites of the posting and an inventory, containing data on the submitted electronic documents, in the electronic form shall be submitted to the state registrar as an electronic document.

In case of submitting electronic documents of an individual to the state registrar, an electronic document, certifying the authorities of the person, connected with preparing electronic documents of the individual, shall be added.

2. For state registration of an individual entrepreneur, who due to his/her religious or other beliefs refused to accept the registration number of registration card for a taxpayer, officially informed the appropriate public authorities, has a check in passport and a purpose to become an entrepreneur, shall submit exclusively in person the following:

completed registration card for state registration of an individual entrepreneur;

document, certifying payment of the registration fee for state registration of an individual entrepreneur.

In case of electronic documents submission, confirmation of payment of the registration fee for an individual entrepreneur state registration shall be a duplicate of the electronic payment document, certified by an electronic digital signature.

3. The state registrar is prohibited to require additional documents for state registration of an individual entrepreneur, if they are not envisaged by Parts one and two of the present Article.

4. . If the documents for state registration are submitted personally by the requestor, the passport of the citizen of Ukraine or the passport document of the foreigner shall be submitted to the registrar. An individual, who due to his/her religious or other beliefs refused to accept the registration number of registration card for a taxpayer, officially informed the appropriate public authorities, shall personally

show a passport or a passport document of a foreigner with an appropriate mark to the state registrar on electronic contactless carrier. An authorized person shall show his/her passport and a document, certifying his/her authorities.

In case if for state registration of an individual entrepreneur, who due to his/her religious or other beliefs refused to accept the registration number of registration card for a taxpayer and officially informed the appropriate public authorities, electronic documents are submitted, a copy of the passport page with an appropriate mark on electronic contactless carrier shall be added to the documents, prescribed by Parts one and two of the present Article.

5. Documents, submitted for state registration of an individual entrepreneur, shall be accepted according to an inventory, with a copy, handed (sent by posting) on the day of the documents receipt by the requestor with a mark of the date of the documents receipt.

The date of the documents receipt on state registration of an individual entrepreneur shall be inserted to the deed register of the registration actions.

6. The state registrar shall be entitled to shelve the documents, submitted for state registration of an individual entrepreneur, in the following cases:

documents are submitted by an improper place of state registration of an individual entrepreneur;

documents do not meet the requirements of Parts one and two of Article 8 and Part five of Article 10 of the present Law;

documents are submitted not in a full scale.

7. In case of shelving the documents, submitted for state registration of an individual entrepreneur, the state registrar shall hand (sent by posting with the list of inventory) to the requestor a corresponding notification, within the next working day from the date of their receipt, with the statement of grounds for shelving the documents, as well as the documents, submitted for state registration of an individual entrepreneur, according to the inventory.

Shelving the documents, submitted for state registration of an individual entrepreneur, shall not prevent the requestor from the

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| <p>repeated application to the state registrar in a general order after eliminating the reasons, which have been the grounds for shelving these documents.</p> <p>8. Submission of electronic documents for state registration of an individual, contemplated to become an entrepreneur, shall be accomplished for certification by the state registrar of the fact of acquiring the status of an entrepreneur by the individual.</p> <p>Submission by an individual entrepreneur of the documents to the state registrar for state registration of amendments to the data on an individual entrepreneur shall be accomplished exclusively on paper media without submission of electronic documents.</p> | | |
| <p>Article 43. The procedure of state registration of an individual entrepreneur</p> | | |
| <p>1. The state registrar, in the absence of grounds for shelving the documents, submitted for state registration of an individual entrepreneur, shall check these documents for absence of grounds for refusal in state registration of an individual entrepreneur, prescribed by Part one of Article 44 of the present Law. Check for absence of grounds for refusal in state registration of an individual entrepreneur, prescribed by Paragraphs three and four of Part one of Article 44 of the present Law, shall be conducted with the usage of data from the Unified State Register.</p> <p>2. In the absence of grounds for refusal in state registration of an individual entrepreneur, the state registrar shall introduce an entry to the Unified State Register on state registration of an individual entrepreneur on the basis of data from the registration card for state registration of an individual entrepreneur.</p> <p>The date of an entry introduction to the Unified State Register on state registration of an individual entrepreneur shall be considered the date of state registration of an individual entrepreneur.</p> <p>3. The term of state registration of an individual entrepreneur shall not exceed two working days from the date of the documents receipt for state registration of an individual entrepreneur.</p> <p>4. The state registrar shall hand (send by posting with the description of the contents) an excerpt from the Unified State Register to the</p> | | |

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| <p>requestor within the next working day from the date of receipt of the information from the statistic agencies, state bodies of income and duties, Pension Fund of Ukraine about the registration of an individual entrepreneur in these agencies.</p> <p>5. The state registrar, within the next working day from the date of state registration of an individual entrepreneur, shall transfer to the agencies of statistics, the State bodies of income and duties, the Pension Fund of Ukraine a notification on state registration of an individual entrepreneur with the statement of number and date of introducing an appropriate entry to the Unified State Register and data from the registration card for state registration of an individual entrepreneur in order to register an individual entrepreneur.</p> <p>Along with the data from the registration card on state registration of individual entrepreneur the state registrar shall submit electronic copy of the statement on choosing by the legal entity the simplified tax system and/or the registration statement as a taxpayer of VAT made by means of scanning, if such statements are submitted as a supplement to the registration card.</p> | | |
| <p>Article 44. Refusal in state registration of an individual entrepreneur</p> | | |
| <p>1. The grounds for refusal in state registration of an individual entrepreneur shall be the following: discrepancy between the data, indicated in the registration card for state registration of an individual entrepreneur, and the data, specified in the documents, submitted for state registration; availability of restrictions for entrepreneurial activity, prescribed by law, as for an individual, contemplated to become an entrepreneur; availability of an entry in the Unified State Register that the requestor is an entrepreneur.</p> <p>2. Refusal in state registration of an individual entrepreneur on other grounds shall not be allowed.</p> <p>3 In the presence of grounds for refusal in state registration of an individual entrepreneur, the state registrar shall, within two working days from the date of the documents receipt for state registration of an individual entrepreneur, hand (send by posting with the description</p> | | |

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| <p>of contents) to the requestor a notification on the refusal in state registration, with the statement of grounds for such a refusal, as well as documents, submitted for state registration of an individual entrepreneur, according to description of documents.</p> <p>4. After eliminating the reasons, which have been the grounds for refusal in state registration of an individual entrepreneur, an individual can repeatedly submit the documents for state registration of an individual entrepreneur, considered in the order, prescribed by the present Law for state registration of an individual entrepreneur.</p> <p>5. Refusal in state registration of an individual entrepreneur can be litigated in court.</p> <p>6. Infraction of the terms for handing (sending by posting) a notification on the refusal in state registration or notification on shelving the documents shall be considered a refusal in state registration of an individual entrepreneur and can be litigated in court.</p> | | |
| <p>Article 45. State registration of amendments to the data on an individual entrepreneur, contained in the Unified State Register</p> | | |
| <p>1. Amendments to the data on an individual entrepreneur, contained in the Unified State Register, particularly amendments to the name of an individual, his/her residency, registration number of registration card for a taxpayer or numbers and series of passport of the citizen of Ukraine or the passport document of a foreigner, who due to his/her religious or other beliefs refused to accept the registration number of registration card for a taxpayer, and officially informed the appropriate public authorities, and has a check on an electronic contactless carrier of the passport of the citizen of Ukraine, shall become operative from the day of their state registration.</p> <p>2. For state registration of amendments to the data on an individual entrepreneur, prescribed by Part one of the present Article, an individual entrepreneur shall personally submit to the state registrar (send by posting with the list of inventory) the following documents: completed registration card for state registration of amendments to the data on an individual entrepreneur; document, certifying payment of the registration fee for state registration of amendments to the data on an individual entrepreneur;</p> | | |

copy of the certificate on change of registration number of the registration card for a taxpayer.

For state registration of amendments to the data on an individual entrepreneur, envisaged by Part one of the present Article, an individual entrepreneur, who due to his/her religious or other beliefs refused to accept the registration number of registration card for a taxpayer, and officially informed the appropriate public authorities, and has a check in the passport, shall submit documents, prescribed by the present Part, exclusively in person.

3. The state registrar shall be prohibited to require documents for state registration of amendments to the data on an individual entrepreneur, if they are not prescribed by Part two of the present Article.

4. . If the documents for state registration of amendments to the data on an individual entrepreneur are submitted by an individual entrepreneur in person, a passport of a citizen of Ukraine or the passport document of a foreigner shall be additionally submitted to the state registrar.

An individual, who due to his/her religious or other beliefs refused to accept the registration number of registration card for a taxpayer, and officially informed the appropriate public authorities, for state registration of amendments to the data on an individual entrepreneur shall in person show the passport of the citizen of Ukraine with an appropriate mark on the electronic contactless carrier to the state registrar.

For state registration of amendments to the data on an individual entrepreneur, an authorized person shall show his/her passport and a document, certifying his/her authorities.

5. Documents, submitted for state registration of amendments to the data on an individual entrepreneur, shall be accepted according to the inventory, with a copy, handed (sent by posting) in the day of the documents receipt by the requestor with a mark of the date of the documents receipt.

6. The date of the documents receipt for state registration of amendments to the data on an individual entrepreneur shall be

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| <p>inserted to the deed register of registration actions.</p> <p>7. The state registrar shall be entitled to shelve the documents, submitted for state registration of amendments to the data on an individual entrepreneur in the following cases: documents are submitted by an improper place of state registration of amendments to the data on an individual entrepreneur; documents do not meet the requirements of Parts one and two of Article 8 and Part five of Article 10 of the present Law; documents are submitted not in a full scale.</p> <p>8. In case of shelving the documents, submitted for state registration of amendments to the data on an individual entrepreneur, the state registrar shall hand (sent by posting with the list of inventory) a corresponding notification within the next working day from the date of the documents receipt, submitted for state registration of amendments to the data on an individual entrepreneur, with the statement of grounds for shelving the documents, submitted for state registration of amendments to the data on an individual entrepreneur, as well as the documents, submitted for state registration of amendments to the data on an individual entrepreneur, according to the inventory.</p> <p>Shelving the documents, submitted for state registration of amendments to the data on an individual entrepreneur, shall not prevent the requestor from the repeated application to the state registrar in a general order after eliminating the reasons, which have been the grounds for shelving these documents.</p> <p>9. State registration of amendments to the data on an individual entrepreneur shall be conducted by the procedures, prescribed by Article 43 of the present Law for state registration of an individual entrepreneur.</p> | | |
| <p>Chapter VI STATE REGISTRATION OF TERMINATION OF ENTREPRENEURIAL ACTIVITY OF AN INDIVIDUAL ENTREPRENEUR</p> <p>Article 46. State registration of termination of entrepreneurial activity of an individual entrepreneur</p> | | |
| <p>1. State registration of termination of entrepreneurial activity of an</p> | | |

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| <p>individual entrepreneur shall be conducted in the following cases: decision-making by an individual entrepreneur on the termination of entrepreneurial activity; death of an individual entrepreneur; court ruling on announcing an individual entrepreneur dead or missing; court ruling on recognition of an individual, which is an entrepreneur, incapable or on limitation of his/her civil capacity; court ruling on termination of entrepreneurial activity of an individual activity.</p> <p>2. Grounds for court ruling on termination of entrepreneurial activity of an individual entrepreneur shall be the following: declaring an individual entrepreneur bankrupt; his/her carrying out entrepreneurial activity that is banned by law; failure to submit during one year to the State Tax Administration bodies the tax declarations, documents of financial records according to law; availability of an entry in the Unified State Register on absence of an individual entrepreneur by the indicated residency.</p> <p>3. An individual shall be deprived of the status of an entrepreneur from the date of introducing an entry to the Unified State Register on state registration of termination of entrepreneurial activity of an individual entrepreneur.</p> | | |
| <p>Article 47. The procedure of state registration of termination of entrepreneurial activity of an individual entrepreneur by his/her decision</p> | | |
| <p>1. For state registration of termination of entrepreneurial activity of an individual entrepreneur by his/her decision, the individual entrepreneur or an authorized person shall submit to the state registrar (send) a registration card on registration of termination of the entrepreneur activity of individual entrepreneur by his/her decision.</p> <p>2. The registration card for state registration of termination of entrepreneur activity of the individual entrepreneur by his/her decision is received with the description, copy of which shall be</p> | | |

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| <p>handed over (sent by post with the description of contents) to the applicant with note about the date of its receipt.</p> <p>3. The date of the receipt of the registration card for the state registration of termination of entrepreneur activity of individual entrepreneur on his/her decision shall be inserted to the register of registration actions.</p> <p>4. State registrar shelves the registration card for state registration of termination of entrepreneur activity of individual entrepreneur on his/her decision if:</p> <p>the registration card for the state registration of termination of entrepreneur activity of individual entrepreneur on his/her decision is submitted by the undue place of state registration of termination of entrepreneur activity of individual entrepreneur.</p> <p>the registration card for the state registration of termination of entrepreneur activity of individual entrepreneur on his/her decision does not comply with the requirements of this Law.</p> <p>5. The appropriate notice about the registration card for the state registration of termination of entrepreneur activity of individual entrepreneur on his/her decision being shelved shall be handed over (sent by post with the description of contents) to the applicant with the note about the grounds for the registration card being shelved along with this document.</p> <p>6. If the grounds for registration card for state registration of termination of entrepreneur activity of individual entrepreneur on his/her decision being shelved are absent, the state registrar shall introduce an entry to the Unified State Register about the state registration of termination of entrepreneur activity of individual entrepreneur not later than on the next working day from the day of receipt of the document and hand over (send by post with the description of contents) the notice about such entry being made.</p> | | |
| <p>Article 48. The procedure of state registration of termination of entrepreneurial activity of an individual entrepreneur in case of his/her death, announcing him/her dead or missing</p> | | |
| <p>1. In case of death of an individual entrepreneur the third party, particularly heritor or an appropriate executive power body, can</p> | | |

submit to the state registrar in person (send by posting) a notarized copy of the death certificate of an individual or a excerpt from the State Register of civil status acts of citizens on the death of an individual.

The state registrar in case of receiving a notification on the death of an individual entrepreneur and in case, if the third person, particularly heritor or an appropriate executive power body, within two months from the day of receipt of such a notification, does not submit a notarized copy of the death certificate of an individual or a excerpt from the State Register of civil status acts of citizens on the death of an individual shall be obliged to send an inquiry to the appropriate body of civil status acts registration on obtaining a document on confirmation of the fact of death of an individual entrepreneur according to the legislation of Ukraine

2. The state registrar shall be prohibited to require additional documents for state registration of termination of entrepreneurial activity of an individual entrepreneur, if they are not envisaged by Part one of the present Article.

3. If documents for state registration of termination of entrepreneurial activity by an individual entrepreneur are submitted by the third party, particularly heritor, in person, his/her passport shall be additionally shown to the state registrar.

4. Documents, submitted for state registration of termination of entrepreneurial activity by an individual entrepreneur, shall be accepted according to the inventory, with a copy handed to the third party, particularly heritor (sent by posting), on the day of the documents receipt, with the mark on the date of the documents receipt.

5. The court, which passed the decision on announcing an individual entrepreneur dead or missing, on the day of acquiring the force of the law by this decision, shall send its copy to the state registrar by the place of registration of an individual entrepreneur.

6. In the court decision on announcing an individual entrepreneur dead or missing a person, appointed as the property manager of an individual entrepreneur, shall be indicated by the presentation of the

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| <p>agency of guardianship and care, if another is not prescribed by the law.</p> <p>The date of the documents receipt for state registration of termination of entrepreneurial activity by an individual entrepreneur in case of his/her death or announcing him/her dead or missing shall be inserted by the state registrar to the deed register of registration actions.</p> <p>7. The state registrar, within the next working day from the date of the documents receipt for state registration of termination of entrepreneurial activity by an individual entrepreneur in case of his/her death or announcing him/her dead or missing, shall complete a registration card for state registration of termination of entrepreneurial activity of an individual entrepreneur in view of his/her death or announcing him/her dead or missing and introduce an entry to the Unified State Register on state registration of termination of entrepreneurial activity by an individual entrepreneur in view of his/her death or announcing him/her dead or missing.</p> <p>8. The procedure of supplying data on state registration of termination of entrepreneurial activity of an individual entrepreneur to the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine is prescribed by Article 51 of the present Law.</p> | | |
| <p>Article 49. The procedure of state registration of termination of entrepreneurial activity of an individual entrepreneur by a court decision that is not connected with bankruptcy of an individual entrepreneur</p> | | |
| <p>1. The court, which passed the decision on termination of entrepreneurial activity of an individual entrepreneur, including decision on announcing an individual entrepreneur incapable or on limitation of his/her civil capacity, on the day of acquiring the force of the law by this decision, shall send its copy to the state registrar by the place of registration of an individual entrepreneur for introduction of an entry to the Unified State Register on the court decision as for the termination of entrepreneurial activity of an individual entrepreneur.</p> <p>The date of receipt of the court decision on termination of</p> | | |

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| <p>entrepreneurial activity of an individual entrepreneur shall be inserted by the state registrar to the deed register of registration actions.</p> <p>2. In case, if the reason for the court ruling as for termination of entrepreneurial activity by an individual entrepreneur is announcing him/her incapable or limitation of his/her civil capacity, in the court decision on termination of entrepreneurial activity of an individual entrepreneur, in view of announcing him/her incapable or limitation of his/her civil capacity, the court shall indicate the person, who is appointed as a property manager of an individual entrepreneur by the presentation of the agency of guardianship and care, if another is not prescribed by law.</p> <p>3. The state registrar, within the next working day from the date of receipt of the court decision as for termination of entrepreneurial activity of an individual entrepreneur, shall complete the registration card on registration of the termination of the entrepreneur activity of individual entrepreneur as a result of the court decision issued and introduce an entry to the Unified State Register on state registration of the termination of the entrepreneur activity of ondividual entrepreneur as a result of the court decision issued, and on the same day shall hand over (send by post with the description of contents) the notice about such entry being made to the individual entrepreneur</p> | | |
| <p>Article 50. The procedure of state registration of termination of entrepreneurial activity of an individual entrepreneur by a court decision as for declaring the individual entrepreneur bankrupt</p> | | |
| <p>1. The court, which passed the decision on commencement of proceedings on the individual entrepreneur bankruptcy, on the day, when the decision acquires the force of the law, shall send it to the state registrar by the location of the individual entrepreneur for introducing an entry to the Unified State Register on the corresponding court decision.</p> <p>The date of receipt of the court decision on commencement of proceedings on the individual entrepreneur bankruptcy shall be inserted by the state registrar to the deed register of registration actions.</p> <p>2. On the day of receipt of the court decision on commencement of</p> | | |

proceedings on the individual entrepreneur bankruptcy, the state registrar shall introduce an entry to the Unified State Register on such a court decision, and on the same day shall inform the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine on introducing of such an entry to the Unified State Register.

3. The court, which passed the decision on declaring an individual entrepreneur bankrupt, on the day, when the decision acquires the force of the law, shall send a copy to the state registrar by the place of state registration of an individual entrepreneur for introduction of an entry to the Unified State Register on the court decision. The date of receipt of the corresponding court decision shall be inserted by the state registrar to the deed register of registration actions.

4. On the day of receipt of the court decision on declaring an individual entrepreneur bankrupt, the state registrar shall introduce an entry to the Unified State Register on the court decision as for declaring an individual entrepreneur bankrupt, and on the same day shall inform the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine, as well as the individual entrepreneur, according to whom the court decision was passed, on introducing of such an entry.

5. In case, if after completion of the bankruptcy proceedings, prescribed by law, the court passes a decision on termination of entrepreneurial activity of an individual entrepreneur in view of declaring him/her bankrupt, the court, that passed the corresponding decision, shall transfer it to the state registrar by the place of registration of an individual entrepreneur on the day, when it acquires the force of the law, for introduction of an appropriate entry. The date of receipt of the appropriate court decision shall be inserted to the deed register of registration actions.

6. On the day of the court decision receipt on termination of entrepreneurial activity of an individual entrepreneur in view of declaring him/her bankrupt, the state registrar shall complete a registration card on state registration of termination of entrepreneurial activity of an individual entrepreneur, introduce an entry to the Unified State Register on state registration of termination of

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| <p>entrepreneurial activity of an individual entrepreneur in view of declaring him/her bankrupt and on the same day hand over (send by post with the description of contents) a notice to the person about introducing such entry.</p> <p>7. The procedure of supplying data on state registration of termination of entrepreneurial activity by an individual entrepreneur to the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine is prescribed by Article 51 of the present Law.</p> <p>9. In case, if after completion of the bankruptcy proceedings, prescribed by law, the court passes a decision as for abandonment of the bankruptcy proceedings, the court, that passed the corresponding decision, shall transfer it to the state registrar by the place of registration of an individual entrepreneur on the day, when it acquires the force of the law, for introduction of an entry to the Unified State Register on the court decision as for abandonment of the bankruptcy proceedings.</p> <p>The date of receipt of the court decision on abandonment of the bankruptcy proceedings of an individual entrepreneur shall be inserted to the deed register of registration actions.</p> <p>10. On the day of the court decision receipt on abandonment of the bankruptcy proceedings, the state registrar shall introduce an entry to the Unified State Register on abandonment of the proceedings on the individual entrepreneur bankruptcy and on the same day shall inform the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine on introducing of such an entry.</p> | | |
| <p>Article 51. The procedure of supplying data to the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine as for registration of termination of an individual entrepreneur</p> | | |
| <p>1. On the day of state registration of an individual entrepreneur termination in the order, prescribed by Articles 47-50 of the present Law, the state registrar shall send to the appropriate agencies of statistics, the State bodies of income and duties, the Pension Fund of Ukraine a notification on state registration of termination of entrepreneurial activity by an individual entrepreneur and data from</p> | | |

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| <p>the registration card for state registration of an individual entrepreneur termination.</p> <p>2. A notification on state registration of termination of entrepreneurial activity of an individual entrepreneur in case of his/her death or announcing the individual entrepreneur dead or missing or notification on state registration of termination of entrepreneurial activity of an individual entrepreneur by a court decision as for declaring the individual entrepreneur bankrupt, as well as data from the appropriate registration card shall be the ground for removal of the individual entrepreneur from the register in the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine.</p> | | |
| <p>Article 52. The procedure of introducing to the Unified State Register a court decision as for abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur</p> | | |
| <p>1. Court ruling as for abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur shall be the basis for introducing an entry to the Unified State Register on abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur.</p> <p>2. Court, which passed the decision as for abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur, on the day of acquiring the force of the law by this decision, shall send it to the state registrar by place of registration of an individual entrepreneur for introduction of an entry to the Unified State Register on abolition of state registration of an individual entrepreneur.</p> <p>The date of receipt of a court decision on abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur shall be inserted by the state registrar to the deed register of registration actions.</p> <p>3. Within the next working day from the date of the court decision receipt as for abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur, the state</p> | | |

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| <p>registrar shall introduce an entry to the Unified State Register on abolition of state registration of termination of entrepreneurial activity of an individual entrepreneur, and on the same day inform the agencies of statistics, the State Tax Administration, the Pension Fund of Ukraine on introduction of such an entry for registration of an individual entrepreneur, and within the next working day hand (send by posting with the list of inventory) an excerpt from the Unified State Register to the residency address of an individual entrepreneur, as for whom the court decision on abolition of state registration of termination has been passed.</p> | | |
| <p>Chapter VII ENFORCEMENT OF THE LAW Article 53. Liability in the sphere of state registration</p> | | |
| <p>1. The state registrars shall bear disciplinary, civil, administrative or criminal responsibility for infringement of the legislation in the sphere of state registration in the order, prescribed by law.</p> <p>2. Actions or inactivity of the state registrar, the officials of the State Tax Administration bodies, the Pension Fund of Ukraine can be litigated in court in the order, prescribed by law.</p> <p>3. Detriment, caused by the state registrar to individuals or legal entities during the performance of his/her duties, shall be subject to reimbursement on account of the state in the order, prescribed by law.</p> <p>4. Persons, guilty for introducing to the statutory documents or other documents, submitted to the state registrar, deliberately false data, which are subject to introducing to the Unified State Register, shall bear responsibility, prescribed by law.</p> | | |
| <p>Chapter VIII FINAL REGULATIONS</p> | | |
| <p>1. The present Law shall become operative from July 1, 2004.</p> <p>2. All acting legal entities and individual entrepreneurs that are established and registered before 1 July 2004, information of which is not included to the Unified State Register shall submit to the state registrar in accordance with Article 19 of this Law a registration card on inserting data about them in the Unified State Register. After the receipt of a registration card from legal entities and individual entrepreneurs the state registrar shall be obliged to insert data on the</p> | | |

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| <p>acting legal entities and individual entrepreneurs and shall issue them an excerpt from the Unified State Register.</p> <p>3. Laws, normative and legal acts, adopted before the present Law becomes operative, shall operate in the part that does not contravene the present Law.</p> <p>4. To the Cabinet of Ministers of Ukraine: within three months after the promulgation of the present Law, submit to the Verkhovna Rada of Ukraine proposals on adjusting the legislative acts of Ukraine in accordance with the present Law; within six months after the promulgation of the present Law, adjust their decisions in accordance with the present Law and provide adjustment by the ministries and other central executive power bodies of their acts in accordance with the present Law.</p> | | |
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| Law of Ukraine on Joint Stock Companies | | |
| Section 1. General Provisions | | |
| Article 1. Scope of the Law | | |
| <p>1. This Law sets out the procedure of the establishment, the operation, the termination, the spin off of joint stock companies, their legal status, rights and duties of shareholders.</p> <p>2. The operations of state joint stock companies and state holding companies, whose single founder and shareholder is the State in the person of authorized governmental agencies, shall be regulated by this Law, taking into account the specifics set out by special laws.</p> <p>The operations of the State Managing Holding Company, state holding companies, and state joint stock company, whose single founder and shareholder is the State in the person of authorized governmental agencies, shall be regulated by this Law, taking into account the specifics set out by special laws.</p> <p>3. Specific features of the establishment of joint stock companies in the course of the privatization and the corporatization, their legal status and their operations during the period before the implementation of the privatization plan (the placement of shares) shall be specified by the privatisation and corporatization legislation.</p> <p>The joint stock companies, whose charter capital includes corporate rights of the state or of the local community, shall be managed taking account of the specific features defined by law.</p> <p>4. The establishment, the termination of a joint stock company, assuming stocks for ownership or the receipt for management of the shares, and the acquisition of control over a company shall be in compliance with the legislation on protection against unfair competition.</p> <p>5. This Law shall not apply to joint stock companies, which are established, operate and are terminated in accordance with the legislation on collective investment undertakings.</p> | n/a | Nothing to mention |
| Article 2. Definition of Terms | | |
| 1. In this Law the following terms shall be used in the following | n/a | Nothing to mention |

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| <p>meaning:</p> <p>1) "parties affiliated with each other" (hereinafter referred to as "affiliated parties") shall be understood as:</p> <p>legal entities, provided that one of them controls the other or both of them are controlled by a third entity;</p> <p>family members of an individual: spouses, parents (adoptive parents), tutors (guardians), brothers, sisters, children and their spouses;</p> <p>an individual and members of his family, and a legal entity, if the individual in question and/or members of his family control a legal entity;</p> <p>2) "reacquisition of shares" shall be understood as acquisition of shares by a joint stock company that have been earlier placed thereby for a certain price;</p> <p>3) "voting share" shall be understood as a share that vests the holder thereof with the right to vote at the general shareholder meeting (hereinafter referred to as the "general meeting") to solve issues specified by law or by the charter of the joint stock company;</p> <p>4) "significant transaction" shall be understood as a transaction (except for the transactions of the placement of own shares by a company) performed by a joint stock company, if the market value of the underlying property (works, services) is 10 and more per cent of the value of the company assets according to the latest annual financial statements;</p> <p>5) "significant block of shares" shall be understood as a block of 10 and more per cent of ordinary shares in a joint stock company;</p> <p>6) "controlling interest" shall be understood as a block of 50 and more per cent of ordinary shares in a joint stock company;</p> | <p>Directive 2004/25/EC ("Takeover Directive")</p> <p>Art. 5 par. 3. The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the</p> | <p>Compare the definition of "dependent company" contained in art. 118 CC</p> <p>The European Commission is considering introducing European rules on "material transactions" (may be seen as corresponding with the idea of "significant transactions" under the Law on JSC) with related parties (RPT)</p> <p>CP-SRD art. 9c(1): Member States shall ensure that companies, in case of transactions with related parties that represent more than 1% of their assets, publicly announce such transactions[...]</p> <p>CP-SRD art. 9c(3): Transactions with the same related party that have been concluded during the previous 12 months period and have not been approved by shareholders shall be aggregated for the purposes of</p> |
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| <p>7) "control" shall be understood as the decisive influence or the possibility of exerting decisive influence on legal entities in the form, for instance, of the exercise of the right of ownership or voting with all assets or a considerable portion thereof, the right of decisive influence on the formation of the membership, the voting results and the decision making by managing bodies of a legal entity, and the performance of transactions that make it possible to determine conditions of legal entities, to issue binding instructions or carry out functions of a managing body of a legal entity;</p> <p>8) "corporate rights" shall be understood as the totality of property and non-property shareholder rights that proceed from share ownership, including the right to participate in corporate governance, to obtain dividends and assets of the joint stock company in case of its liquidation in accordance with the law, as well as other rights and powers envisaged by law or charter documents;</p> <p>9) "cumulative voting" shall be understood as the voting during the election of bodies of the company, when the total number of votes held by a shareholder is multiplied by the number of members of the body of the joint stock company being elected, while the shareholder is entitled to give all votes to a single candidate or to allocate them among several candidates;</p> <p>10) "liquidation value of a preference share of a certain type" shall be understood as the amount of funds received by the holder of such a share on the liquidation of the joint stock company;</p> | <p>company has its registered office. It needs to be emphasized that in most EU MS the threshold by which it is assumed, the control over the target company has been achieved is less than 50%, in most cases it is set in the range of 30% – 33%. For Ukraine an empirical evidence would be needed taking into account the ownership structure and the actual presence at the shareholder GM.</p> <p>Directive 2001/34/EC art. 87</p> <p>1. For the purposes of this Chapter, "controlled undertaking" shall mean any undertaking in which a natural person or legal entity:</p> <p>(a) has a majority of the shareholders' or members' voting rights; or</p> <p>(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or</p> <p>(c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.</p> <p>2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any</p> | <p>application of paragraph 2. If the value of these aggregated transactions exceeds 5% of the assets[...]</p> <p>PCT-SRD art. 9c(1): Member States shall ensure that companies publicly announce material transactions [...]</p> <p>PCT-SRD art. 9c(6): Material transactions with related parties are identified by Member States according to one or more quantitative ratios based on criteria such as the companies' market capitalization and assets or revenues, and which may take into account the nature of transactions with related parties.[...]</p> <p>There are however important differences between both texts. Consequently, a hold&see position is recommended at this stage.</p> |
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11) "mandatory reacquisition of shares" shall be understood as the obligatory acquisition of placed by a shareholder for a fee and on his/her demand by a joint stock company;

12) "jointly acting parties" shall be understood as individuals and/or legal entities that act on the basis of a legal instrument between them, and co-ordinate their actions to attain a common objective;

13) "official printed organ" shall be understood as the official printed bulletin of the National Commission for Securities and Stock Market;

14) "shareholders' notification" shall be understood as a notice that contains the information envisaged by law and the charter of the joint stock company, and is sent to the addressee in writing in a manner prescribed by the charter of the company;

15) "officials of joint stock company's bodies " shall be understood as individuals who occupy the posts of the chairman and members of the supervisory board, executive body, audit commission, chief audit executive of the joint stock company, as well as the chairman and members of another body of the company, if the formation of such a body is envisaged by the charter of the company;

16) "proportional reacquisition of shares" shall be understood as the acquisition by the joint stock company of shares placed thereby in proportion to the number of shares of a certain type and/or class offered by each shareholder for sale;

17) "simple majority of votes" shall be understood as more than 50 per cent of votes of the shareholders who took part in the general meeting;

18) "placed securities" shall be understood as securities of a joint stock company sold to the benefit of other parties in accordance with the procedure established by the legislation;

19) "charter capital" shall be understood as the capital of the company that consists of the sum of par values of all shares placed by the company;

20) "members of the executive body" shall be understood as

person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

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| <p>officials - members of the collective executive body. The status of a member of the executive body shall also be enjoyed by the individual who exercises the powers of a single executive body of the company.</p> | | |
| <p>Article 3. Legal Status of a Joint Stock Company</p> | | |
| <p>1. A joint stock company is a business company whose charter capital is divided into certain number of shares of an equal nominal value, under which the corporate rights are confirmed with shares.</p> <p>2. A joint stock company shall not be liable for the obligations of the shareholders. The company and its bodies may not be subjected to any sanctions restricting their rights in case of the commission of offences by shareholders.</p> <p>Shareholders shall not be liable for the obligations of the company, and shall bear the risk of losses related to activities of the Company only within the scope of the value of shares held by them. The shareholders may not be subjected to any sanctions restricting their rights in case of the commission of offences by the company or other shareholders.</p> <p>Shareholders that have not fully paid up their shares shall be liable for the obligations of the company within the scope of the unpaid portion of the value of shares held by them in events specified by the charter of the company.</p> <p>3. A joint stock company may be established by means of the establishment or the merger, the division, the spin off or the transformation of a business corporation(s), a state or community-owned, or another enterprise(s) into a joint stock company.</p> <p>A company shall be established without the limitation of the operation period, unless otherwise prescribed by its charter.</p> <p>A company shall be deemed established and shall acquire rights of a business company from the date of its state registration in accordance with the procedure prescribed by the legislation.</p> <p>4. The full name of a joint stock company in Ukrainian language must contain the name of its type (public or private) and its organizational/legal form (joint stock company).</p> | <p>n/a</p> | <p>Nothing to mention</p> <p>The terminology with regard to the public-private dichotomy may be revisited. The notion “private” may be</p> |

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| <p>A company may have an abbreviated name in Ukrainian language, full and abbreviated names in a foreign language (foreign languages).</p> | | <p>misleading as it is likely to bring about confusion with private limited liability company. It could be wise to stick to the terminology proposed by the High Level Group: listed companies (=currently public JSC), open companies (=currently private JSC), closed companies (=limited liability companies). Alternatively “private” with regard to the JSC could be replaced by “non-public”, as the Polish company law legislation does.</p> |
| <p>Article 4. Shareholders of the Company</p> | | |
| <p>1. Individuals and legal entities, as well as the state in the person of the agency authorized to manage the state-owned property or the territorial community in the person of the agency authorized to manage the community-owned property that own shares in the company shall be recognized as shareholders of the company.</p> <p>A joint stock company may not have another business corporation owned by a sole participant as a sole participant. A joint stock company may not have only legal entity shareholders, in which the same party is the sole participant.</p> <p>2. Any duties of shareholders that contradict the law may not be determined by the charter or other documents of the company.</p> | <p>Directive 2009/102/EC (single-member private limited liability companies) art. 2. par 2. Member States may, pending coordination of national laws relating to groups, lay down special provisions or penalties for cases where: [...] (b) a single-member company or any other legal person is the sole member of a company.</p> <p>art. 6 Where a Member State allows single-member companies as defined by Article 2(1) in the case of public limited companies as well, this Directive shall apply.</p> | <p>National discretion</p> <p>Restrictions with regard to curbing single-member pyramidal groups allowed under national discretion.</p> |

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| <p>Article 5. Types of Joint Stock Companies</p> | | |
| <p>1. The joint stock companies are divided into public joint stock companies and private joint stock companies.</p> <p>The number of shareholders of a private joint stock companies may not exceed 100 shareholders.</p> <p>2. A public joint stock company may carry out public or private placement of shares.</p> <p>A private joint stock company may carry out private placement of shares only. In case of the decision of the general meeting of a private joint stock company to carry out the public share placement, the charter of the company shall be properly amended, for instance, by means of the changing of the company type from private to public.</p> <p>The changing of the company type from private to public or from public to private shall not be considered as the transformation thereof.</p> | <p>n/a</p> | <p>Amendment proposal: to exclude the provision: "the number of shareholders of a private joint stock companies may not exceed 100 shareholders." The exclusive criterium of division into public and private joint stock companies shall be public placement of the shares, or putting it more precisely, in line with the <i>Acquis</i> this criterium should be "listing on a regulated market".</p> |
| <p>Article 6. Joint Stock Company with a Single Shareholder</p> | | |
| <p>1. A joint stock company may be established by one person or may be comprised of one person in case of the acquisition of all shares in the company by the same shareholder. The relevant information must be registered and published for the general public in accordance with the procedure prescribed by the National Commission on Securities and Stock Market.</p> | <p>Directive 2009/102/EC Art 2. A company may have a sole member when it is formed and also when all its shares come to be held by a single person (single-member company). Art 3. Where a company becomes a single-member company because all its shares come to be held by a single person, that fact, together with the identity of the sole member, must either be recorded in the file or entered in the register as referred to in Article 3(1) and (2) of Directive 68/151/EEC or be entered in a register kept by the company and accessible to the public.</p> | <p>2009/102/EC Art. 6 Where a Member State allows single-member companies as defined by Article 2(1) in the case of public limited companies as well, this Directive shall apply.</p> |
| <p>Article 7. Joint Stock Company Shares Alienation Procedure</p> | | |
| <p>1. Shareholders of a public joint stock company may alienate</p> | <p>n/a</p> | |

shares held by them without the consent of other shareholders of the company.

2. The charter of a private joint stock company may provide for the pre-emptive right of its shareholders to the acquisition of shares in the company offered by the holder thereof for sale to a third party. If the charter of a private joint stock company provides for the pre-emptive right of its shareholders to the purchase of shares offered by the holder thereof for sale to a third party, the said pre-emptive right shall be exercised in accordance with parts three to six of this article. The procedure of the exercise of the pre-emptive right of shareholders to the acquisition of shares in a private joint stock company offered by the holder thereof for disposal (other than by way of sale) to a third party shall be specified by the charter of the said company.

3. Shareholders of a private joint stock company shall enjoy the pre-emptive right to the acquisition of shares sold by other shareholders of the company at the price and on conditions offered by the shareholder to a third party in proportion to the number of shares held by each shareholder. The pre-emptive right of shareholders to the acquisition of shares sold by other shareholders of the company shall remain in force for two months since the date of the company's receipt of the shareholder's notice of intent to sell shares, unless a shorter period is prescribed by the company charter.

The validity period of the pre-emptive right envisaged by the company charter may not be shorter than 20 days of receipt of the relevant notice by the company. The pre-emptive right period shall be terminated, if written statements of the use or the waiver of the pre-emptive share purchase right have been received before the expiry of the said period from all shareholders of the company.

4. A shareholder of a private joint stock company intent on selling his shares to a third party must notify thereof in writing the rest of the company shareholders with the indication of the price and other conditions of the sale of shares. The notification of company shareholders shall be carried out via the company. On receipt of a written notice from a shareholder intent on selling the shares to a third party, the company must send copies of the notice to all other shareholders of the company within two business days. The notification

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| <p>of shareholders shall be carried out at the expense of the shareholder intent on selling the shares, unless otherwise provided by the company charter.</p> <p>If shareholders of the private joint stock company fail to make use of the pre-emptive right to the acquisition of all shares offered for sale within the time frame prescribed by this Law or the charter of the joint stock company, the shares can be sold to a third party at a price and on conditions notified to shareholders of the company.</p> <p>5. In case of the violation of the pre-emptive right to the acquisition of shares envisaged by this article, any shareholder of the company shall have the right to require the rights and duties of the buyer of shares to be vested in them by way of judicial procedure within three months of the date, when the shareholder in question became aware or should have become aware of such transgression.</p> <p>6. No cession of the said pre-emptive right to other parties shall be permitted.</p> <p>7. The said pre-emptive right of shareholders of a private company shall not apply to events of the conveyance of the ownership of securities of the said company as a result of the inheritance or the succession.</p> <p>8. In case of the emergence of the right to collect shares in a private joint stock company due to their being pledged, the shares shall be disposed of subject to the exercise of the pre-emptive right of shareholders to the acquisition of such shares.</p> <p>9. No pre-emptive right of a joint stock company to the acquisition of shares of own issue offered by the owner thereof for the disposal to the third parties shall be allowed.</p> | | |
| <p>Article 8. Determination of the Market Value of the Property</p> | | |
| <p>1. The market value of the property in case of its valuation in accordance with this Law, other acts of legislation or the charter of the joint stock company shall be determined on the basis of an independent valuation carried out in accordance with the legislation on the valuation of property, property interests and professional valuation activities.</p> <p>The decision on involvement of an appraiser being a business</p> | <p>Directive 2012/30/EU (“Capital Directive”) Art. 10 1. A report on any consideration other than in cash shall be drawn up before the company is incorporated or is</p> | <p>Nothing to mention</p> |

company shall be made by the supervisory council of the company (in the course of the establishment of the company, the said decision shall be made by the meeting of founders or, in case of the establishment of a joint stock company by a single person, by the founder in person).

2. The market value of equity securities shall be determined as follows:

1) for issued securities not circulating in stock exchanges as the value of securities determined in accordance with the legislation on the valuation of property, property interests and professional valuation activities;

2) for issued securities circulating in stock exchanges as the value of securities determined in accordance with the legislation on the securities and the stock market.

3. The supervisory council or the general shareholder meeting, if the company charter does not provide for the establishment of the supervisory council (or the constituting meeting in the course of the establishment of the company) shall approve the market value of the property (including securities) determined in accordance with parts one and two of this article. The approved value of the property may not differ by more than 10 per cent from the value determined by the appraiser. If the approved market value of the property differs from the property value determined in accordance with the legislation on valuation of property, property interests and professional valuation activities, the supervisory council or the general shareholder meeting, if the company charter does not provide for the establishment of the supervisory council (or the constituting meeting in the course of the establishment of the company), shall substantiate its decision.

authorised to commence business, by one or more independent experts appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State.

2. The experts' report referred to in paragraph 1 shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of those methods correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them.

3. The experts' report shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC.

See also par. 4 for possible opt-outs.

art. 11

1. Member States may decide not to apply Article 10(1), (2) and (3) of this Directive where, upon a decision of the administrative or management body, transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (11) or money-market

instruments as defined in point 19 of Article 4(1) of that Directive are contributed as consideration other than in cash, and those securities or money-market instruments are valued at the weighted average price at which they have been traded on one or more regulated markets as defined in point 14 of Article 4(1) of that Directive during a sufficient period, to be determined by national law, preceding the effective date of the contribution of the respective consideration other than in cash.

However, where that price has been affected by exceptional circumstances that would significantly change the value of the asset at the effective date of its contribution, including situations where the market for such transferable securities or money-market instruments has become illiquid, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body.

For the purposes of such revaluation, Article 10(1), (2) and (3) shall apply.

2. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets other than the transferable securities and money-market instruments referred to in paragraph 1 of this Article are contributed as consideration other than

in cash which have already been subject to a fair value opinion by a recognised independent expert and where the following conditions are fulfilled:

(a) the fair value is determined for a date not more than six months before the effective date of the asset contribution; and

(b) the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State which are applicable to the kind of assets to be contributed.

In the case of new qualifying circumstances that would significantly change the fair value of the asset at the effective date of its contribution, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body.

For the purposes of such revaluation, Article 10(1), (2) and (3) shall apply.

In the absence of such a revaluation, one or more shareholders holding an aggregate percentage of at least 5 % of the company's subscribed capital on the day the decision on the increase in the capital is taken may demand a valuation by an independent expert, in which case Article 10(1), (2) and (3) shall apply.

Such shareholder(s) may submit a demand up until the effective date of

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| | <p>the asset contribution, provided that, at the date of the demand, the shareholder(s) in question still hold(s) an aggregate percentage of at least 5 % of the company's subscribed capital as it was on the day the decision on the increase in the capital was taken.</p> <p>3. Member States may decide not to apply Article 10(1), (2) and (3) where, upon a decision of the administrative or management body, assets other than the transferable securities and money-market instruments referred to in paragraph 1 of this Article are contributed as consideration other than in cash whose fair value is derived by individual asset from the statutory accounts of the previous financial year provided that the statutory accounts have been subject to an audit in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.</p> <p>The second to fifth subparagraphs of paragraph 2 of this Article shall apply mutatis mutandis.</p> | |
| Section 2. Establishment of a Joint Stock Company | | |
| Article 9. Establishment of a Joint Stock Company | | |
| 1. The state in the person of the agency authorized to manage the state-owned property or the territorial community in the person of the agency authorized to manage the community-owned property, as well as individuals and/or legal entities that made a decision to establish | n/a | Provisions on foundation of companies are spread out in different legal acts, it is necessary to check whole system. For the sake of clarity, as well as avoidance |

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| <p>a joint stock company shall be the founders of the joint stock company.</p> <p>2. One, two or more entities may be the founders of a joint stock company.</p> <p>3. Founders may enter into the memorandum of association setting out the procedure of the exercise of joint activities related to the establishment of the joint stock company, the number, the type and the class of shares to be acquired by each founder, the par value and the acquisition value of such shares, the deadline for, and the form of, the payment of the value of the shares, and the validity period of the memorandum.</p> <p>In order to establish a joint stock company, the founders must hold a closed (private) placement of its shares, the constituting meeting and undertake the state registration of the joint stock company.</p> <p>The memorandum of association is not a constituting document of the company; it shall be valid until the registration date of the closed (private) share placement report by the National Commission for Securities and Stock Market.</p> <p>The memorandum of association shall be concluded in writing. If the company is established with the participation of individuals, their signatures under the memorandum of association shall be notarised.</p> <p>No memorandum of association shall be concluded in case of the establishment of the company by a single individual.</p> <p>4. In case of the establishment of a joint stock company, its shares must be placed solely among its founders by means of the private placement. The public placement of shares in a company may take place after the obtainment of the certificate of the registration of the first issue of shares.</p> <p>Specific features of the establishment of a joint stock company by means of the merger, the division, the spin off or the transformation of a business company (companies), state-owned and community-owned enterprises into a joint stock company shall be specified by the National Commission for Securities and Stock Market; those of the establishment of a joint stock company with the participation of state-owned and/or community-owned enterprises shall be specified by the</p> | | <p>of gaps and overlaps, all provisions should be contained in the Law on JSC.</p> |
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National Commission for Securities and Stock Market in concurrence with the State Property Fund of Ukraine.

5. A joint stock company shall be established in the following stages:

1) decision of the meeting of founders to establish a joint stock company and to perform the closed (private) placement of shares;

2) submission of the application and all necessary documents for the registration of the issue of shares to the National Commission for Securities and Stock Market;

3) registration of the issue of shares by the National Commission for Securities and Stock Market, and the issue of the provisional share issue registration certificate;

4) assignment of the international securities identification number to shares;

5) entry into a contract with a securities depository for the service of the issue of shares or a contract with the registrar of the registered securities for the maintenance of the register of holders of registered securities;

6) closed (private) placement of shares among founders of the company;

7) payment of the full par value of shares by founders;

8) the approval of results of the closed (private) share placement among founders of the company by the constituting meeting of the company, the approval of the charter of the company, and the other decisions envisaged by law;

9) registration of the company and its charter with the state registration agencies;

10) submission of the closed (private) share placement results report to the National Commission for Securities and Stock Market;

11) registration of the closed (private) share placement results report by the National Commission for Securities and Stock Market;

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| <p>12) obtainment of the share issue state registration certificate;</p> <p>13) issue of documents confirming the ownership of shares to founders of the company.</p> <p>Actions that violate the procedure of the establishment of a joint stock company prescribed hereby shall constitute the basis for a decision of the National Commission for Securities and Stock Market to deny registration of the closed (private) share placement report. In case of such a decision, the National Commission for Securities and Stock Market shall bring action with court for the liquidation of the joint stock company.</p> <p>6. In case of the establishment of a joint stock company by a single entity, the decisions to be made by the meeting of founders shall be made by the entity unilaterally in the form of a decision to establish a company. If an individual is a sole founder of the company, then his signature under the decision to establish the company shall be notarized.</p> | | |
| Article 10. Constituting Meeting of a Joint Stock Company | | |
| <p>1. The constituting meeting of a joint stock company must be held within three months of the date of the full payment for shares by founders.</p> <p>The number of votes of a founder at the constituting meeting of the joint stock company shall be determined by the number of shares in the company to be purchased by the founder in question.</p> <p>2. The issues related to the following shall be solved at the constituting meeting of the joint stock company:</p> <ol style="list-style-type: none"> 1) establishment of the company; 2) approval of the valuation of the property contributed by founders by way of the payment for shares in the company; 3) approval of the charter of the company; 4) establishment of bodies of the company; 5) empowerment of a representative (representatives) for the exercise of further activities related to the establishment of the | n/a | National discretion |

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| <p>company;</p> <p>6) election of members of the supervisory council, the chairman of the collegiate executive body of the company (the individual who exercises powers of the single-person executive agency of the company), members of the examining commission (examiner);</p> <p>7) the approval of results of the placement of shares;</p> <p>8) election of the counting commission;</p> <p>9) performance of other actions needed to establish the company.</p> <p>3. Decisions on issues referred to in items 1 to 3 of part two of this article shall be deemed to have been made if supported by all founders of the joint stock company. Decisions on other issues shall be made by the simple majority vote of founders, unless otherwise provided by the memorandum of association.</p> <p>4. In case of the establishment of a joint stock company by a single entity, the decisions listed in part two of this article shall be made by the entity unilaterally in the form of a decision to establish a company. If an individual is a sole founder of the company, then his signature under the decision to establish the company shall be notarised.</p> <p>The failure of the constituting meeting to approve the charter of a joint stock company shall be deemed to constitute the refusal of founders to establish the company in question and the ground for the refund of contributions lodged by founders by way of the payment for shares. The contributions shall be returned within 20 business days of the date of the constituting meeting that has failed to make a decision to approve the charter of the joint stock company.</p> | | |
| <p>Article 11. Payment for Shares by Founders of the Joint Stock Company</p> | | |
| <p>1. The payment for shares placed in the course of the establishment of a joint stock company may be effected with cash, securities (other than debt equity securities issued by the founder, and promissory notes), the appraisable property, property interests, and intangible assets.</p> | | |

The payment for the shares being placed during the establishment of a joint stock company may not be made at a price lower than the par value thereof.

The payment for shares being placed during the establishment of a joint stock company may not be made by way of the assumption of liabilities related to the performance of work or the provision of services for the company.

2. The value of the property contributed by founders of the joint stock company by way of payment for shares in the company must match the market value of the property in question determined under Article 8 hereof.

3. Each founder of the joint stock company must pay the full value of the acquired shares before the date of approval of results of the placement of the first issue of shares. In case of the failure to pay (the incomplete payment) of the value of the acquired shares before the date of the approval of results of the placement of the first issue of shares, the joint stock company shall be deemed not to be established. The company shall not have the right to engage into transactions not related to the establishment thereof until **50 per cent** of the charter capital is paid up.

The founder shall enjoy all rights certified with shares other than the right to alienate and encumber them until the registration of the share placement results report.

4. A document confirming the ownership of shares by the founder of the joint stock company shall be issued thereto after the complete payment for such shares within 10 business days of receipt of the share issue state registration certificate by the company.

Directive 2012/30/EU (“Capital Directive”)

art. 7 The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of those assets.

art. 8 Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par.

art. 9 Shares issued for a consideration must be paid up at the time the company is incorporated or is authorised to commence business at not less than **25 %** of their nominal value or, in the absence of a nominal value, their accountable par.

However, where shares are issued for a consideration other than in cash at the time the company is incorporated or is authorised to commence business, the consideration must be transferred in full within five years of that time.

art. 4

1. Where the laws of a Member State prescribe that a company may not commence business without authorisation, they shall also make provision for responsibility for liabilities incurred by or on behalf of the company during the period before such authorisation is granted or refused.

2. Paragraph 1 shall not apply to

According to the current regime, not only should the in-kind contributions be valued properly, but in any case, be it in-cash, be it in-kind contribution, the shares may not be issued below their nominal value or their accountable par.

25% requirement for a paid-up capital, as set by the Directive, is a minimum standard and national legislators may require more. Consequently Ukrainian Law (50% requirement) is compatible with the Directive.

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| | liabilities under contracts concluded by the company conditionally upon its being granted authorisation to commence business. | |
| Article 12. Liability of Founders of the Joint Stock Company | | |
| <p>1. Founders of the joint stock company shall be jointly liable under liabilities related to its establishment that came into existence before the state registration thereof.</p> <p>2. The joint stock company shall be liable under liabilities of founders related to its establishment solely in case of the approval of their actions by the general shareholder meeting. The general shareholder meeting that approves such liabilities of the company founders must be held within six months of the state registration of the company.</p> <p>The information about such liabilities of the company must be stated in the charter of the company.</p> | <p>Directive 2012/30/EU (“Capital Directive”) art 4</p> <p>1. Where the laws of a Member State prescribe that a company may not commence business without authorisation, they shall also make provision for responsibility for liabilities incurred by or on behalf of the company during the period before such authorisation is granted or refused.</p> <p>2. Paragraph 1 shall not apply to liabilities under contracts concluded by the company conditionally upon its being granted authorisation to commence business.</p> | <p>Ukrainian legislator acts within the discretion as permitted under the Directive</p> <p>See also overlapping provision of art. 96 CC.</p> <p>Note that some national doctrines contain more sophisticated rules, see the German <i>Vorgesellschaft</i>, see also art. 13 of the Polish Code of Commercial Companies:</p> <p>§ 1. The company and the persons who acted in its name shall be liable for the obligations of the capital company in organisation.</p> <p>§ 2. A shareholder of the capital company in organisation shall be jointly and severally liable with the parties referred to in § 1 for the obligations of the company up to the value of the contribution to finance the subscribed shares which has not been made.</p> |
| Article 13. Charter of a Joint Stock Company | | |
| <p>1. The charter shall be the constituting document of a joint stock company.</p> <p>2. The charter of a joint stock company must contain information about the following:</p> <p>1) full and abbreviated names of the company in Ukrainian;</p> <p>2) type of the company;</p> | <p>Directive 2012/30/EU (“Capital Directive”) Art. 2</p> <p>The statutes or the instrument of incorporation of the company shall always give at least the following information:</p> <p>(a) the type and name of the company;</p> | Nothing to mention. |

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| <p>3) amount of the authorized fund;</p> <p>4) value of the reserve capital, if any;</p> <p>5) the par value and the total number of shares, the quantity of each type of shares placed by the company, including the quantity of each class of preference shares and results of the failure to meet undertakings related to the share buy-out;</p> <p>6) value of dividends on preference shares of each class, if any are placed by the company;</p> <p>7) conditions and procedure of the conversion of preference shares of a certain class into ordinary shares in the company or preference shares of another class, in case of the placement of preference shares;</p> <p>8) rights of shareholders that own preference shares of each class in case of the placement of preference shares;</p> <p>9) existence of the pre-emptive right of shareholders in a private company to the acquisition of shares in the company offered by the holder thereof for sale to a third party, and the procedure of the exercise thereof, or the non-existence of the said right;</p> <p>10) procedure of the notification of shareholders of the dividend payment;</p> <p>11) procedure of convening and holding the general meeting;</p> <p>12) competence of the general meeting;</p> <p>13) method of the notification of shareholders of the general meeting and changes in the agenda of the general meeting;</p> <p>14) complement of bodies of the company and their competence, the procedure of their formation, election, revocation of their members, decision making, and the procedure of the modification of the complement of bodies of the company and their competence;</p> <p>15) procedure of the charter amendment;</p> <p>16) procedure of the company termination.</p> | <p>(b) the objects of the company;</p> <p>(c) when the company has no authorised capital, the amount of the subscribed capital;</p> <p>(d) when the company has an authorised capital, the amount thereof and also the amount of the capital subscribed at the time the company is incorporated or is authorised to commence business, and at the time of any change in the authorised capital, without prejudice to point (e) of Article 2 of Directive 2009/101/EC;</p> <p>(e) in so far as they are not legally determined, the rules governing the number of and the procedure for appointing members of the bodies responsible for representing the company with regard to third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies;</p> <p>(f) the duration of the company, except where this is indefinite.</p> <p>Art. 3 The following information at least must appear in either the statutes or the instrument of incorporation or a separate document published in accordance with the procedure laid down in the laws of each Member State in accordance with Article 3 of Directive 2009/101/EC:</p> <p>(a) the registered office;</p> <p>(b) the nominal value of the shares</p> | |
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| <p>3. The charter of a joint stock company may not provide for vesting founders of the company with additional rights or duties.</p> <p>4. The charter of a joint stock company may also contain other provisions that do not contradict the legislation.</p> | <p>subscribed and, at least once a year, the number thereof;</p> <p>(c)the number of shares subscribed without stating the nominal value, where such shares may be issued under national law;</p> <p>(d)the special conditions, if any, limiting the transfer of shares;</p> <p>(e)where there are several classes of shares, the information referred to in points (b), (c) and (d) for each class and the rights attaching to the shares of each class;</p> <p>(f)whether the shares are registered or bearer, where national law provides for both types, and any provisions relating to the conversion of such shares unless the procedure is laid down by law;</p> <p>(g)the amount of the subscribed capital paid up at the time the company is incorporated or is authorised to commence business;</p> <p>(h)the nominal value of the shares or, where there is no nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing that consideration;</p> <p>(i)the identity of the natural or legal persons or companies or firms by whom or in whose name the statutes or the instrument of incorporation, or where the company was not formed at the same time, the drafts of those documents, have been signed;</p> <p>(j)the total amount, or at least an</p> | |
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| | <p>estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorised to commence business; and</p> <p>(k) any special advantage granted, at the time the company is formed or up to the time it receives authorisation to commence business, to anyone who has taken part in the formation of the company or in transactions leading to the grant of such authorisation.</p> | |
| Section 3. Capital of the Joint Stock Company | | |
| Article 14. Charter Capital and Equity of a Joint Stock Company | | |
| <p>1. The minimum value of the charter capital of a joint stock company shall amount to 1,250 minimum salary amounts on the basis of the minimum salary level being in effect as of the establishment (registration) of the joint stock company. The charter fund of the company determines the minimum value of the property of the company that guarantees interests of its creditors.</p> <p>2. The equity (the value of net assets) of the company shall be defined as the difference between the total value of assets of the company and the value of its liabilities to other parties.</p> <p>4. The procedure of increasing (reducing) the charter capital of a joint stock company shall be specified by the National Commission for Securities and Stock Market.</p> <p>5. The charter of a joint stock company may provide for setting up a special fund for the dividend payment under preference shares. The procedure of the formation and the utilisation of such a fund shall be specified by the National Commission for Securities and Stock Market.</p> | <p>Directive 2012/30/EU (“Capital Directive) Section 1 – art. 6 par. 1 The laws of the Member States shall require that, in order that a company may be incorporated or obtain authorisation to commence business, a minimum capital shall be subscribed the amount of which shall be not less than EUR 25 000.</p> <p>Section 4 – art. 29 et seq. 1. Any increase in capital must be decided upon by the general meeting. Both that decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC. 2. Nevertheless, the statutes or instrument of incorporation or the</p> | <p>Requirements about minimum value of the charter capital are met. The general provisions on increasing and decreasing of the charter capital are prescribed in the Law on JSC. Peculiarities on increasing and decreasing of the charter capital are prescribed in the Decision of the NSSMS No. 822 dated 14.05.2013 On Approval of the Public or Private Joint Stock Company Charter Capital Increase (Reduction) Procedure).</p> <p>The question remains if the use of NSSMS Decision instead a law passed by the parliament (here Law on JSC) is sufficient from the perspective of a proper transposition. According to the case law of the Court of Justice of European Communities following criteria need to be considered: - legal certainty must be assured,</p> |

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| | <p>general meeting, the decision of which must be published in accordance with the rules referred to in paragraph 1, may authorise an increase in the subscribed capital up to a maximum amount which they shall fix with due regard for any maximum amount provided for by law. Where appropriate, the increase in the subscribed capital shall be decided on within the limits of the amount fixed by the company body empowered to do so. The power of such body in this respect shall be for a maximum period of five years and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.</p> <p>3. Where there are several classes of shares, the decision by the general meeting concerning the increase in capital referred to in paragraph 1 or the authorisation to increase the capital referred to in paragraph 2 shall be subject to a separate vote at least for each class of shareholder whose rights are affected by the transaction.</p> <p>4. This Article shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.</p> | <ul style="list-style-type: none"> - legal binding of the act is assured - the legal act has been duly, promulgated, - parties can rely on the implementing act as being enforceable before national courts, - they should have at least the same significance as the legal acts normally used for legislating a given matter. <p>.(see ECJ Judgment C-102/79, 10).</p> |
| <p>Article 15. Increase in the Charter Capital</p> | | |
| <p>1. The charter capital of the company shall be increased by means of the increase in the par value of shares or the placement of additional shares with the existing par value in accordance with the</p> | | |

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| <p>procedure prescribed by the National Commission for Securities and Stock Market.</p> <p>2. The joint stock company shall have the right to increase the charter capital after the registration of reports on results of the placement of all prior share issues.</p> <p>3. The increase in the charter capital of a joint stock company with the lodgement of additional contributions shall be carried out by means of the placement of additional shares.</p> <p>The pre-emptive right of shareholders to the acquisition of shares additionally placed by the company shall only be effective in the course of the private placement of shares and shall be instituted by the legislation.</p> <p>4. The increase in the charter capital of a joint stock company without the lodgement of additional contributions shall be carried out by means of the increase in the par value of shares.</p> <p>A joint stock company shall not have the right to make a decision to increase the charter capital by means of the public placement of shares, if the value of its equity is lower than the value of its charter capital.</p> <p>The increase in the charter capital of the joint stock company in case of the existence of shares bought out by the company shall be disallowed.</p> <p>5. No increase in the charter capital of a company shall be permitted for the coverage of losses, except for cases specified by law.</p> <p>The conformity of the charter capital after the increase thereof with requirements of part one of Article 14 hereof as of the date of the registration of changes in the charter of the company shall be an obligatory condition for the increase in the charter capital by the joint stock company.</p> | <p>Directive 2012/30/EU (“Capital Directive) art. 33. See comments to art. 27 of Law on JSC (below).</p> | <p>Pre-emptive right should be mandated by law for both private and public placement of newly issued shares. See comments to art. 27 of Law on JSC (below).</p> <p>The prohibitions on capital increases in cases whenever</p> <ul style="list-style-type: none"> (i) the value of its equity is lower than the value of its charter capital; or (ii) such an increase would be designed to cover losses of the company <p>appears inefficient and hindering corporate restructurisations. It is recommended that the prohibitions would be eliminated.</p> |
| <p>Article 16. Reduction in the Charter Capital</p> | | |
| <p>1. The charter capital of a joint stock company shall be reduced in accordance with the procedure prescribed by the National Commission for Securities and Stock Market by means of the reduction</p> | <p>Directive 2012/30/EU (“Capital Directive”) Section 1 - art. 34</p> | <p>See Regulation of the NSSMS No. 822 dated 14.05.2013 On Approval of the Public or Private Joint Stock Company</p> |

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| <p>in the par value of shares or the annulment of the shares earlier bought out by the company, and the reduction in their total number, if the charter of the company so provides.</p> <p>2. Upon decision to reduce the charter capital of the joint stock company, the executive body must notify each creditor, whose claims on the joint stock company are not secured with pledge, guarantee or surety, of such a decision in writing within 30 days.</p> <p>3. Within 30 days of receipt of the notice referred to in part two of this article, the creditor, whose claims to the joint stock company are not secured with pledge or surety contracts, may require the company in writing that one of the following measures be taken within 45 days at the discretion of the company: the securing of the liabilities by means of the entry into the pledge or surety contract, the early termination or the performance of liabilities to the creditor, unless otherwise provided by the contract between the company and the creditor.</p> <p>If the creditor has failed to submit a written demand to the company within the time frame prescribed by this part, it shall be deemed that the creditor does not require the company to take additional measures in respect of liabilities to the creditor in question.</p> <p>4. The reduction in the charter capital by the joint stock company lower than the value prescribed by law shall result in the liquidation of the company.</p> | <p>Any reduction in the subscribed capital, except under a court order, must be subject at least to a decision of the general meeting acting in accordance with the rules for a quorum and a majority laid down in Article 44 without prejudice to Articles 40 and 41. Such decision shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 2009/101/EC. The notice convening the meeting must specify at least the purpose of the reduction and the way in which it is to be carried out.</p> <p>Section 2, 3 – art. 36</p> <p>1. In the event of a reduction in the subscribed capital, at least the creditors whose claims antedate the publication of the decision on the reduction shall at least have the right to obtain security for claims which have not fallen due by the date of that publication. Member States may not set aside such a right unless the creditor has adequate safeguards, or unless such safeguards are not necessary having regard to the assets of the company. Member States shall lay down the conditions for the exercise of the right provided for in the first subparagraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to</p> | <p>Charter Capital Increase (Reduction) Procedure). On the conformity of transposing directives by means of by-laws see comments to art. 14 supra.</p> <p>See also art. 22 of the Law on State registration of the legal entities and individual entrepreneurs dated 15.05.2003 № 755-IV information about reduction of the charter capital should be published in the special national print mass-media.</p> |
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the reduction in the subscribed capital the satisfaction of their claims is at stake, and that no adequate safeguards have been obtained from the company.

2. The laws of the Member States shall also stipulate at least that the reduction shall be void, or that no payment may be made for the benefit of the shareholders, until the creditors have obtained satisfaction or a court has decided that their application should not be acceded to.

3. This Article shall apply where the reduction in the subscribed capital is brought about by the total or partial waiving of the payment of the balance of the shareholders' contributions.

Section 2,3 – art. 37

1. Member States need not apply Article 36 to a reduction in the subscribed capital whose purpose is to offset losses incurred or to include sums of money in a reserve provided that, following that operation, the amount of such reserve is not more than 10 % of the reduced subscribed capital. Except in the event of a reduction in the subscribed capital, that reserve may not be distributed to shareholders; it may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalisation of such reserve, in so far as the Member States permit such an operation.

2. In the cases referred to in paragraph 1 the laws of the Member States must

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| | <p>at least provide for the measures necessary to ensure that the amounts deriving from the reduction of subscribed capital may not be used for making payments or distributions to shareholders or discharging shareholders from the obligation to make their contributions.</p> | |
| <p>Article 17. Annulment of Shares</p> | | |
| <p>1. The joint stock company shall have the right to annul shares bought out thereby and reduce the charter capital or increase the par value of the rest of shares leaving the charter capital unchanged in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.</p> | <p>Directive 2012/30/EU (“Capital Directive”) Art. 41 1. In the case of a reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting in his own name but on behalf of the company, the withdrawal must always be decided on by the general meeting. 2. Article 36 shall apply unless the shares are fully paid up and are acquired free of charge or using sums available for distribution in accordance with Article 17(1) to (4); in those cases an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the shares withdrawn must be included in a reserve. Except in the event of a reduction in the subscribed capital, that reserve may not be distributed to shareholders. It may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalisation of such reserve, in so far as the Member States permit such an</p> | <p>See Decision of the NSSMS No. 822 dated 14.05.2013 On Approval of the Public or Private Joint Stock Company Charter Capital Increase (Reduction) Procedure). All requirements of the Directive are met by the said NSSMS Regulation On the conformity of transposing directives by means of by-laws see comments to art. 14 supra.</p> |

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| | operation. 3. Articles 35, 37 and 44 shall not apply to the cases to which paragraph 1 of this Article refers. | |
| Article 18. Share Consolidation and Split | | |
| <p>1. The joint stock company shall have the right to consolidate all shares placed thereby resulting in the conversion of two or more shares into a single new share of the same type and class.</p> <p>The exchange of shares of the old par value for an integer number of shares of the new par value for each shareholder shall be the obligatory condition of the consolidation.</p> <p>2. The joint stock company shall have the right to split all shares placed thereby resulting in the conversion of a single share into two or more shares of the same type and class.</p> <p>3. The share consolidation and the share split must not result in the alteration of the charter capital of the joint stock company.</p> <p>4. In case of the share consolidation or split, the charter of the joint stock company shall be properly amended in respect of the par value and the number of the placed shares.</p> <p>5. The procedure of the company share split and consolidation shall be specified by the National Commission for Securities and Stock Market.</p> | n/a | National discretion. |
| Article 19. Reserve Capital | | |
| <p>1. The reserve capital shall be formed at the level of at least 15 per cent of the charter capital of the company by means of annual allocations from the net profit of the company or at the expense of the retained earnings. The amount of annual charges may not be lower than 5 per cent of the annual net profit of the company until the attainment of the reserve capital value prescribed by the charter.</p> <p>2. The reserve capital shall be set up to cover losses of the company and to pay out dividend on the preference shares. Laws may additionally provide for other lines of use of the reserve capital.</p> | n/a | National discretion |

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| <p>3. A joint stock company, which only places ordinary shares, may set up the reserve capital in accordance with the procedure prescribed by part one of this article.</p> <p>4. A joint stock company, which places both ordinary and preference shares, must set up the reserve capital in accordance with the procedure prescribed by part one of this article.</p> | | |
| Section 4. Shares of the JSC | | |
| <p>Article 20. Shares of the Company</p> | | |
| <p>1. A share of a company shall certify corporate rights of a shareholder in respect of the said joint stock company.</p> <p>2. All shares of the company shall be registered. Shares of companies shall only exist in a non-documentary form.</p> <p>3. A joint stock company may place shares of two types: ordinary and preference shares. The company charter may provide for the placement of one or several classes of preference shares vesting their holders with different rights.</p> <p>The company may not set restrictions in respect of the number of shares or the number of votes under shares held by a single shareholder.</p> <p>4. Ordinary shares of the company shall not be convertible into preference shares or other securities of the joint stock company.</p> <p>5. The share of the preference shares in the charter capital of a joint stock company may not exceed 25 per cent.</p> | n/a | Nothing to mention. |
| <p>Article 21. Issue of Securities</p> | | |
| <p>1. A joint stock company may only issue shares on the basis of a decision of the general meeting.</p> <p>The company may place securities other than shares on the basis of a decision of the supervisory council, unless otherwise provided by its charter. A decision to place securities in the amount exceeding 25 per cent of the value of the company's assets shall be made by the general shareholder meeting.</p> <p>2. Joint stock companies shall be permitted to issue shares and</p> | <p>Directive 2012/30/EU (“Capital Directive”) art. 29</p> <p>1. Any increase in capital must be decided upon by the general meeting. Both that decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive</p> | |

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| <p>bonds for the transformation of liabilities of the company into securities in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.</p> | <p>2009/101/EC.</p> <p>2. Nevertheless, the statutes or instrument of incorporation or the general meeting, the decision of which must be published in accordance with the rules referred to in paragraph 1, may authorise an increase in the subscribed capital up to a maximum amount which they shall fix with due regard for any maximum amount provided for by law. Where appropriate, the increase in the subscribed capital shall be decided on within the limits of the amount fixed by the company body empowered to do so. The power of such body in this respect shall be for a maximum period of five years and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.</p> <p>[...]</p> <p>4. This Article shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe</p> | <p>Authorised capital may be introduced pursuant to art. 29 par. 2 of the Capital Directive.</p> <p>Securities other than shares may be issued pursuant to art. 21 par. 1 of the Law on JSC (<i>“the company may place securities other than shares on the basis of a decision of the supervisory council, unless otherwise provided by its charter. A decision to place securities in the amount exceeding 25 per cent of the value of the company's assets shall be made by the general shareholder meeting”</i>), but this may not apply to convertible bonds (see art. 29 par. 4 of the Capital Directive).</p> |
| <p>Article 22. Price for Shares</p> | | |
| <p>1. A joint stock company shall place or sell each share, which it has bought out, at a price not lower than its market price to be approved by the supervisory council, except for the following cases:</p> | | <p>Nothing to mention.</p> |

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| <p>the placement of shares during the establishment of the company;</p> <p>the placement of shares in the course of the merger, the affiliation, the division, the spin off of the company;</p> <p>2. A joint stock company shall not have the right to place shares at a price lower than their par value.</p> | <p>See also provisions aiming at assuring fair value of the shares in mergers and divisions: Directive 2011/35/EU (Merger Directive): art. 9, art. 10 82/891/EEC (Sixth Directive on Divisions): art. 7, art. 8 Directive (see reference to the above in art. 10 par. 1 of the Capital Directive: 5. Member States may decide not to apply this Article to the formation of a new company by way of merger or division where a report by one or more independent experts on the draft terms of merger or division is drawn up).</p> <p>Directive 2012/30/EU (“Capital Directive”), art. 8 Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par.</p> | |
| Article 23. Payment for Securities | | |
| <p>1. In case of the placement of securities by a joint stock company, they shall be paid with cash or, subject to an agreement between the company and the investor, with property interests, non-property interests with the monetary value, securities (other than debt equity securities issued by the acquiring party, and promissory notes, except for government bonds to be exchanged for shares in Naftogaz of Ukraine National Joint Stock Company and Ukrhydroenergo National Joint Stock Company in cases specified by law), and with other property.</p> <p>The investor may not pay for securities by assuming liabilities in respect of the performance of work or the provision of services for the company.</p> <p>The charter of the joint stock company may set other</p> | <p>Directive 2012/30/EU (“Capital Directive”) art. 7 The subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of those assets.</p> | |

restrictions in respect of forms of payment for securities. The company may not institute a restriction or a prohibition of the payment for securities with cash.

2. The placed shares must be fully paid up by the time of the approval of the share placement results by the issuer's body authorised to make such a decision.

3. If the property is contributed by way of payment for securities, the value of the property in question must match the market value of the said property determined under Article 8 hereof.

The monetary valuation of claims against the company that have come into being before the placement of securities and with which securities of the company are paid shall be carried out in accordance with the procedure set out in paragraph one of this article for the property valuation.

4. The ownership of securities by the acquiring party in the course of the securities placement shall come into existence in accordance with the procedure and within time frames specified by the legislation on the depository system of Ukraine.

5. The joint stock company may not grant loans for the acquisition of its securities or the surety under loans granted by a third party for the acquisition of its shares.

art. 10 – expert examination to assure the proper valuation of the contribution in kind.

Art. 25 (financial assistance)
Article 25

1. Where Member States permit a company to, either directly or indirectly, advance funds or make loans or provide security, with a view to the acquisition of its shares by a third party, they shall make such transactions subject to the conditions set out in paragraphs 2 to 5.

2. The transactions shall take place under the responsibility of the administrative or management body at fair market conditions, especially with regard to interest received by the company and with regard to security provided to the company for the loans

Capital protection rules are predominantly designed to protect corporate creditors. Consequently, if the value assumed by the founders of the company is less than the market value of the contribution in kind, than the interest of the shareholder is affected and not that of the company. So the directive sets a minimum standard here.

Rules on financial assistance have been loosened with the 2006 reform of the Capital Directive (see recommendations of the SLIM Group as well as the HLG)

and advances referred to in paragraph 1.

The credit standing of the third party or, in the case of multiparty transactions, of each counterparty thereto shall have been duly investigated.

3. The transactions shall be submitted by the administrative or management body to the general meeting for prior approval, whereby the general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 44.

The administrative or management body shall present a written report to the general meeting, indicating:

- (a) the reasons for the transaction;
- (b) the interest of the company in entering into such a transaction;
- (c) the conditions on which the transaction is entered into;
- (d) the risks involved in the transaction for the liquidity and solvency of the company; and
- (e) the price at which the third party is to acquire the shares.

That report shall be submitted to the register for publication in accordance with Article 3 of Directive 2009/101/EC.

4. The aggregate financial assistance granted to third parties shall at no time result in the reduction of the net assets below the amount specified in Article 17(1) and (2), taking into account also any reduction of the net assets that may have occurred through the acquisition,

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| | <p>by the company or on behalf of the company, of its own shares in accordance with Article 21(1).</p> <p>The company shall include, among the liabilities in the balance sheet, a reserve, unavailable for distribution, of the amount of the aggregate financial assistance.</p> <p>5. Where a third party by means of financial assistance from a company acquires that company's own shares within the meaning of Article 21(1) or subscribes for shares issued in the course of an increase in the subscribed capital, such acquisition or subscription shall be made at a fair price.</p> <p>6. Paragraphs 1 to 5 shall not apply to transactions concluded by banks and other financial institutions in the normal course of business, nor to transactions effected with a view to the acquisition of shares by or for the company's employees or the employees of an associate company.</p> <p>However, those transactions may not have the effect of reducing the net assets below the amount specified in Article 17(1).</p> <p>7. Paragraphs 1 to 5 shall not apply to transactions effected with a view to acquisition of shares as described in point (h) of Article 22(1)</p> | |
| <p>Article 24. Specific Features of the Circulation of Securities of Joint Stock Companies</p> | | |
| <p>1. Shares in a public joint stock company may be bought and sold at the stock exchange.</p> <p>A public joint stock company must undergo the share listing</p> | | |

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| <p>procedure with at least one stock exchange.</p> <p>2. Shares of a private joint stock company may not be bought and/or sold at the stock exchange, except for the sale by means of holding an auction at the exchange.</p> <p>3. The joint stock company shall not have the right to accept own securities as pledge.</p> <p>4. Legal instruments related to shares shall be executed in writing.</p> | <p>Directive 2012/30/EU (“Capital Directive”)</p> <p>art. 27 par. 1 The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as an acquisition for the purposes of Article 21, Article 22(1), and Articles 24 and 25.</p> | <p>The Directive sets a minimum standard – more strict national law is allowed under the Directive, although it is questionable if a wholesale prohibition is justified as a policy option.</p> |
| <p>Section 5. Rights and obligations of the shareholders.</p> | | |
| <p>Article 25. Rights of Holders of Ordinary Shares</p> | | |
| <p>1. Each ordinary share in a joint stock company shall vest its owner being the shareholder with the same totality of rights, including the rights:</p> <p>1) to take part in the management of the joint stock company;</p> <p>2) to receive dividends;</p> <p>3) to receive a portion of the property or the value a portion of the property of the company in case of the liquidation of the company;</p> <p>4) to obtain information about business activities of the joint stock company.</p> <p>One ordinary share in the company shall vest a shareholder with a single vote for the solution of each issue at the general meeting, except for the cumulative voting events.</p> <p>Shareholders that own ordinary shares in the company may also have other rights envisaged by acts of the legislation and the charter of the joint stock company.</p> | <p>n/a</p> | <p>National discretion</p> |

Article 26. Rights of Holders of Preference Shares

1. Each preference share of the same class shall vest its owner being the shareholder with the same totality of rights.

2. The charter of the joint stock company shall specify the extent of rights vested in a shareholder that owns each class of preference shares, including:

1) the amount and the priority of the dividend payment;

2) the liquidation value and the priority of disbursements in case of the company liquidation;

3) cases and conditions of the conversion of preference shares of the class in question into preference shares of another class, ordinary shares or other securities;

4) the information obtainment procedure.

3. A joint stock company shall pay dividend on preference shares, except for events covered with part two of Article 31 of this Law, in the amount specified by the charter.

4. Shareholders that own preference shares in the company shall only have the vote in events covered with part five of this article and the charter of the joint stock company.

One preference share of the company shall give a shareholder one vote for solving each issue. The charter of a joint stock company may provide for a special vote counting procedure: either together or separately from votes under ordinary and/or preference shares of other classes.

5. Shareholders that own preference shares of a certain class shall have the vote in case of the solution of the following issues by the general meeting of the joint stock company:

1) the termination of the company that provides for the conversion of preference shares of the class in question into preference shares of another class, ordinary shares or other securities;

2) the introduction of amendments into the charter of the company that restrict the rights of shareholders that own the preference

n/a

National discretion

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| <p>shares of the class in question;</p> <p>3) the introduction of changes into the company charter that provide for the placement of a new class of preference shares, whose owners will have preference in terms of the priority of the receipt of dividends or disbursements in case of the company liquidation or the increase in the extent of rights of shareholders that own the placed classes of preference shares that have preference in terms of the priority of the receipt of dividends or disbursements in case of the company liquidation.</p> <p>The charter of a private company may vest a shareholder that owns preference shares with the vote on other issues as well.</p> <p>6. A decision of the general meeting of a joint stock company made with the participation of shareholders that own preference shares and have the vote under part five of this article shall be deemed to have been made, if it has been supported with three quarters of votes of shareholders that own preference shares and took part in the voting procedure, provided that the charter of a company with 25 or fewer shareholders does not contain a requirement for a larger number of votes of holders of preference shares needed to make a decision.</p> <p>During the voting of shareholders that own preference shares of several classes in accordance with part five of this article, the votes under such shares shall be counted together, unless otherwise prescribed by the company charter.</p> <p>7. In case of the modification of the type of a joint stock company from private to public, the grant of rights not accorded by this Law to shareholders that own preference shares in a public company shall be terminated.</p> | | |
| <p>Article 27. Pre-emptive Right of Shareholders in Case of the Additional Share Issue</p> | | |
| <p>1. The following rights of shareholders shall be considered as pre-emptive:</p> <p>the right of a shareholder that owns ordinary shares to acquire ordinary shares placed by the company in proportion to the percentage of ordinary shares held thereby in the total number of ordinary shares;</p> | <p>Directive 2012/30/EU (“Capital Directive”) art 33 1. Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to</p> | <p>Shareholders have pre-emptive right in all cases, at least whenever capital is increased by contributions in-cash. Many Member States’ laws (e.g. Germany, Austria, Poland, Croatia) provide for pre-emptive rights for in-</p> |

the right of a shareholder that owns preference shares to acquire preference shares of the same or another class placed by the company, if shares of such class vest their holders with preferences in respect of the priority of the receipt of dividends or disbursements in case of the company liquidation, in proportion to the percentage of preference shares of a certain class held by the shareholder in the total number of preference shares of the class in question.

2. The pre-emptive right shall be granted to a shareholder that owns ordinary shares in the process of the private placement on an obligatory basis in accordance with the procedure prescribed by the legislation.

The pre-emptive right shall be granted to a shareholder that owns preference shares in the course of the private placement of preference shares by the company, if the charter of the joint stock company so provides.

The company shall notify each eligible shareholder in writing of the possibility of the exercise of the pre-emptive right and publish the notice thereof in an official printed bulletin not later than 30 days prior to the commencement of the share placement with granting shareholders the pre-emptive right.

The notice must contain details of the total number of shares being placed by the company, the placement price, the rules of determining the number of securities, for whose acquisition the shareholder enjoys the pre-emptive right, the time frames and the procedure of the exercise of the said right. In case of the placement of preference shares, the notice must contain the information about the rights vested in holders of the said securities.

3. A shareholder intent on exercising its pre-emptive right shall submit a share acquisition statement to the joint stock company by the specified deadline and transfer funds in the amount that equals the value of securities being purchased to the appropriate account. The application of the shareholder must specify its name, place of residence (seat), the number of securities to be purchased thereby. The application and the transferred funds shall be accepted by the company not later than on the day that precedes the securities placement commencement

shareholders in proportion to the capital represented by their shares.

2. The laws of a Member State:

(a) need not apply paragraph 1 to shares which carry a limited right to participate in distributions within the meaning of Article 17 and/or in the company's assets in the event of liquidation; or

(b) may permit, where the subscribed capital of a company having several classes of shares carrying different rights with regard to voting, or participation in distributions within the meaning of Article 17 or in assets in the event of liquidation, is increased by issuing new shares in only one of these classes, the right of pre-emption of shareholders of the other classes to be exercised only after the exercise of that right by the shareholders of the class in which the new shares are being issued.

3. Any offer of subscription on a pre-emptive basis and the period within which that right must be exercised shall be published in the national gazette appointed in accordance with Directive 2009/101/EC. However, the laws of a Member State need not provide for such publication where all of a company's shares are registered. In such case, all the company's shareholders must be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the

kind contributions as well (the Directive sets a minimum standard here). This (i.e. embracing in-kind contributions as well) should be recommended as it is a clear-cut rule capable of protecting minority shareholders from dilution of their stock, both in terms of vote and value.

Pre-emptive right should be granted to shareholders in private and public JSC companies alike (see Annex I to the Capital Directive).

Pre-emptive right should be given to shareholders of ordinary shares as well as to holders of preferred shares.

Pre-emptive right should allow to maintain the *status quo* in the company both in terms of influence (voting rights proportions) and value (protection against dilution, protection against expropriation by means of repeated stock dilution).

Whenever possible. The new issue should reflect the pre-existing structure of stock.

day. The company shall issue an undertaking in writing to the shareholder in respect of the sale of the appropriate number of securities.

4. In case of the violation of the procedure of the exercise of the pre-emptive right by shareholders on the part of the joint stock company, the National Commission for Securities and Stock Market may make a decision finding the issue to be unfair and suspending the placement of shares of the issue in question.

date of dispatch of the letters to the shareholders.

4. The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. The general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 44. Its decision shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC.

5. The laws of a Member State may provide that the statutes, the instrument of incorporation or the general meeting, acting in accordance with the rules for a quorum, a majority and publication set out in paragraph 4, may give the power to restrict or withdraw the right of pre-emption to the company body which is empowered to decide on an increase in subscribed capital within the limit of the authorised capital. That power may not be granted for a longer period than the power for which provision is made in Article 29(2).

6. Paragraphs 1 to 5 shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but

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| | <p>not to the conversion of such securities, nor to the exercise of the right to subscribe.</p> <p>7. The right of pre-emption is not excluded for the purposes of paragraphs 4 and 5 where, in accordance with the decision to increase the subscribed capital, shares are issued to banks or other financial institutions with a view to their being offered to shareholders of the company in accordance with paragraphs 1 and 3.</p> | |
| Article 28. Protection of Rights of Shareholders Being Employees of the Company | | |
| <p>1. Officers of bodies of the joint stock company and other parties that have labour relations with the company shall not have the right to require a shareholder being the company employee to provide information about the way he/she has voted or is going to vote at the general meeting, or the alienation of shares by a shareholder being the company employee or the intent to alienate them, or demand a power of attorney for the participation in the general meeting.</p> <p>In case of the violation of requirements of this article, the officer of the company shall be drawn to the administrative and pecuniary liability, dismissed from his position, and the contract governed by the civil law or the labour contract with the said officer shall be terminated in accordance with the law.</p> | n/a | Nothing to mention |
| Article 29. Duties of Shareholders | | |
| <p>1. The shareholders shall be obliged:</p> <p>to adhere to the charter, other internal documents of the joint stock company;</p> <p>to abide by decisions of general meetings and other bodies of the company;</p> <p>to meet their liabilities to the company, including those related to the in-kind participation;</p> | n/a | Nothing to mention |

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| <p>to pay for shares in the amount, in accordance with the procedure and using the means envisaged by the charter of the joint stock company;</p> <p>not to divulge commercial secrets and the confidential information about the operations of the company.</p> <p>The company charter may provide for the possibility of the conclusion of a shareholder agreement vesting shareholders with additional duties, such as the duty to take part in the general meeting and envisaging liability for the failure to abide thereby.</p> <p>2. Shareholders may also have other duties under this Law and other laws.</p> | | |
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Section 6. Dividends of the JSC

Article 30. Dividend Payment Procedure

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| <p>1. "Dividend" shall be understood as a portion of the net profit of a joint stock company paid out to the shareholder per share of a certain type and/or class held by the shareholder. The same amount of dividends shall accrue on shares of the same type and class.</p> <p>The company shall pay dividends in cash only.</p> <p>The dividend shall be paid on shares, whose placement result report has been registered in accordance with the procedure prescribed by the legislation.</p> <p>2. The dividends on ordinary shares shall be paid from the net profit of the reporting year and/or from the retained earnings on the basis of a decision of the general meeting of a joint stock company within six months of the date of the decision of the general meeting to pay dividends.</p> <p>The dividends on preference shares shall be paid from the net profit of the reporting year and/or the retained earnings in accordance with the charter of a joint stock company within six months of the end of the reporting year.</p> <p>In case of the lack or the insufficiency of the net profit of the reporting year and/or the retained earnings of prior years, the dividend on preference shares shall be paid at the expense of the reserve capital</p> | <p>Directive 2012/30/EU (“Capital Directive” Art. 17</p> <p>1. Except for cases of reductions of subscribed capital, no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under the law or the statutes.</p> <p>2. Where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, that amount shall be deducted from the amount of subscribed capital referred to in paragraph 1.</p> <p>3. The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the</p> | |
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of the company or the special preference share dividend fund.

3. The decision to pay out dividends and the amount thereof under ordinary shares shall be made by the general meeting of the joint stock company.

The amount of dividends under preference shares of all classes shall be specified in the charter of the joint stock company.

4. The date of the compilation of the list of parties eligible for dividends, the procedure and the time frame of the disbursement thereof shall be specified by the supervisory council of the joint stock company for each dividend payment. The date of the compilation of the list of the parties eligible for dividends under ordinary shares may not precede the date of the decision of the general meeting to pay out dividends. The list of the parties eligible for dividends under preference shares must be compiled within one month of the end of the reporting year.

The list of the parties eligible for dividends shall be drawn up in accordance with the procedure prescribed by the legislation on the depository system of Ukraine.

The company shall notify the parties entitled to dividends of the date, the amount, the procedure and the time frames of the disbursement thereof. The public joint stock company shall notify the stock exchange (exchanges) in whose exchange register (registers) such a company is listed, of the date, the amount, the procedure and the time frame of the dividend payment on ordinary shares within 10 days of the decision to pay out dividends on ordinary shares.

In case of the disposal of shares owned by a shareholder after the date of the compilation of the list of the parties eligible for dividends, but before the dividend payment date, the eligibility for the dividends shall be vested in the listed party.

5. In order to disburse dividends, the company shall transfer dividends in accordance with the procedure prescribed by the legislation on the depository system of Ukraine to the Central Securities Depository to an account held with the Financial Market Contract Settlement Centre for credits to accounts of depository institutions and

last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes.

4. The expression 'distribution' used in paragraphs 1 and 3 includes in particular the payment of dividends and of interest relating to shares.

5. When the laws of a Member State allow the payment of interim dividends, the following conditions at least shall apply:

(a) interim accounts shall be drawn up showing that the funds available for distribution are sufficient;

(b) the amount to be distributed may not exceed the total profits made since the end of the last financial year for which the annual accounts have been drawn up, plus any profits brought forward and sums drawn from reserves available for that purpose, less losses brought forward and sums to be placed to reserve pursuant to the requirements of the law or the statutes.

6. Paragraphs 1 to 5 shall not affect the provisions of the Member States as regards increases in subscribed capital by capitalisation of reserves.

7. The laws of a Member State may provide for derogation from paragraph 1 in the case of investment companies with fixed capital.

The expression 'investment company with fixed capital', within the meaning

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| <p>correspondent depositories for the subsequent transfers by depository institutions to accounts of depositors or the disbursement to depositors otherwise in a manner envisaged by contract, as well as for the subsequent transfers by correspondent depositories to individuals eligible for the receipt of income and other payments in accordance with the legislation of another country.</p> | <p>of this paragraph, means only those companies:</p> <ul style="list-style-type: none"> (a) the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets; and (b) which offer their own shares for subscription by the public. <p>In so far as the laws of Member States make use of this option they shall:</p> <ul style="list-style-type: none"> (a) require such companies to include the expression ‘investment company’ in all documents indicated in Article 5 of Directive 2009/101/EC; (b) not permit any such company whose net assets fall below the amount specified in paragraph 1 to make a distribution to shareholders when on the closing date of the last financial year the company's total assets as set out in the annual accounts are, or following such distribution would become, less than one-and-a-half times the amount of the company's total liabilities to creditors as set out in the annual accounts; and (c) require any such company which makes a distribution when its net assets fall below the amount specified in paragraph 1 to include in its annual accounts a note to that effect. | |
| <p>Article 31. Dividend Payment Restrictions</p> | | |
| <p>1. A joint stock company shall not have the right to make decisions to pay dividends and to disburse dividends under ordinary</p> | <p>Directive 2012/30/EU (“Capital Directive”</p> | |

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| <p>shares, if:</p> <p>1) the placement result report has not been registered in accordance with the procedure prescribed by the legislation;</p> <p>2) the equity of the company is lower than the sum of its charter capital and reserved capital, and the exceedence of the liquidation value of preference shares over their par value.</p> <p>2. A joint stock company shall not have the right to disburse dividends under ordinary shares, if:</p> <p>1) the company has share buy-out liabilities under Article 68 hereof;</p> <p>2) the current dividend under preference shares has not been disbursed in full.</p> <p>3. A joint stock company shall not have the right to make decisions to pay dividends and to disburse dividends under preference shares, if:</p> <p>1) the placement result report has not been registered in accordance with the procedure prescribed by the legislation;</p> <p>The company shall not have the right to disburse dividends under preference shares of a certain class until the disbursement of the current dividends under preference shares, whose holders enjoy priority in terms of the obtainment of dividends.</p> | <p>Art. 17</p> | |
| <p>Section 7. General Meeting of a JSC</p> | | |
| <p>Article 32. General Meeting of a Joint Stock Company</p> | | |
| <p>1. The general meeting shall be the highest body of a joint stock company.</p> <p>2. A joint stock company shall be required to convene the general meeting (annual general meeting) every year.</p> <p>The annual general meeting of the company shall be held not later than 30 April of the year that follows the reporting year.</p> <p>The issues specified in items 11, 12, and 22 of part two of Article 33 of this Law must be included into the agenda of the annual</p> | | <p>General consideration: the SRD (Directive 2007/36/EC) is applicable to listed companies only. As the Ukrainian law does not provide specific rules on listed companies, at least not with regard to the conveying of and participating in the General Meeting, the implementation of the Directive would make the rules that the Directive mandates, applicable to all JSC. This</p> |

general meeting.

The issues specified in items 17 and 18 of part two of Article 33 of this Law must be included into the agenda of the general meeting at least once in three years.

All general meetings, other than the annual general meeting, shall be deemed extraordinary.

3. The general meeting shall be held at the expense of the joint stock company. If an extraordinary general meeting is held on the initiative of a shareholder (shareholders), the shareholder (shareholders) in question shall pay the expenses on the organisation, the preparation and the holding of such a general meeting.

SRD (applicable to public companies only)

art. 6(1-2)

1. Member States shall ensure that shareholders, acting individually or collectively:

(a) have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting; and

(b) have the right to table draft resolutions for items included or to be included on the agenda of a general meeting.

Option:

Member States may provide that the right referred to in point (a) may be exercised only in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders. [...]

2. Where any of the rights specified in paragraph 1 is subject to the condition

would be too costly for private JSC or even for some of the public companies, who are not regarded as listed companies in the meaning of the SRD. Recommendation: introduction and further elaboration of the dual regime for private and public companies should be made. SRD should be implemented wholesale with regard to listed companies, whereas some other provisions may be extended to private JSC as well.

In the light of art. 6 of the SRD, the current art. 32 par. 3 of the Law on JSC might be interpreted as an unlawful limitation of shareholders rights

It is ceptable under the SRD, if the option is made use of, so shareholders may exercise those rights in any general meeting.

But if the option is used, then requirement to pay the expenses of all extraordinary meetings by shareholders would mean that SRD was not implemented correctly, as it would go against SRD art. 3, as it would be an additional obligation imposed on shareholders (which is forbidden), and not on companies.

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| | <p>that the relevant shareholder or shareholders hold a minimum stake in the company, such minimum stake shall not exceed 5 % of the share capital.</p> <p>SRD art. 3: This Directive shall not prevent Member States from imposing further obligations on companies or from otherwise taking further measures to facilitate the exercise by shareholders of the rights referred to in this Directive.</p> | |
| <p>Article 33. Competence of the General Meeting</p> <p>1. The general meeting may solve any issues of activity of a joint stock company.</p> <p>2. The following shall fall within the sole competence of the general meeting:</p> <ol style="list-style-type: none"> 1) the identification of main lines of business of the joint stock company; 2) the amendment of the charter amendment; 3) the decision to annul the bought-out shares; 4) the decisions on the modification of the company type; 5) the decisions on the placement of shares; 6) the decisions on the increase in the charter capital of the company; 7) the decisions on the reduction in the charter capital of the company; 8) the decisions on the share split or the share consolidation; 9) the approval of charters of the general meeting, the supervisory council, the executive body and the examining commission | n/a | National discretion |

(examiner) of the company, and the amendment thereof;

- 10) the approval of other internal documents of the company, if the company charter so provides;
- 11) the approval of the annual statement of the company;
- 12) the allocation of the profit and losses of the company subject to requirements of the law;
- 13) the decision on the buy-out by the company of shares placed by the company, except for cases of the obligatory buy-out of shares referred to in Article 68 hereof;
- 14) the decision on the form of existence of shares;
- 15) the approval of the amount of the annual dividends taking account of the requirements of the law;
- 16) the decisions on the procedure of the holding of the general meeting;
- 17) the election of members of the supervisory council, the approval of terms and conditions of civil or labour contracts to be concluded with them, the setting of their remuneration, the election of the individual authorized to sign contracts with members of the supervisory council;
- 18) the decision to terminate powers of members of the supervisory council, except for cases specified by this Law;
- 19) the election of the head and members of the examining commission (the examiner), the decision on the early termination of their powers;
- 20) the approval of findings of the examining commission (the examiner);
- 21) the election of the members of the counting commission, the decision on the termination of their powers;
- 22) the decision to engage into a considerable transaction, if the market value of the property, the work or the services being the object thereof exceeds 25 per cent of the value of assets according to the latest

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| <p>annual financial statement of the company;</p> <p>23) the decision on the spin off and the termination of the company, except for the event covered with part four of Article 84 hereof, the liquidation of the company, the election of the liquidation commission, the approval of the procedure and time frames of the liquidation, the procedure of the allocation of the property remaining after the satisfaction of claims of creditors among shareholders, and the approval of the liquidation balance sheet;</p> <p>24) the decision as a result of the review of a report of the supervisory council, a report of the executive body, a report of the examining commission (examiner);</p> <p>25) the approval of principles (code) of the corporate governance of the company;</p> <p>26) the election of the joint stock company termination commission;</p> <p>27) the solution of other issues falling within the sole competence of the general meeting in accordance with the company charter.</p> <p>3. The powers to solve issues that fall within the exclusive competence of the general meeting may not be vested in other bodies of the company.</p> | | |
| <p>Article 34. Right to Participate in the General Meeting</p> | | |
| <p>1. The parties entered into the list of shareholders eligible for the participation in the general meeting of a joint stock company or their representatives may take part in the general meeting of the joint stock company. A representative of the auditor of the company and officers of the company regardless of their ownership of shares of the company, and the representative of the body representing rights and interests of the employee team may also be present at the general meeting on the invitation of the party convening the general meeting.</p> <p>The list of shareholders eligible for the participation in the general meeting shall be drawn up as of 0.00 a.m. three business days prior to the meeting date in accordance with the procedure prescribed by the legislation on the depository system of Ukraine.</p> | <p>2007/36/EC(SRD) art. 7 1. Member States shall ensure: (a)that the rights of a shareholder to participate in a general meeting and to vote in respect of any of his shares are not subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting; and</p> | <p>Nothing to mention.</p> |

On request of a shareholder, the company or the party that keeps record of the ownership of shares in the company shall be obliged to provide information about the entry of the shareholder into the list of shareholders eligible for the participation in the general meeting.

2. It shall be prohibited to modify the list of shareholders eligible for the participation in the general meeting of a joint stock company, once it has been compiled.

Restrictions of the rights of a shareholder to the participation in the general meeting shall be set by law.

(b) that the rights of a shareholder to sell or otherwise transfer his shares during the period between the record date, as defined in paragraph 2, and the general meeting to which it applies are not subject to any restriction to which they are not subject at other times.

2. Member States shall provide that the rights of a shareholder to participate in a general meeting and to vote in respect of his shares shall be determined with respect to the shares held by that shareholder on a specified date prior to the general meeting (the record date).

Member States need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders on the day of the general meeting.

3. Each Member State shall ensure that a single record date applies to all companies. However, a Member State may set one record date for companies which have issued bearer shares and another record date for companies which have issued registered shares, provided that a single record date applies to each company which has issued both types of shares. The record date shall not lie more **than 30 days** before the date of the general meeting to which it applies. In implementing this provision and Article 5(1), each Member State shall ensure that at least **eight days** elapse between the latest

It needs to be transposed into the Law on JSC, in particular it needs to be clearly stipulated that rights of a shareholder to participate in the GM cannot be limited by the fact that he/she sold the shares (even all the shares) before the general meeting, after the record date (see art. 7 par. 2 and 3 of the SRD). It means that shareholders who earned that right on the record date can fully participate in the GM even if they are no longer shareholders of that company on the day of the GM.

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| | <p>permissible date for the convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included. In the circumstances described in Article 5(1), third subparagraph, however, a Member State may require that at least six days elapse between the latest permissible date for the second or subsequent convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included.</p> <p>4. Proof of qualification as a shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.</p> | |
| <p>Article 35. Notice of General Meeting</p> | | |
| <p>1. A written notice of the general meeting of the joint stock company and the agenda shall be sent to each shareholder entered into the list of shareholders compiled in accordance with the procedure prescribed by the depository system legislation of Ukraine as of the date determined by the supervisory council or, in case of the convention of the extraordinary general meeting on request of shareholders in cases covered with part six of Article 47 of this Law, by shareholders requesting the meeting to be held. The said date may not precede the date of the decision to hold the general meeting, and may not be set earlier than 60 days prior to the general meeting date.</p> <p>The written notice of the general meeting and the agenda thereof shall be sent to shareholders personally (subject to part two of this article) by the party that convenes the general meeting in the manner envisaged by the charter of the joint stock company not later than 30 days prior to the meeting date. The notice shall be sent by the party that convenes the general meeting or the party that maintains the</p> | <p>Directive 2007/36/EC(SRD) art. 5 Information prior to the general meeting</p> <p>1. Without prejudice to Articles 9(4) and 11(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 21st day before the day of the meeting. Member States may provide that, where the company offers the facility for shareholders to vote by electronic</p> | <p>The Directive <u>should not</u> be understood as mandating making the vote by electronic means accessible to all shareholders. The Directive merely requires that the MS allow for for the companies to introduce electronic voting if anygivem company wishes so (art. 8 SRD).</p> <p>In fact not a single MS has imposed on companies obligation to facilitate eletronic voting, because it would incur to high organisational costs and security problems, especially for SMEs. At the current stage mandating of electronic voting would go against the general proportionality requirement, if it was to</p> |

record of the ownership of shares in the company in case of the convention of the general meeting by shareholders.

A company shall publish a notice of the general meeting not later than 30 days prior to the date of the general meeting in an official printed bulletin. A public joint stock company shall additionally send the notice of the general meeting and the agenda thereof to the stock exchange, at which the company is listed, and, not later than 30 days prior to the general meeting date, place the information referred to in part three of this article on its own Internet web site.

3. The notice of the general meeting of a joint stock company must contain the following data:

- 1) full name and the seat of the company;
- 2) date, the time and the venue (with the indication of the number of the room, the office or the hall where the shareholders must arrive) of the general meeting;
- 3) time of the commencement and the completion of the registration of shareholders for the participation in the general meeting;
- 4) compilation date of the list of shareholders eligible for the participation in the general meeting;
- 5) list of issues offered for voting;
- 6) procedure of the familiarization of shareholders with materials, with which they can familiarize themselves in the course of the preparation for the general meeting.

The general meeting of shareholders shall be held on the territory of Ukraine within boundaries of the populated area of the seat of the company, except if 100 per cent of shares in the company are owned by foreigners, stateless individuals, foreign legal entities and international organizations as of the date of the general meeting.

means accessible to all shareholders, the general meeting of shareholders may decide that it shall issue the convocation of a general meeting which is not an annual general meeting in one of the manners specified in paragraph 2 of this Article **not later than on the 14th day before the day of the meeting.** This decision is to be taken by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented and for a duration not later than the next annual general meeting.

Member States need not apply the minimum periods referred to in the first and second subparagraphs for the second or subsequent convocation of a general meeting issued for lack of a quorum required for the meeting convened by the first convocation, provided that this Article has been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.

2. Without prejudice to further requirements for notification or publication laid down by the competent Member State as defined in Article 1(2), the company shall be required to issue the convocation referred to in paragraph 1 of this Article in a manner ensuring fast access to it on a non-discriminatory basis. The Member State shall require the company to use such media as may reasonably be relied upon

be imposed on every company. Instead, the Directive is facilitating and „prohibits prohibiting“, i.e. does not allow Member States to prohibit electronic voting if the company wants to have it in her corporate governance – such a voting needs to be allowed under the legal regime of any MS.

It should be added that such information has to be displayed at the company's website for a continuous period until the GM is held, and including the day of the meeting (SRD art. 5 (4)).

Not only a list of issues (items on the agenda) offered for voting, but full proposed agenda has to be disclosed, including issues that are not offered for voting, if such issues are included in the agenda (SRD art. 5(3)(a)).

For public companies a full set of information specified in SRD art. 3 has to be included in the notice of the GM.

for the effective dissemination of information to the public throughout the Community. The Member State may not impose an obligation to use only media whose operators are established on its territory.

The Member State need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders, provided that the company is under an obligation to send the convocation to each of its registered shareholders.

In either case the company may not charge any specific cost for issuing the convocation in the prescribed manner.

3. The convocation referred to in paragraph 1 shall at least:

(a) indicate precisely when and where the general meeting is to take place, and the proposed agenda for the general meeting;

(b) contain a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting. This includes information concerning:

(i) the rights available to shareholders under Article 6, to the extent that those rights can be exercised after the issuing of the convocation, and under Article 9, and the deadlines by which those rights may be exercised; the convocation may confine itself to stating only the

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| | <p>deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company;</p> <p>(ii) the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and</p> <p>(iii) where applicable, the procedures for casting votes by correspondence or by electronic means;</p> <p>(c) where applicable, state the record date as defined in Article 7(2) and explain that only those who are shareholders on that date shall have the right to participate and vote in the general meeting;</p> <p>(d) indicate where and how the full, unabridged text of the documents and draft resolutions referred to in points (c) and (d) of paragraph 4 may be obtained;</p> <p>(e) indicate the address of the Internet site on which the information referred to in paragraph 4 will be made available.</p> | |
| <p>Article 36. Documents To Be Provided to Shareholders and Documents With Which Shareholders May Familiarize Themselves During the Preparation for the General Meeting</p> | | |

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| <p>1. The joint stock company must provide shareholders with the opportunity to familiarize themselves with documents needed for making decisions on agenda items in the seat of the company on weekdays during working hours in an accessible area and, on the general meeting date, in the venue of the meeting between the date of the notice of the general meeting and the date of the general meeting. The notice of the general meeting must specify the place (the room or office number, etc.) for the familiarization of shareholders with documents, and the officer of the company responsible for the familiarization procedure.</p> <p>If the agenda of the general meeting calls for voting on issues defined in Article 68 hereof, the joint stock company must grant shareholders an opportunity to familiarize themselves with the draft contract on the buy-out of shares by the company in accordance with the procedure prescribed by Article 69 hereof. The conditions of the said contract (other than the quantity and the total value of shares) must be the same for all shareholders.</p> <p>2. The charter of a joint stock company with over 100 shareholders that own ordinary shares may provide for a different procedure of the provision of shareholders with documents for the familiarization during the preparation for the general meeting. Such documents can be provided in the electronic form or otherwise in a manner envisaged by the charter.</p> <p>3. The joint stock company shall not have the right to amend documents issued to shareholders or familiarized by shareholders after the sending of the notice of the general meeting to shareholders, except for amendments in such documents due to changes in the agenda or due to the mistake correction. In this case, the changes shall be undertaken not later than 10 days prior to the date of the general meeting or, in respect of candidates to the company bodies, not later than four days prior to the date of the general meeting.</p> | <p>Directive 2007/36/EU(SRD) art. 5 par. 4</p> <p>Member States shall ensure that, for a continuous period beginning not later than on the 21 day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information:</p> <ul style="list-style-type: none"> (a)the convocation referred to in paragraph 1; (b)the total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company’s capital is divided into two or more classes of shares); (c)the documents to be submitted to the general meeting; (d)a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them; (e)where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder. <p>Where the forms referred to in point (e) cannot be made available on the</p> | <p>Needs to be implemented for listed JSC.</p> |
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| | <p>Internet for technical reasons, the company shall indicate on its Internet site how the forms can be obtained on paper. In this case the company shall be required to send the forms by postal services and free of charge to every shareholder who so requests.</p> <p>Where, pursuant to Articles 9(4) or 11(4) of Directive 2004/25/EC, or to the second subparagraph of paragraph 1 of this Article, the convocation of the general meeting is issued later than on the 21st day before the meeting, the period specified in this paragraph shall be shortened accordingly.</p> | |
| <p>Article 37. General Meeting Agenda</p> | | |
| <p>1. The agenda of the general meeting of a joint stock company shall be preliminarily approved by the supervisory council of the company or, in case of the convention of the extraordinary general meeting on request of shareholders in cases covered with part six of Article 47 hereof, by the shareholders that require the meeting to be held.</p> <p>2. The shareholders shall have the opportunity to familiarize themselves with draft decisions on agenda items before the meeting on its request in accordance with the procedure specified by Article 36 of this Law.</p> | <p>Directive 2007/36/EU (SRD) art. 5 par. 4 (d)</p> <p>4. Member States shall ensure that, for a continuous period beginning not later than on the 21 day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information:</p> <p>[...]</p> <p>(d) a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them;</p> | |

Article 38. Proposals for the General Meeting Agenda

1. Each shareholder shall have the right to make proposals on items included into the agenda of the general meeting of a joint stock company and on new candidates for bodies of the company, whose number may not be higher than the number of members in each of the bodies. In this case, the changes shall be undertaken not later than 20 days prior to the date of the general meeting or, in respect of candidates to the company bodies, not later than seven days prior to the date of the general meeting.

2. A proposal for the joint stock company general meeting agenda shall be submitted in writing with the indication of the family name (the name) of the shareholder making the proposal, the number, the type and/or the class of shares held thereby, the content of the proposal on the issue and/or the draft decision, as well as the number, the type and/or the class of shares owned by the candidate nominated by the said shareholder to the bodies of the company.

3. The supervisory council of a joint stock company or, in case of the convention of the extraordinary general meeting on request of shareholders in cases covered with part six of Article 47 hereof, the shareholders who require the meeting to be held shall make a decision on the inclusion of proposals into the agenda not later than 15 days prior to the general meeting date or, in respect of candidates to the company bodies, not later than four days prior to the general meeting date.

4. Proposals of shareholders (a shareholder) **that own 5% or more ordinary shares** in aggregate must be included into the general meeting agenda. In this case, no decision of the supervisory council on the inclusion of the issue into the agenda shall be required; the proposal shall be deemed to be included into the agenda if it is submitted in conformity with requirements of this article.

Changes to the agenda of the general meeting shall be introduced only by means of the inclusion of new issues and draft decisions on the suggested issues. The company shall not have the right to amend issues or draft decisions suggested by shareholders.

5. A decision to deny the entry of a proposal of a shareholder (shareholders) jointly owning 5 or more per cent of ordinary shares into the agenda of a general meeting of a joint stock company may only be made in the case of:

Directive 2007/36/EU(SRD)

art. 6

Right to put items on the agenda of the general meeting and to table draft resolutions

1. Member States shall ensure that shareholders, acting individually or collectively:

(a) have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting; and

(b) have the right to table draft resolutions for items included or to be included on the agenda of a general meeting.

Member States may provide that the right referred to in point (a) may be exercised only in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.

Member States may provide that those rights shall be exercised in writing (submitted by postal services or electronic means).

2. Where any of the rights specified in paragraph 1 is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the company, such minimum stake

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| <p>the failure of shareholders to abide by the time frame specified in part one of this article; the incompleteness of details required by part two of this article.</p> <p>6. A substantiated decision to deny the entry of the proposal into the agenda of the general meeting of the joint stock company shall be sent by the supervisory council to the shareholder within three days of its date.</p> <p>7. The joint stock company must notify shareholders, in accordance with the charter, of changes in the agenda not later than 10 days prior to the general meeting date.</p> <p>A public joint stock company shall additionally send the notice of changes in the agenda of the general meeting to the stock exchange, at which the company is listed, and, not later than 10 days prior to the general meeting date, place the relevant information about changes in the agenda of the general meeting on its own Internet web site.</p> <p>The disputing of the company's decision to deny the entry of proposals into the agenda by the shareholder at court shall not suspend the general meeting. As a result of the case review, the court may require the company to hold a general meeting on the issue, whose entry into the agenda was groundlessly denied to the shareholder.</p> | <p>shall not exceed 5 % of the share capital.</p> <p>3. Each Member State shall set a single deadline, with reference to a specified number of days prior to the general meeting or the convocation, by which shareholders may exercise the right referred to in paragraph 1, point (a). In the same manner each Member State may set a deadline for the exercise of the right referred to in paragraph 1, point (b).</p> <p>4. Member States shall ensure that, where the exercise of the right referred to in paragraph 1, point (a) entails a modification of the agenda for the general meeting already communicated to shareholders, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date as defined in Article 7(2) or, if no record date applies, sufficiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where applicable, to vote by correspondence.</p> | |
| <p>Article 39. Representation of Shareholders</p> | | |
| <p>1. An individual or an authorized agent of a legal entity, as well as an authorized agent of the state or the territorial community may be a representative of the shareholder at a general meeting of the joint stock company.</p> <p>Officers of bodies of the company and their affiliated parties may not represent other shareholders of the company at the general meeting.</p> <p>An individual or legal entity shareholder may be represented at a</p> | <p>Directive 2007/36/EU(SRD) art. 10 (Proxy voting)</p> <p>1. Every shareholder shall have the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his name. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to</p> | <p>Needs to be implemented for listed companies.</p> |

general meeting of the joint stock company by another individual or an authorized agent of a legal entity; the state or territorial community may be represented as a shareholder by the authorized officer of the agency that manages state or community-owned property.

2. A shareholder shall have the right to appoint a representative on a permanent basis or for a term. A shareholder shall have the right to replace the representative at any time subject to the notification of the executive body of the joint stock company thereof.

3. The power of attorney for the participation and the voting at the general meeting may be authenticated by the registrar, the depository, the custodian, the notary and other officers that perform notarial acts or otherwise according to a procedure envisaged by the legislation.

The power of attorney for the participation and the voting at the general meeting of the joint stock company may contain voting assignments, i.e., a list of issues of the agenda of the general meeting with the indication of the how and which decision has to be supported or not. The representative must vote in exact conformity with the voting assignment while voting at the general meeting. If the power of attorney does not contain a voting assignment, the representative shall solve all issues related to the voting at the general meeting of shareholders at its discretion.

A shareholder shall have the right to issue a power of attorney to take part and vote at the general meeting to several representatives thereof.

The shareholder shall have the right to revoke or replace its representative at the general meeting of the joint stock company at any time.

The issue of a power of attorney for the participation and the voting at the general meeting shall not rule out the right of the shareholder that has issued the power of attorney in the general meeting in question in lieu of the representative.

which the shareholder thus represented would be entitled.

Apart from the requirement that the proxy holder possess legal capacity, Member States shall abolish any legal rule which restricts, or allows companies to restrict, the eligibility of persons to be appointed as proxy holders.

2. Member States may limit the appointment of a proxy holder to a single meeting, or to such meetings as may be held during a specified period.

Without prejudice to Article 13(5), Member States may limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. However, if a shareholder has shares of a company held in more than one securities account, such limitation shall not prevent the shareholder from appointing a separate proxy holder as regards shares held in each securities account in relation to any one general meeting. This does not affect rules prescribed by the applicable law that prohibit the casting of votes differently in respect of shares held by one and the same shareholder.

3. Apart from the limitations expressly permitted in paragraphs 1 and 2, Member States shall not restrict or allow companies to restrict the exercise of shareholder rights through proxy holders for any purpose other than to address potential conflicts of interest between the proxy holder and the

shareholder, in whose interest the proxy holder is bound to act, and in doing so Member States shall not impose any requirements other than the following:

(a) Member States may prescribe that the proxy holder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder;

(b) Member States may restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions for each resolution in respect of which the proxy holder is to vote on behalf of the shareholder;

(c) Member States may restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxy holder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.

A conflict of interest within the meaning of this paragraph may in particular arise where the proxy holder:

(i) is a controlling shareholder of the company, or is another entity controlled by such shareholder;

(ii) is a member of the administrative, management or supervisory body of the company, or of a controlling shareholder or controlled entity referred to in point (i);

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| | <p>(iii) is an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in (i);</p> <p>(iv) has a family relationship with a natural person referred to in points (i) to (iii).</p> <p>4. The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder. Member States may require proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm on request that the voting instructions have been carried out.</p> <p>5. A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number of shareholders so represented. Where a proxy holder holds proxies from several shareholders, the applicable law shall enable him to cast votes for a certain shareholder differently from votes cast for another shareholder.</p> <p>Section 1.2 – art 10 (3) (c) (ii)</p> | |
| n/a | <p>Directive 2007/36/EU (SRD) art. 8 (Participation in the general meeting by electronic means) 1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:</p> | <p>Amendment proposal: provisions about participation in the general meeting by electronic means shall be implemented in the Law on JSC.</p> |

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| | <p>(a)real-time transmission of the general meeting;</p> <p>(b)real-time two-way communication enabling shareholders to address the general meeting from a remote location;</p> <p>(c)a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.</p> <p>2. The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.</p> <p>This is without prejudice to any legal rules which Member States have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means.</p> | |
| n/a | <p>Directive 2007/36/EU (SRD) art. 12 (Voting by correspondence)</p> <p>Member States shall permit companies to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure</p> | <p>Amendment proposal: provisions about voting by correspondence shall be implemented in the Law on JSC.</p> |

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| | the identification of shareholders and only to the extent that they are proportionate to achieving that objective. | |
| Article 40. General Meeting Procedure | | |
| <p>1. The procedure of the general meeting of a joint stock company shall be specified by this Law, the company charter or a decision of the general meeting.</p> <p>2. A general meeting of a joint stock company may not commence earlier than indicated in the notice of the general meeting.</p> <p>3. The registration of shareholders (representatives thereof) shall be carried out on the basis of the list of shareholders eligible for the participation in the general meeting compiled in accordance with the procedure prescribed by the legislation on the depository system of Ukraine and the indication of the number of votes of each shareholder. The registration of shareholders (representatives thereof) shall be carried out by the registration commission to be appointed by the supervisory council of the company or, in case of the convention of the extraordinary general meeting on request of shareholders in cases covered with part six of Article 47 hereof, by the shareholders that require the meeting to be held.</p> <p>The registration commission may deny registration to a shareholder (a representative thereof) solely in case of the lack of documents identifying the shareholder (representative thereof) in possession of the shareholder (representative thereof) or, in case of the participation of a representative of a shareholder, documents confirming the eligibility of the representative for the participation in the general meeting of the company as well.</p> <p>The list of shareholders registered for the participation in the general meeting shall be signed by the head of the registration commission to be elected with a simple majority vote of commission members before the commencement of the registration. A shareholder that has not been registered shall not be eligible for the participation in the general meeting.</p> | n/a | National discretion |

Powers of the registration commission may be vested in a registrar, a custodian or a depository on the basis of a contract. In this case, a representative of the registrar, the custodian or the depository shall chair the registration commission.

The list of shareholders registered for the participation in the general meeting shall be attached to the minutes of the general meeting.

A substantiated decision of the registration commission to deny registration of a shareholder or a representative thereof for the participation in the general meeting signed by the chairman of the registration commission shall be attached to the minutes of the general meeting and issued to the person denied the registration.

A shareholder shall have the right to replace the representative before the expiry of the time allotted for the registration of meeting participants, having notified thereof the registration commission and the executive body of the joint stock company, or to take part in the general meeting in person.

If several representatives of a shareholder appeared to take part in the general meeting, the representative with the power of attorney issued later shall be registered.

If a share is co-owned by several parties, their general meeting voting powers shall be exercised subject to their consent by one of co-owners or their joint representative.

4. Shareholders (a shareholder) that own in aggregate 10 and more per cent of ordinary shares as of the date of the compilation of the list of shareholders eligible for the participation in the general meeting of the joint stock company, as well as the National Commission for Securities and Stock Market may appoint their representatives for the supervision of the registration of shareholders, the holding of the general meeting, the voting and the ascertainment of the voting results. The company shall be notified in writing of the appointment of such representatives before the commencement of the registration of shareholders.

Officers of the joint stock company shall be required to ensure free access of representatives of shareholders (a shareholder) and/or the

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| <p>National Commission for Securities and Stock Market to the supervision over the registration of shareholders, the conduct of the general meeting, the voting and the ascertainment of the voting results.</p> <p>5. The progress of the general meeting or the review of a specific issue may be recorded using technical facilities by decision of initiators of the general meeting or the general meeting itself; the relevant records shall be attached to the minutes of the general meeting.</p> | | |
| <p>Article 41. Quorum of the General Meeting</p> | | |
| <p>1. The existence of the quorum of the general meeting shall be determined by the registration commission as of the time of the completion of the registration of shareholders for the participation in the general meeting of the joint stock company.</p> <p>2. The general meeting of the joint stock company shall be deemed to have quorum in case of the registration of shareholders that together own at least 60 per cent of the voting shares for the participation in the meeting.</p> <p>For the purposes of the solution of an issue, on which the right to vote is granted under part five of Article 26 of this Law to holders of preference shares, or an issue, on whose review the votes of holders of preference shares of the company are to be counted separately in accordance with paragraph two of part four of Article 26 of this Law, the general meeting shall be deemed to have quorum on such issues subject also to the registration of shareholders that together own at least 60 per cent of preference shares (of each class of preference shares) voting on the issue in question for the participation in the general meeting.</p> | <p>n/a</p> | <p>National discretion</p> <p>It should be considered if the quorum should not be reduced to 50% and reduced even further or even abolished for certain issues to be decided by the GM (or reversely, the quorum to be maintained with respect to a number of significant issues). Alternatively, the quorum could apply for the first attempt and be eliminated or reduced for a renewed attempt.</p> |
| <p>Article 42. General Meeting Decision Making Procedure</p> | | |
| <p>1. One voting share shall vest a shareholder with a single vote for the solution of each issue offered for voting at the general meeting of the joint stock company, except for the cumulative voting events.</p> <p>2. The right to vote at the general meeting of the joint stock company shall be enjoyed by shareholders that own ordinary shares in the company or, in cases covered with Article 26 of this Law, also shareholders that own preference shares of the company as of the date of the compilation of the list of shareholders eligible for the</p> | <p>n/a</p> | <p>National discretion</p> |

participation in the general meeting.

A shareholder may not be deprived of the vote except for situations specified in this Law.

3. A decision of the general meeting of a joint stock company on an issue offered for voting shall be made by the simple majority vote of shareholders registered for the participation in the general meeting and holding shares that vote on the issue in question, unless this Law prescribes otherwise. The charter of a private company may set a higher percentage of votes of shareholders needed for making decisions on agenda items, except for the following issues:

the early termination of powers of officers of bodies of the company;

the submission of a claim against officers of company bodies for the reimbursement for damages caused to the company;

the submission of a claim in case of the failure to abide by requirements hereof on the entry into a considerable transaction.

4. Members of a body of a company shall be elected by way of the cumulative voting procedure in cases prescribed by this Law and/or the charter of the joint stock company.

In case of the election of members of a body of a joint stock company by way of the cumulative voting procedure, the votes shall be cast on all candidates simultaneously.

Candidates, who have obtained the highest number of votes of shareholders in comparison with other candidates, shall be deemed elected.

Members of a body of a company shall be deemed elected and the body of the company shall be deemed formed solely on condition of the election of the full number of members of the company body by way of the cumulative voting procedure.

5. Decisions of the general meeting on issues covered with items 2 to 7 and 23 of part two of Article 33 of this Law shall be made by more than three quarters of the total number of votes of shareholder registered for the participation in the general meeting and holding the

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| <p>shares voting on the relevant issue. The charter of a private joint stock company may also provide for other issues on which decisions are to be made with three quarters of the total number of shareholders registered for the participation in the general meeting and holding the shares voting on the relevant issue, except for issues listed in paragraph two of part three of this article.</p> <p>6. The general meeting may not make decisions on issues not included into the agenda.</p> <p>7. In case of an issue offered for voting, if the shareholders that own ordinary and preference shares have the voting rights for the solution of the issue in question, the votes shall be counted jointly for all the shares voting on the issue in question, except for cases covered with the charter of the company and part four of Article 26 hereof.</p> <p>8. A break till the next day may be announced during the general meeting. The decision to make a break till the next day shall be made by the simple majority of votes of shareholders that have registered for the participation in the general meeting and own shares, which vote on at least one issue to be reviewed on the next day. No repeated registration of shareholders (their representatives) shall be held on the next day.</p> <p>The number of votes of shareholders that have registered for the participation in the general meeting shall be determined on the basis of the registration data of the first day.</p> <p>The general meeting shall be held in the same venue after the break as specified in the notice of the general meeting.</p> <p>The number of breaks in the course of the general meeting may not exceed three.</p> <p>9. The voting shall be held at the general meeting on all agenda items offered for sale.</p> | | |
| <p>Article 43. Voting Method</p> | | |
| <p>1. The voting at the general meeting of a joint stock company on agenda items may be held using ballots.</p> <p>In a company that has carried out the public placement of</p> | <p>Directive 2007/36/EU (SRD) art. 8 (Participation in the general meeting by electronic means)</p> | <p>These norms of the SRD (art. 8, art. 12) are facilitative, i.e. they do not require companies to introduce these provisions (participation and voting in</p> |

shares, the voting on agenda items of the general meeting shall only be held using ballots.

In a company with more than 100 holders of ordinary shares in the company, the voting on agenda items of the general meeting shall only be held using ballots.

The use of ballots shall be obligatory for the voting on issues listed in Article 68 hereof.

2. The voting ballot (except for the cumulative vote ballot) must contain:

- 1) the full name of the joint stock company;
- 2) the date and the time of the general meeting;
- 3) the issue offered for the vote and the draft decision (decisions) on the said issue;
- 4) the voting options on each draft decision ("in favour", "against", "abstained");
- 5) a reservation that the vote must be signed by the shareholder (shareholder representative) and is deemed invalid in case of the lack of such a signature;
- 6) the indication of the number of votes held by each shareholder.

In case of the voting on the election of members of the executive body, the supervisory council or the examining commission (the examiner) of the company, the ballot must contain the last, first and patronymic names of the candidate (candidates).

The cumulative vote ballot must contain:

- 1) the full name of the joint stock company;
- 2) the date and the time of the general meeting;
- 3) the list of candidate members of a body of a joint stock company with the provision of the information about them in accordance with requirements of the National Commission for

1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:

[...]

(c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxyholder who is physically present at the meeting.

art. 12 (Voting by correspondence)

Member States shall permit companies to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

the GM by electronic means and voting by correspondence – respectively), instead they oblige MS not to hinder and whenever needed, put a legal framework in place so that those companies which want to allow their shareholders e-GM and/or voting by correspondence, are able, under the national law, to do so.

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| <p>Securities and Stock Market;</p> <p>4) the place for the indication of the number of votes cast by a shareholder (a shareholder representative) for each candidate;</p> <p>5) a reservation that the vote ballot must be signed by the shareholder (shareholder representative) and is deemed invalid in case of the lack of such a signature;</p> <p>6) the indication of the number of votes held by each shareholder.</p> <p>The cumulative voting for the election of members of a body of a joint stock company shall take place using ballots.</p> <p>3. The form and the text of the ballot shall be approved by the supervisory council not later than 10 days prior to the general meeting date or, in case of the election of candidates to bodies of the company, not later than four days prior to the general meeting date or, in case of the convention of the extraordinary general meeting on request of shareholders in cases covered with part six of Article 47 of this Law, by the shareholders that require the meeting to be held. Shareholders shall have the right to familiarise themselves with the ballot form before the general meeting in accordance with the procedure specified in Article 35 of this Law.</p> <p>4. The ballot shall be deemed invalid, if it is different from the specimen officially produced by the joint stock company or lacks the signature of the shareholder (representative).</p> <p>If the ballot contains several issues put to vote, the invalidation of the ballot in respect of one issue shall constitute the ground for the invalidation thereof in respect of other issues.</p> <p>Ballots invalidated on the grounds envisaged by this article shall be disregarded during the vote counting.</p> | | |
| <p>Article 44. Counting Commission</p> | | |
| <p>1. Explanations on the procedure of the voting, the counting of votes and other issues related to securing the voting process at a general meeting shall be provided by the counting commission to be elected by the general meeting of shareholders (the constituting meeting). Powers</p> | | |

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| <p>of the counting commission may be vested in a registrar, a custodian or a depository of the company on the basis of a contract. Conditions of the said contract shall be approved by the general shareholder meeting.</p> <p>2. The counting commission should be at least three people strong in a joint stock company with over 100 holders of ordinary shares. The individuals who are members or candidates to bodies of the company may not be members of the counting commission.</p> | | |
| <p>Article 45. Voting Results Protocol</p> <p>1. A protocol shall be drawn up as a result of the voting to be signed by all members of the counting commission of the joint stock company who have taken part in the vote counting.</p> <p>In case of the vesting of counting commission powers in the registrar, the custodian or the depository, the voting results protocol shall be signed by a representative of the registrar, or the custodian or the depository.</p> <p>2. The following must be indicated in the voting results protocol:</p> <ol style="list-style-type: none"> 1) the date of the general meeting; 2) the list of issues, on which decisions have been made by the general meeting; 3) the decisions and the numbers of votes "in favour", "against" and "abstained" on each draft decision for each agenda item put to vote. <p>3. A decision of the general meeting of the joint stock company shall be deemed to have been made upon the compilation of the voting results protocol.</p> <p>The voting results shall be announced at the general meeting, during which the voting has taken place. After the closure of the general meeting, the voting results shall be communicated to shareholders within 10 business days in a manner prescribed by the charter of the joint stock company.</p> <p>4. The voting results protocol shall be attached to the minutes</p> | <p>Directive 2007/36/EU(SRD) art. 14 (Voting results)</p> <p>1. The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions.</p> <p>However, Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.</p> <p>2. Within a period of time to be determined by the applicable law, which shall not exceed 15 days after the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph 1.</p> <p>3. This Article is without prejudice to any legal rules that Member States have adopted or may adopt concerning the</p> | |

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| <p>of the general meeting of the joint stock company.</p> <p>The ballots shall be sealed by the counting commission (or the party vested with powers of the counting commission) and held by the company during the period of its operation, but not more than four years, after the compilation of the voting results protocol.</p> | <p>formalities required in order for a resolution to become valid or the possibility of a subsequent legal challenge to the voting result.</p> | |
| <p>Article 46. Minutes of the General Meeting</p> | | |
| <p>1. The minutes of the general meeting of the joint stock company shall be compiled within 10 days of the closure of the general meeting and signed by the chairman and the secretary of the general meeting.</p> <p>2. The information about the following shall be entered into the minutes of the general meeting of the joint stock company:</p> <ol style="list-style-type: none"> 1) the date, the time and the venue of the general meeting; 2) the compilation date of the list of shareholders eligible for the participation in the general meeting; 3) the total number of entities entered into of the list of shareholders eligible for the participation in the general meeting; 4) the total number of votes of shareholders that own voting shares in the company that has registered for the participation in the general meeting (if some shares are voting not on all agenda items, the number of voting shares shall be specified for each agenda item); 5) the general meeting quorum (if some shares are voting not on all agenda items, the quorum of the general meeting on each issue must be indicated); 6) the chairman and the secretary of the general meeting; 7) the membership of the counting commission; 8) the general meeting agenda; 9) the major theses of speeches; 10) the voting procedure at the general meeting (open vote, | <p>n/a</p> | <p>National discretion</p> |

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| <p>with ballots, etc.);</p> <p>11) the voting results with the indication of voting results on each general meeting agenda item and decisions made by the general meeting.</p> <p>The minutes of the general meeting signed by the chairman and the secretary of the general meeting shall be filed, sealed with the company seal and the signature of the head of the executive body of the company (in case of the collegiate executive body) or the single-person executive body.</p> | | |
| <p>Article 47. Extraordinary General Meeting</p> | | |
| <p>1. An extraordinary general meeting of a joint stock company shall be convened by the supervisory council:</p> <p>1) on own initiative;</p> <p>2) on request of the executive body in case of the initiation of bankruptcy proceedings against the company or the need to engage into a considerable transaction;</p> <p>3) on request of the examining commission (the examiner);</p> <p>4) on request of shareholders (a shareholder) that own in aggregate 10 and more per cent of ordinary shares in the company as of the request date;</p> <p>5) in other cases prescribed by law or the charter of the company.</p> <p>The request for convening the extraordinary general meeting shall be submitted in writing to the executive body at the address in the location of the joint stock company with the indication of the body or the names of shareholders that require an extraordinary general meeting to be held, the grounds for convening the same, and the agenda. In case of the convention of the extraordinary general meeting on the initiative of shareholders, the request must also contain information about he quantity, the type and the class of shares held by shareholders, and must be signed by all shareholders submitting the same.</p> <p>2. The supervisory council shall make a decision to convene (or deny the convention of) the extraordinary general meeting of the joint</p> | <p>Directive 2007/36/EU (SRD) art. 6 (1) 2</p> <p>1. Member States shall ensure that shareholders, acting individually or collectively:</p> <p>(a) have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting; and</p> <p>(b) have the right to table draft resolutions for items included or to be included on the agenda of a general meeting.</p> <p>Member States may provide that the right referred to in point (a) may be exercised only in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.</p> | |

stock company within 10 days of receipt of the request for the convention of the same.

3. A decision to deny the convention of an extraordinary general meeting of a joint stock company may only be made in the case of:

if shareholders do not own the number of ordinary shares in the company prescribed by paragraph one of part one of this article as of the request submission date;

the incompleteness of details required by paragraph two of part one of this article.

The decision of the supervisory council in respect of convening the extraordinary general meeting or the substantiated decision to deny the convention thereof shall be issued to the relevant managing body of the company or the requesting shareholders not later than in three days of the decision date.

The supervisory council shall not have the right to modify the agenda of the general meeting contained in the request for convening the extraordinary general meeting, other than to include new issues or draft decisions into the agenda.

4. The extraordinary general meeting of a joint stock company must be held within 45 days of receipt of the request for convening the same by the company.

5. If so required by the interests of the joint stock company, the supervisory council shall have the right to make a decision to convene the extraordinary general meeting with the written notification of shareholders of the extraordinary general meeting and the agenda thereof in accordance with this Law not later than 15 days prior to the meeting date with the divestment of shareholders of the right to amend the agenda.

In this case, the repeated general meeting shall not be held in case of the lack of the quorum at the extraordinary general meeting.

The supervisory council may not make the decision referred to in paragraph one of this part, if the agenda of the extraordinary general

Art. 6 par. 2 Where any of the rights specified in paragraph 1 is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the company, such minimum stake shall not exceed **5%** of the share capital.

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| <p>meeting contains the issue of election of members of the supervisory council.</p> <p>6. If the supervisory council has failed to make a decision on convening the extraordinary general meeting of the joint stock company within the time frame specified in part two of this article, the said meeting can be convened by the requesting shareholders. The decision of the supervisory council to deny the convention of the extraordinary general meeting may be disputed by shareholders with court.</p> <p>7. The company or the party that maintains the record of ownership of shares in the company shall be required to provide information about the list of owners of shares in the company, as well as other information needed for organising the extraordinary general meeting of the joint stock company on request of the supervisory council of the company within five business days.</p> <p>In case of the convention of the general meeting by shareholders, the notice thereof and other materials shall be sent out to all shareholders of the company by the party that maintains the record of ownership of shares in the company.</p> | | |
| <p>Article 48. General Shareholder Meeting in the Form of the Absentee Voting</p> | | |
| <p>1. In cases covered with a charter of the joint stock company with not more than 25 shareholders, it shall be permitted to make decisions by means of polling. In this case, the draft decision or the voting issue shall be sent out to shareholders that own voting shares; the shareholders must provide a written notice of their opinion on the issues within five calendar days of receipt of the relevant draft decision or the voting issue. All shareholders that own voting shares must be notified in writing by the chairman of the meeting about the decision made within 10 days of receipt of the notice from the last shareholder that owns voting shares. The decision shall be deemed made if supported by all shareholders that own voting shares.</p> | n/a | National discretion |
| <p>Article 49. Specific Features of a General Meeting of a Company That Consists of a Single Person</p> | | |
| <p>1. Provisions of Articles 33 to 48 of this Law in respect of the procedure of convening and holding the general meeting of a joint stock</p> | Directive 2009/102/EC (SMCD) art. 4 | |

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| <p>company shall not apply to a company with a single shareholder.</p> <p>2. The powers of the general meeting of the company envisaged by Article 33 hereof and the internal documents of the company shall be exercised by the shareholder unilaterally.</p> <p>The decision of the shareholder on issues that fall within competence of the general meeting shall be executed thereby in writing (in the form of a decision) and authenticated with the company seal, or notarised. The said decision of the shareholder shall have the status of the minutes of the general meeting of a joint stock company.</p> <p>3. The election of members of the supervisory council, the examining commission (if any) shall take place without cumulative voting.</p> | <p>1. The sole member shall exercise the powers of the general meeting of the company.</p> <p>2. Decisions taken by the sole member in the field referred to in paragraph 1 shall be recorded in minutes or drawn up in writing.</p> <p>art. 5</p> <p>1. Contracts between the sole member and his company asrepresented by him shall be recorded in minutes or drawn up inwriting.</p> | |
| Article 50. Disputing Decisions of the General Meeting | | |
| <p>1. If decisions of the general meeting or the procedure of making the decision in question violate the requirements of this Law, other acts of the legislation, the charter or the general meeting policy of the joint stock company, the shareholder, whose rights and legitimate interests are violated with the said decision, may dispute the decision in question with court within three months of the decision date.</p> <p>Taking account of all circumstances of the case, the court shall have the right to leave the disputed decision in force, if the committed violations do not violate legitimate rights of the shareholder that owns the decisions.</p> <p>2. The shareholder may dispute decisions of the general meeting on issues listed in part one of Article 68 of this Law solely on receipt of the written denial of the exercise of the right to require the obligatory buy-out of the voting shares by the company or in case of the non-receipt of response to the shareholder's request within 30 days of sending the same to the company's address in accordance with the procedure prescribed by this Law.</p> | n/a | Nothing to mention. |
| Section 8. Supervisory Council of a Joint Stock Company | | |
| Article 51. Establishment of the Supervisory Council of a Joint Stock Company | | |
| 1. The supervisory council of a joint stock company shall be the | | |

agency that protects the rights of the company shareholders and, within the competence defined in the charter and this Law, controls and regulates the activities of the executive body.

2. The establishment of a supervisory council shall be obligatory in joint stock companies with 10 and more holders of ordinary shares. The powers of the supervisory council in case of the lack thereof in a company with 9 or fewer holders of ordinary shares shall be exercised by the general meeting.

In this case, the powers of the supervisory council related to the preparation and the holding of the general meeting as envisaged by this Law shall be exercised by the managing body, unless otherwise prescribed by the charter of the joint stock company.

3. The working procedure, the procedure of remuneration and the liability of members of the supervisory council shall be defined by this Law, the charter of the company, the supervisory council charter of the joint stock company, and a civil-law or labour contract to be concluded with a member of the supervisory council. The said contract shall be signed on behalf of the company by the chairman of the executive body or another individual authorized by the general meeting on terms and conditions approved with the decision of the general meeting. In case of the entry into a civil-law contract with a member of the supervisory council, the contract in question may be either reimbursable or non-reimbursable.

4. A member of the supervisory council must perform his duties in person and may not vest his powers in a person, other than a member of the supervisory council being a shareholding legal entity.

Members of the supervisory council shall be entitled to the remuneration of their activities at the expense of the company. The remuneration conditions shall be determined by the general meeting on the basis of the cost estimate approved by the meeting.

Recommendation
2004/913/EC fostering an appropriate
regime for the remuneration of
directors of listed companies
Recommendation
2009/385/EC complementing
Recommendations 2004/913/EC and
2005/162/EC [...] Recommendation
2005/162/EC on the
role of non-executive or supervisory
directors of listed companies and on
the committees of the (supervisory)
board

Supervisory board (council) should be made mandatory for all JSC, public and private alike.

Applicable to to listed companies only.
Recommendation applicable on
voluntarily basis.
Sec. 1.3 of the Recommendation
2004/913/EC: Member States should
ensure that this
Recommendation applies to the
remuneration of the chief executive
officers in circumstances where they are
not members of the administrative,
managerial and supervisory bodies of a
listed company.

Recommendation 2005/162/EC, Annex
I thereto, sec. 3.1 thereof: subsec. 1
Where, under national law, the
(supervisory) board is playing a role,
either by making decisions itself or by
making proposals for consideration by
another corporate body, in the process
for setting remuneration of directors, a
remuneration committee should be set
up within the (supervisory) board.
Subsec. 2. The remuneration committee

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| | | should be composed exclusively of non-executive or supervisory directors. At least a majority of its members should be independent. |
| Article 52. Competence of the Supervisory Council | | |
| <p>1. The competence of the supervisory council shall cover the issues envisaged by this Law and the charter, and those assigned to the supervisory council by the general meeting.</p> <p>2. The following shall fall within the exclusive competence of the supervisory council:</p> <p>1) the approval of policies that govern issues related to activities of the company within the scope of its powers;</p> <p>2) the preparation of the agenda of the general meeting, making the decision on the date of the said meeting and the inclusion of proposals into the agenda, except for convening extraordinary general meeting by shareholders;</p> <p>3) making a decision on holding regular or extraordinary general meeting in accordance with the company charter and in cases covered with this Law;</p> <p>4) making the decision to sell shares bought out by the company earlier;</p> <p>5) making the decision on the placement of securities other than shares by the company;</p> <p>6) making the decision on the buy-out of securities other than shares placed by the company;</p> <p>7) the approval of the market value of the property in events envisaged by this law;</p> <p>8) electing and terminating powers of the chairman and members of the executive body;</p> <p>9) the approval of conditions of contracts to be concluded with members of the executive body, the setting of their remuneration;</p> | <p>Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board</p> <p>Sec. 8 Every year, the (supervisory) board should carry out an evaluation of its performance. This should encompass an assessment of its membership, organisation and operation as a group, an evaluation of the competence and effectiveness of each board member and of the board committees, and an assessment of how well the board has performed against any performance objectives which have been set.</p> <p>Recommendation 2005/162/EC Annex I, sec. 2.1. subsec. 1. Where, under national law, the (supervisory) board is playing a role, either by making decisions itself or by</p> | |

10) making the decision on the suspension of the chairman or a member of the executive body from the exercise of his powers, and the election of the acting chairman of the executive body;

11) electing and suspending the chairman and the members of other bodies of the company;

12) electing the registration commission, except for events set out by this Law;

13) electing the auditor of the company and determining terms and conditions of the contract to be concluded with the auditor, setting the auditor's remuneration. If the supervisory council does not exist, this issue shall fall within the competence of the executive body, unless otherwise provided by the charter;

14) setting the date of the compilation of the list of the parties entitled to dividends, the procedure and the time frames of the dividend payment within the deadline specified in part two of Article 30 of this Law;

15) setting the date of the compilation of the list of shareholders to be notified of the general meeting in accordance with part one of Article 35 of this Law and entitled to take part in the general meeting in accordance with Article 34 of this Law;

16) solving issues related to the participation of the company in industrial financial groups and other associations, the establishment of other legal entities;

17) solving issues falling within the competence of the supervisory council with Section XVI hereof in case of the merger, the affiliation, the division, the spin off or the transformation of the company;

18) the decision to execute substantial transactions in cases covered with part one of Article 70 of this Law;

19) determining the likelihood of the company's being declared insolvent as a result of the assumption or the performance of liabilities by the company, for instance, as a result of the dividend payment or the share buy-out;

making proposals for consideration by another corporate body, in the process for appointment and/or removal of directors, a nomination committee should be set up within the (supervisory) board.

subsec. 2. The nomination committee should be composed of at least a majority of independent non-executive or supervisory directors. When a company deems it appropriate for the nomination committee to comprise a minority of non-independent members, the Chief Executive Officer could be a member of such a committee.

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| <p>20) making a decision on the election of the company property appraiser and the approval of terms and conditions of the contract to be concluded with the appraiser, setting the appraiser's remuneration;</p> <p>21) making a decision on the election (replacement) of the registrar of holders of registered securities of the company or the depository of securities, and the approval of terms and conditions of the contract to be concluded therewith, setting their remuneration;</p> <p>22) sending proposals to shareholders on the acquisition of ordinary shares held by them by an entity (jointly acting entities), which have procured the controlling interest in accordance with Article 65 of this Law;</p> <p>23) the solution of other issues falling within the sole competence of the supervisory council in accordance with the charter of the joint stock company, including making decisions on the transformation of the share issue in the documentary form of existence into the non-documentary form of existence.</p> <p>3. Issues that fall within the exclusive competence of the supervisory council of the joint stock company may not be solved by bodies of the company other than the general meeting, except for cases specified by this Law.</p> <p>4. Officers of bodies of the joint stock company shall provide members of the supervisory council with access to the information within the limits set by this Law and the charter of the company.</p> | | |
| <p>Article 53. Election of Members of the Supervisory Council</p> | | |
| <p>1. Members of the supervisory council of a joint stock company shall be elected from among individuals, who have the full civil-law capability, and/or from among shareholding legal entities.</p> <p>A legal entity supervisory council member may have an unlimited number of representatives in the supervisory council. The procedure of the operation of the shareholder's representative in the supervisory council shall be determined by the shareholder.</p> <p>2. Powers of a member of the supervisory council shall come into effect upon his election by the general meeting of the company.</p> | <p>Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board</p> <p>Sec. 11.1 In order to maintain a proper balance in terms of the qualifications possessed by its members, the (supervisory) board should determine its desired composition in relation to the</p> | |

Powers of a representative of a shareholder being a member of the supervisory council shall come into effect upon the issue of the power of attorney to him by the shareholder being a member of the supervisory council, and the receipt by the company of the written notice of appointment of a representative, which must specify, inter alia,

the following:

- 1) the last, first and patronymic names (if any) of the representative;
- 2) the birth date of the representative;
- 3) the series and number of the passport of the representative (or another identity document), the issue date and the issuing authority;
- 4) the place of employment of the representative and the position occupied thereby;
- 5) the place of residence or the place of stay of the representative.

A legal entity supervisory council member shall be liable to the company for actions of its representative in the supervisory council.

Shareholders of the company shall be entitled to familiarise themselves with written notices of shareholders being members of the supervisory council on the appointment of representatives in the supervisory council in accordance with the procedure prescribed by part two of Article 78.

3. The election of members of the supervisory council of a public joint stock company shall be carried out solely by means of the cumulative voting.

4. Members of the supervisory council of a private joint stock company shall be elected on the basis of the proportionate representation of representatives of shareholders or by means of the cumulative voting. The specific method of the election of members of the supervisory council of a private joint stock company shall be specified in its charter.

In case of the election of members of the supervisory council of

company's structure and activities, and evaluate it periodically. The (supervisory) board should ensure that it is composed of members who, as a whole, have the required diversity of knowledge, judgement and experience to complete their tasks properly.

Sec. 4.1. A sufficient number of independent non-executive or supervisory directors should be elected to the (supervisory) board of companies to ensure that any material conflict of interest involving directors will be properly dealt with.

Sec. 11.2 The members of the audit committee, should, collectively, have a recent and relevant background in and experience of finance and accounting for listed companies appropriate to the company's activities.

a private joint stock company on the basis of the principle of representation, the dependence of the membership and/or the proportionality of the representation of shareholder representatives in the supervisory council depending on the number of ordinary shares held by shareholders, or the lack of limitation of the number of representatives of a shareholder in the supervisory council of the company may be prescribed by the company charter.

The procedure of the representation of a shareholder by a representative in the supervisory council of a private joint stock company shall be specified by the shareholder.

The shareholder shall have the right to revoke its representative representing his interests in the supervisory council of a private joint stock company at any time with a written notice thereof to the company. The powers of the shareholder's representative in the supervisory council of the company shall be terminated from the date of such a notice.

5. The same individual may be elected into the supervisory council a number of times.

6. A member of the supervisory council may not be a member of the executive body and/or a member of the examining commission (examiner) of the same company at the same time.

7. The number of members of the supervisory council shall be set by the general meeting.

8. If the number of members of the supervisory council is lower than a half of its membership, the company must convene an extraordinary general meeting within three months to elect the rest of members of the supervisory council or, in case of the election of the supervisory council members by means of the cumulative voting, for the election of the whole complement of the supervisory council.

9. A member of the supervisory council shall exercise its powers in compliance with conditions of the civil-law contract, the labour contract or the contract with the company, and in accordance with the charter of the company; a representative of the shareholder being a member of the supervisory council of the company shall exercise its

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| <p>powers in accordance with instructions of the shareholder represented thereby in the supervisory council.</p> <p>The contract shall be signed by the party authorized to do so by the general meeting on behalf of the company.</p> <p>The contract with a member of the supervisory council shall be terminated in case of the termination of his powers.</p> <p>The exercise of powers of a member of the supervisory council by state officers shall only occur in cases and according to the procedure specified by law. The exercise of powers of a member of the supervisory council by individuals being on service in local self-government bodies shall take place in accordance with the law.</p> | | |
| <p>Article 54. Chairman of the Supervisory Council</p> | | |
| <p>1. The chairman of the supervisory council of a joint stock company shall be elected by members of the supervisory council from among them by a simple majority vote of counted on the basis of the total number of members of the supervisory council, unless otherwise provided by the company charter.</p> <p>The supervisory council shall have the right to re-elect the chairman of the supervisory council at any time.</p> <p>2. The chairman of the supervisory council shall organise its work, convene and chair meetings of the supervisory council, open the general meeting, organise the election of the secretary of the general meeting, unless otherwise provided by a charter of the joint stock company, exercise other powers envisaged by the charter and the supervisory council charter.</p> <p>3. Should it be impossible for the chairman of the supervisory council to exercise his powers, they shall be exercised by one of the supervisory council members on the basis of the council decision, unless otherwise provided by the charter or the supervisory council charter of the joint stock company.</p> | n/a | Nothing to mention. |
| <p>Article 55. Meeting of the Supervisory Council</p> | | |
| <p>1. Meetings of the supervisory council shall be convened on the initiative of the chairman of the supervisory council or on request of a</p> | n/a | Nothing to mention. |

member of the supervisory council.

Decisions of the supervisory council shall also be convened on request of the examining commission, the executive body or a member thereof, other parties specified in the charter of the company who take part in the meeting of the supervisory council.

Members of the executive body and other individuals shall take part on request of the supervisory council in its meeting or the review of specific issues of the agenda in accordance with the procedure set out by the supervisory council charter.

Decisions of the supervisory council shall be held as necessary with the frequency prescribed by the charter, but not more often than once per quarter.

The charter of a joint stock company may provide for a procedure of the decision making by the supervisory council by means of the absentee voting (polling).

Representatives of a trade union body or another body authorised by the employee team that has signed the collective contract on behalf of the employee team may take part with the deliberative vote in a meeting of the supervisory council on its invitation.

2. A meeting of the supervisory council shall be legitimate, if attended by at least one half of its complement. The company charter may set a larger number of members of the supervisory council needed for finding its meetings legitimate.

3. Members of the executive body shall take part in the supervisory council meeting on request of the supervisory council.

4. Decisions shall be made by the supervisory council with the simple majority vote of the members of the supervisory council taking part in the meeting and having the vote, unless a large number of shares has been set for the decision making purposes with the charter of the joint stock company.

5. Each member of the supervisory council shall have a single vote at a meeting of the supervisory council.

The charter of the company may provide for the casting vote of

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| <p>the chairman of the supervisory council in case of the equal distribution of votes of the supervisory council members in the course of the decision making.</p> <p>6. The minutes of meeting of the supervisory council shall be executed within five days of the meeting.</p> <p>7. The meeting of the supervisory council or the review of a specific issue may be recorded using technical facilities subject to the council decision.</p> | | |
| <p>Article 56. Supervisory Council Committees. Corporate Secretary</p> | | |
| <p>1. The supervisory council of the joint stock company may set up permanent and temporary committees consisting of its members for the review and the preparation of issues that fall within the competence of the supervisory council.</p> <p>Audit committee and company information policy committee may be established in a joint stock company. The committees shall be chaired by members of the supervisory council of the company elected on the basis of a proposal of a shareholder that does not control activities of the company.</p> <p>In order to support activities of the audit committee, the supervisory council may make a decision to institute an internal auditor position (establish an internal audit function) in the company. The internal auditor (the internal audit function) shall be appointed by the supervisory council and shall report and be subordinated directly to a member of the supervisory council being the chairman of the audit committee.</p> <p>The procedure of the formation and the activities of committees shall be specified by the charter or the supervisory council charter of the company.</p> <p>2. Decisions on setting up a committee and the list of issues to be handed over to the committee for the review and the preparation shall be made by the simple majority vote of members of the supervisory council, unless the charter prescribes a large share of votes needed to make such a decision.</p> | <p>Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board</p> <p>Sec. 5 Boards should be organised in such a way that a sufficient number of independent non-executive or supervisory directors play an effective role in key areas where the potential for conflict of interest is particularly high. To this end, but subject to point 7, nomination, remuneration and audit committees should be created within the (supervisory) board, where that board plays a role in the areas of nomination, remuneration and audit under national law, taking into account Annex I.</p> <p>However, pursuant to sec. 1.3.2 Member States should be allowed to choose, in whole or in part, between the creation within the (supervisory) board of any of the committees with the characteristics advocated in this</p> | <p>Recommended on a 'comply or explain'-basis (sec. 1.2 of the Recommendation 2005/162/EC).</p> |

3. Opinions of committees shall be reviewed by the supervisory council in accordance with the procedure envisaged herein for the decision making by the supervisory council.

4. The supervisory council shall have the right to elect a corporate secretary in accordance with the established procedure on the basis of the proposal of the chairman of the supervisory council. A corporate secretary shall be the individual responsible for the relations of the joint stock company with shareholders and/or investors.

Recommendation, and the use of other structures – external to the (supervisory) board – or procedures. Such structures or procedures, which could be either mandatory for companies under national law or best practice recommended at national level through a ‘comply or explain’ approach, should be functionally equivalent and equally effective.

Sec. 7.1. Companies should make sure that the functions assigned to the nomination, remuneration and audit committees are carried out. However, companies may group the functions as they see fit and create fewer than three committees. In such a situation, companies should give a clear explanation both of the reasons why they have chosen an alternative approach and how the approach chosen meets the objective set for the three separate committees.

Sec. 7.2. In companies where the (supervisory) board is small, the functions assigned to the three committees may be performed by the (supervisory) board as a whole, provided that it meets the composition requirements advocated for the committees and that adequate information is provided in this respect. In such a situation, the national provisions relating to board committees (in particular with respect to their role, operation, and transparency) should

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| | apply, where relevant, to the (supervisory) board as a whole. | |
| Article 57. Early Termination of Powers of Members of the Supervisory Council | | |
| <p>1. A general meeting of a joint stock company may make a decision to early terminate the powers of members of the supervisory council and to simultaneously elect new members.</p> <p>The powers of a member of the supervisory council shall be terminated without a decision of the general meeting:</p> <ol style="list-style-type: none"> 1) on request of the supervisory council member subject to the two-week written notice thereof to the company; 2) in case of the inability to perform duties of a supervisory council member due to the health status; 3) in case of the effectiveness of a court sentence or decision convicting the member for a punishment that rules out the possibility of the exercise of duties of a supervisory council member; 4) in case of his death, the declaration of being legally incapable or having restricted capability, missing or deceased. <p>The company charter may provide for additional grounds for the termination of powers of a member of the supervisory council.</p> <p>The contract with a member of the supervisory council shall be terminated simultaneously with the termination of his powers.</p> <p>2. If members of the supervisory council have been elected by means of the cumulative voting, a decision of the general meeting to early terminate the powers may only be made in respect of all members of the supervisory council.</p> | <p>Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board</p> <p>Sec. 10 Non-executive or supervisory directors should be appointed for specified terms subject to individual reelection, at maximum intervals to be determined at national level with a view to enabling both the necessary development of experience and sufficiently frequent reconfirmation of their position. It should also be possible to remove them, but their removal should not be easier than for an executive or managing director.</p> | |
| Section 9. Executive Body of a Joint Stock Company | | |
| Article 58. Activity Principles of an Executive Body of a Joint Stock Company | | |
| <p>1. The executive body of the joint stock company shall manage day-to-day activities of the company.</p> | n/a | |

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| <p>The executive body shall be competent to solve all issues related to the management of the day-to-day activities of the company, except for those that fall within the exclusive competence of the general meeting and the supervisory council.</p> <p>2. The executive body of a joint stock company shall report to the general meeting and the supervisory council, and organize the implementation of their decisions. The executive body shall act on behalf of the joint stock company within the limits set by the charter of the joint stock company and the law.</p> <p>3. The executive body of a joint stock company may be either a collegiate body (management board, directorate) or single-person body (director, general manager).</p> <p>4. Any individual who has the full civil-law capability and is not a member of the supervisory council or the examining commission of the company in question may be a member of the executive body of the joint stock company.</p> <p>5. Rights and duties of members of the executive body of the joint stock company shall be defined by this Law, other acts of legislation, the company charter and/or the executive body charter of the company, as well as the contract to be concluded with each member of the executive body. The contract shall be signed on behalf of the company by the chairman of the supervisory council or the individual authorized to do so by the supervisory council.</p> <p>6. On request of bodies and officers of the company, the executive body must provide an opportunity for the familiarization with the information about activities of the company within the limits set out by law, the charter and internal policies of the company.</p> <p>Individuals who have gained access to restricted-access information shall be liable for the illegitimate use thereof.</p> | | |
| <p>Article 59. Collegiate Executive Body of a Joint Stock Company</p> | | |
| <p>1. The number of members of the executive body, the procedure of the appointment of its members shall be specified by the charter of the company. The procedure of convening and holding</p> | <p>n/a</p> | <p>National discretion.</p> |

meetings of the collegiate executive body shall be specified by the charter or the executive body charter of the joint stock company.

2. Each member of the collegiate executive body shall have the right to require a meeting of the collegiate executive body to be held and to suggest issues for the meeting agenda.

3. Members of the supervisory council, as well as a representative of a trade union body or another body authorized by the employee team that has signed the collective contract on behalf of the employee team shall have the right to be present at meetings of the collegiate executive body. The charter may also vest other parties with the right to be present at a meeting of the collegiate executive body.

4. Minutes of meeting of a collegiate executive body shall be kept. The minutes of meeting of the collegiate executive body shall be signed by the chairman and issued for familiarization on request of a member of the collegiate executive body, a member of the supervisory council or a representative of a trade union body or another body authorized by the employee team that has signed the collective contract on behalf of the employee team. The charter of the joint stock company may also vest other individuals with the right to receive the minutes of meeting of the collegiate executive body for the familiarization.

5. The chairman of the collegiate executive body shall be elected by the supervisory council of the company, unless otherwise provided by the charter of the company, in accordance with the procedure prescribed by the charter of the joint stock company.

The chairman of the collegiate executive body shall organize the work of the collegiate executive body, convene meetings and ensure the maintenance of the minutes of meetings.

The chairman of the collegiate executive body shall have the right to act without the power of attorney on behalf of the company in accordance with decisions of the collegiate executive body, e.g., represent interests of the company, enter into transactions on behalf of the company, issue orders and instructions binding upon all employees of the company. Another member of the collegiate executive body may also be vested with these powers, if the charter of the company so provides, in accordance with the procedure specified by the legislation

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| <p>of Ukraine.</p> <p>6. In case of the inability of the chairman of the collegiate executive body to exercise his powers, the powers in question shall be exercised by one of the members of the collegiate executive body by decision of the said body, unless otherwise provided by the charter of the company or the charter of the executive body of the joint stock company. Other parties may act on behalf of the company by way of the representation as provided for by the Civil Code of Ukraine .</p> | | |
| <p>Article 60. Single-person Executive Body</p> | | |
| <p>1. The procedure of the decision-making by an individual who exercises powers of a single-person executive body shall be specified by the charter of the company.</p> <p>2. The individual exercising powers of a single-person executive body shall have the right to act without the power of attorney on behalf of the company in accordance with decisions of the collegiate executive body, e.g., represent interests of the company, enter into transactions on behalf of the company, issue orders and instructions binding upon all employees of the company.</p> <p>3. In case of the inability of the individual exercising the powers of a single-person executive body to exercise his powers, these powers shall be exercised by an individual appointed by him, unless otherwise prescribed by the charter of the company or the executive body charter.</p> | <p>n/a</p> | <p>National discretion.</p> |
| <p>Article 61. Termination of Powers of the Chairman and Members of the Executive Body</p> | <p>n/a</p> | |
| <p>1. Powers of a chairman of the collegiate executive body (an individual exercising the powers of a single-person executive body) shall be terminated by decision of the supervisory council, unless the charter of the joint stock company includes this issue into the competence of the general meeting.</p> <p>Powers of a member of the collegiate executive body shall be terminated by decision of the supervisory council, unless the charter of the joint stock company includes this issue into the competence of the general meeting.</p> <p>The grounds for the termination of powers of a chairman</p> | | |

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| <p>and/or a member of the executive body shall be specified by law, the company charter, and the contract concluded with the chairman and/or the member of the executive body.</p> <p>2. If the election and the termination of powers of the chairman of the collegiate executive body (the individual exercising powers of the single-person executive body) is included into the competence of the general meeting in accordance with the charter of the company, the supervisory council shall have the right to suspend the chairman of the collegiate executive body (the individual exercising powers of the single-person executive body), whose actions or inaction violate rights of shareholders or the company itself, from his powers until the general meeting solves the issue of the termination of his powers.</p> <p>Until the general meeting solves the issue of the termination of powers of the chairman of the collegiate executive body (the individual exercising powers of the single-person executive body), the supervisory council shall be required to appoint an individual who will provisionally exercise the powers of the chairman of the collegiate executive body (the individual exercising powers of the single-person executive body), and convene an extraordinary general meeting.</p> <p>3. In case of the suspension of the chairman of the executive body or the individual acting in his capacity, the supervisory council shall be required to announce a general meeting of the company whose agenda must include the issue of the re-election of the chairman of the executive body of the company, within 10 days of the approval of the relevant decision.</p> | | |
| Section 9. Officers of Bodies of a Joint Stock Company | | |
| Article 62. Requirements for Officers of Bodies of a Joint Stock Company | | |
| <p>1. Deputies of the Parliament of Ukraine, members of the Cabinet of Ministers of Ukraine, heads of central and local executive bodies, local self-government bodies, military servicemen, notaries, officers of public prosecution, court, security service, internal affairs agencies, state officials may not be officers of bodies of a joint stock company, except for cases when they exercise functions related to the management of corporate rights of the state and represent interests of the state or the territorial community in the supervisory council or the</p> | n/a | National discretion. |

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| <p>examining commission of the company. Individuals prohibited by court from exercising a certain activity may not be officers of bodies of a company that exercises the activity in question. Individuals, who have non-cancelled convictions for crimes against property, service or economic crimes, may not be officers of bodies of a company.</p> <p>2. Officers of bodies of a joint stock company shall not have the right to divulgate commercial secrets and confidential information about activities of the company, except for cases envisaged by law.</p> <p>3. Officers of bodies of the company must provide documents on the financial and business activities of the company on request of the examining commission (examiner) or the auditor.</p> <p>4. Officers of bodies of the joint stock company shall be paid remuneration solely on terms and conditions set out by contracts governed by civil law or labour contracts concluded with them.</p> | | |
| Article 63. Liability of Officers of Bodies of a Joint Stock Company | | |
| <p>1. Officers of bodies of a joint stock company must act in the interests of the company, comply with requirements of the legislation, provisions of the charter and other documents of the company.</p> <p>2. Officers of bodies of a joint stock company shall be liable to the company for losses inflicted upon the company with their actions (inaction) in accordance with law.</p> <p>3. If several individuals are liable under this article, their liability to the company shall be joint.</p> | <p>This should be without prejudice to liability grounds to be provided in national law pursuant to e.g. art. 20 par. 3 Directive 2012/30/EU (“Capital Directive”) art. 7 Directive 2009/101/EC (“Disclosure Directive”) art. 7 Directive 2004/109/EC (“Transparency Directive”)</p> | <p>Internal liability of Directors vis-à-vis the company remains in principle under the discretion of national legislator.</p> |
| Section 10. Acquisition of a Substantial and Controlling Interest in a Company | | |
| Article 64. Acquisition of a Substantial Interest in a Company | | |
| <p>1. An entity (jointly acting entities) intent on purchasing shares, which, taking account of the number of shares held by the entity in question and entities affiliated therewith, will account for 10 and more per cent of ordinary shares in the company (hereinafter referred to as the "substantial interest"), must submit a notice of its intent in writing to the company and publish the same not later than 30 days prior to the date of the acquisition of the relevant interest. The said notice shall be published by means of the submission thereof to the National</p> | <p>n/a</p> | |

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| <p>Commission for Securities and Stock Market, each exchange, where the company has been listed, and the publication thereof in an official printed bulletin.</p> <p>The notice shall indicate the number, the type and/or the class of shares in the company held by the party (each of the parties acting together) and each of its affiliated parties, and the number of ordinary shares in the company which the party (the parties acting together) is intent on acquiring.</p> <p>Provisions of this part of the article shall not apply to entities, which already own a substantial interest taking account of the number of shares held by them and entities affiliated therewith.</p> <p>2. The company, whose substantial interest is being acquired, shall not have the right to take measures to prevent the acquisition from taking place.</p> | | |
| <p>Article 65. Acquisition of Shares of the Company as a Result of the Acquisition of the Controlling Interest</p> | | |
| <p>1. An entity (jointly acting entities) that has become an owner of the controlling interest in the company taking account of the number of shares held by the entity in question and entities affiliated therewith shall be required to make an offer to all shareholders within 20 days of the acquisition date for the purchase of ordinary shares from them, except for the acquisition of the controlling interest in the course of the privatization.</p> <p>The said entity (jointly acting entities) shall send the company an irrevocable public offer for all shareholders that own ordinary shares in the company for the acquisition of shares to the address of the company in the name of the supervisory council or the executive body (if the charter of the company does not provide for the establishment of a supervisory council), and notify thereof the National Commission for Securities and Stock Market and each stock exchange where the company has been listed. The supervisory council (or the executive body, if the charter of the company does not provide for the establishment of a supervisory council) shall be required to send the said written offer to each shareholder in accordance with the register of shareholders of the company within 10 days of receipt of the relevant</p> | <p><u>Directive 2004/25/EC</u> Art. 5</p> <p>1. Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of</p> | <p>The provisions concerning equitable price should be revised.</p> <p>The provisions on consideration offered by the offeror (mandatory cash alternative).</p> <p>The data of the offer document shall be in accordance with the Directive.</p> <p>The time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document. It may be provided that the period of 10 weeks may be extended on condition that the offeror gives at least two weeks' notice of his/her intention of closing the bid.</p> |

documents from the entity (jointly acting entities), which has acquired the controlling interest in the company.

2. The share acquisition offer addressed to shareholders must contain the data on:

1) the party (each of the parties acting together), which has acquired the controlling interest in the company, and its affiliated parties: the last name (the name), the place of residence (the seat), the number, the type and/or the class of shares in the company held by each party so listed;

2) the offered share purchase price and the procedure of determining the same;

3) the time frame for the notification of the acceptance of the share acquisition offer by shareholders in accordance with part three of this article;

4) the procedure of the payment for shares being acquired.

3. The time frame, during which the shareholders may notify the entity (jointly acting entities) that has acquired the controlling interest of the acceptance of the share acquisition offer, must range from 30 to 120 days from the offer date.

4. The share acquisition price may not be lower than the market price determined in accordance with Article 8 of this Law.

5. The entity (jointly acting entities) that has acquired the controlling interest must pay shareholders, which have accepted the offer, the value of their shares on the basis of the acquisition price stated in the proposal within 30 days of the expiry of the time frame stated in the proposal; the shareholder, which has accepted the proposal, must take all actions required for the acquisition of the ownership of its shares by the entity (jointly acting entities) that has acquired the controlling interest.

6. Provisions of this part of the article shall not apply to the entity (jointly acting entities), which already owns a controlling interest taking account of the number of shares held by them and entities affiliated therewith.

those securities for all their holdings at the equitable price as defined in paragraph 4.

2. Where control has been acquired following a voluntary bid made in accordance with this Directive to all the holders of securities for all their holdings, the obligation laid down in paragraph 1 to launch a bid shall no longer apply.

3. The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office.

4. The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1 shall be regarded as the equitable price. If, after the bid has been made public and before the offer closes for acceptance, the offeror or any person acting in concert with him/her purchases securities at a price higher than the offer price, the offeror shall increase his/her offer so that it is not less than the highest price paid for the securities so acquired.

Provided that the general principles laid down in Article 3(1) are respected, Member States may authorise their supervisory authorities to adjust the price referred to in the first

The provisions that within the aforementioned period, the board of the offeree company shall obtain the prior authorization of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company shall be added.

The rules which govern the conduct of bids shall be stipulated, at least as regards the following:

- (a) the lapsing of bids;
- (b) the revision of bids;
- (c) competing bids;
- (d) the disclosure of the results of bids;
- (e) the irrevocability of bids and the conditions permitted.

subparagraph in circumstances and in accordance with criteria that are clearly determined.

To that end, they may draw up a list of circumstances in which the highest price may be adjusted either upwards or downwards, for example where the highest price was set by agreement between the purchaser and a seller, where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued. They may also determine the criteria to be applied in such cases, for example the average market value over a particular period, the break-up value of the company or other objective valuation criteria generally used in financial analysis. Any decision by a supervisory authority to adjust the equitable price shall be substantiated and made public.

5. By way of consideration the offeror may offer securities, cash or a combination of both.

However, where the consideration offered by the offeror does not consist of liquid securities admitted to trading on a regulated market, it shall include a cash alternative.

In any event, the offeror shall offer a cash consideration at least as an alternative where he/she or persons acting in concert with him/her, over a

period beginning at the same time as the period determined by the Member State in accordance with paragraph 4 and ending when the offer closes for acceptance, has purchased for cash securities carrying 5 % or more of the voting rights in the offeree company. Member States may provide that a cash consideration must be offered, at least as an alternative, in all cases.

6. In addition to the protection provided for in paragraph 1, Member States may provide for further instruments intended to protect the interests of the holders of securities in so far as those instruments do not hinder the normal course of a bid.

Article 6

1. Member States shall ensure that a decision to make a bid is made public without delay and that the supervisory authority is informed of the bid. They may require that the supervisory authority must be informed before such a decision is made public. As soon as the bid has been made public, the boards of the offeree company and of the offeror shall inform the representatives of their respective employees or, where there are no such representatives, the employees themselves.

3. The offer document referred to in paragraph 2 shall state at least:
(a) the terms of the bid;
(b) the identity of the offeror and, where the offeror is a company, the type, name and registered office of that

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| | <p>company;</p> <p>(c) the securities or, where appropriate, the class or classes of securities for which the bid is made;</p> <p>(d) the consideration offered for each security or class of securities and, in the case of a mandatory bid, the method employed in determining it, with particulars of the way in which that consideration is to be paid;</p> <p>(e) the compensation offered for the rights which might be removed as a result of the breakthrough rule laid down in Article 11(4), with particulars of the way in which that compensation is to be paid and the method employed in determining it;</p> <p>(f) the maximum and minimum percentages or quantities of securities which the offeror undertakes to acquire;</p> <p>(g) details of any existing holdings of the offeror, and of persons acting in concert with him/her, in the offeree company;</p> <p>(h) all the conditions to which the bid is subject;</p> <p>(i) the offeror's intentions with regard to the future business of the offeree company and, in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change in the conditions of employment, and in particular the offeror's strategic plans for the two companies and the likely repercussions</p> | |
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on employment and the locations of the companies' places of business;
(j) the time allowed for acceptance of the bid;
(k) where the consideration offered by the offeror includes securities of any kind, information concerning those securities;
(l) information concerning the financing for the bid;
(m) the identity of persons acting in concert with the offeror or with the offeree company and, in the case of companies, their types, names, registered offices and relationships with the offeror and, where possible, with the offeree company;
(n) the national law which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts.

Article 7

1. Member States shall provide that the time allowed for the acceptance of a bid may not be less than two weeks nor more than 10 weeks from the date of publication of the offer document.

Provided that the general principle laid down in Article 3(1)(f) is respected, Member States may provide that the period of 10 weeks may be extended on condition that the offeror gives at least two weeks' notice of his/her intention of closing the bid.

Article 9

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| | <p>2. During the period referred to in the second subparagraph, the board of the offeree company shall obtain the prior authorization of the general meeting of shareholders given for this purpose before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may result in a lasting impediment to the offeror's acquiring control of the offeree company.</p> <p>Article 11 Article 13 Member States shall also lay down rules which govern the conduct of bids, at least as regards the following:</p> <ul style="list-style-type: none"> (a) the lapsing of bids; (b) the revision of bids; (c) competing bids; (d) the disclosure of the results of bids; (e) the irrevocability of bids and the conditions permitted. | |
| n/a | <p><u>Directive 2004/25/EC</u> Art. 15 The right of squeeze-out</p> <p>1. Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 to 5 apply.</p> <p>2. Member States shall ensure that an offeror is able to require all the holders of the remaining securities to sell him/her those securities at a fair price. Member States shall introduce that</p> | <p>Amendment proposal: provisions about the right of squeeze-out and sell-out shall be implemented to the Law on JSC.</p> |

right in one of the following situations:

(a) where the offeror holds securities representing not less than 90 % of the capital carrying voting rights and 90 % of the voting rights in the offeree company,

or

(b) where, following acceptance of the bid, he/she has acquired or has firmly contracted to acquire securities representing not less than 90 % of the offeree company's capital carrying voting rights and 90 % of the voting rights comprised in the bid.

In the case referred to in (a), Member States may set a higher threshold that may not, however, be higher than 95 % of the capital carrying voting rights and 95 % of the voting rights.

3. Member States shall ensure that rules are in force that make it possible to calculate when the threshold is reached.

Where the offeree company has issued more than one class of securities, Member States may provide that the right of squeeze-out can be exercised only in the class in which the threshold laid down in paragraph 2 has been reached.

4. If the offeror wishes to exercise the right of squeeze-out he/she shall do so within three months of the end of the time allowed for acceptance of the bid referred to in Article 7.

5. Member States shall ensure that a fair price is guaranteed. That price shall

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| | <p>take the same form as the consideration offered in the bid or shall be in cash. Member States may provide that cash shall be offered at least as an alternative.</p> <p>Following a voluntary bid, in both of the cases referred to in paragraph 2(a) and (b), the consideration offered in the bid shall be presumed to be fair where, through acceptance of the bid, the offeror has acquired securities representing not less than 90 % of the capital carrying voting rights comprised in the bid.</p> <p>Following a mandatory bid, the consideration offered in the bid shall be presumed to be fair.</p> <p>Article 16 The right of sell-out</p> <p>1. Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 and 3 apply.</p> <p>2. Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2).</p> <p>3. Article 15(3) to (5) shall apply <i>mutatis mutandis</i>.</p> | |
| Section 12. Buy-out and Mandatory Share Buy-out by a Joint Stock Company | | |
| Article 66. Buy-out by a Joint Stock Company of Securities | | |
| 1. A joint stock company shall have the right to buy out shares from shareholders on the basis of a decision of the general meeting | Directive 2012/30/EU ("Capital Directive") | In general, the Directive's requirements are met. |

subject to the consent of holders of such shares. The procedure of the exercise of this right shall be set out in the company charter and/or the decision of the general meeting. The decision of the general meeting must specify:

- 1) the buy-out procedure that includes the maximum number, the type and/or the class of shares to be bought out;
- 2) the time frame of the buy-out;
- 3) the price of the buy-out (or the price determination procedure);
- 4) actions of the company in respect of the bought-out shares (their annulment or sale).

The time frame of the buy-out shall include the time frame of the acceptance of written share sale offers of shareholders and the time frame of the payment therefor. The share buy-out time frame may not exceed one year. A written offer by a shareholder to sell shares to the company shall be irrevocable.

The share buy-out price may not be lower than their market price determined in accordance with part three of Article 8 of this Law. The shares being bought out shall be paid for in cash.

The company shall be required to purchase shares from each shareholder who accepts the share buy-out offer at the price stated in the decision of the general meeting.

The legal instruments in respect of the conveyance of the ownership of shares to the company executed during the time frame specified in the decision of the general meeting at a price other than the price stated in the said decision shall be null and void.

2. If the general meeting has made a decision on a proportionate share buy-out, the company shall send each shareholder a notice in writing about the number of shares to be bought out, their price and the buy-out time frame. In a company with over 1,000 holders of ordinary shares, the acceptance of offers of shareholders on the sale of shares to the company shall last for at least 30 days since sending the said notice to the shareholders.

art. 21

1. Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Directive 2003/6/EC, Member States may permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf. To the extent that the acquisitions are permitted, Member States shall make such acquisitions subject to the following conditions:

(a) authorisation shall be given by the general meeting, which shall determine the terms and conditions of such acquisitions and, in particular, the maximum number of shares to be acquired, the duration of the period for which the authorisation is given, the maximum length of which shall be determined by national law without, however, exceeding five years, and, in the case of acquisition for value, the **maximum** and minimum consideration. Members of the administrative or management body shall satisfy themselves that, at the time when each authorised acquisition is effected, the conditions referred to in points (b) and (c) are respected;

(b) the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, may not have the effect of reducing the net assets below the amount mentioned in Article 17(1)

However, the maximum consideration shall be foreseen as well in the decision of the general meeting concerning the acquisition.

The data to be stated in the annual report need to be revised.

The general meeting may make a decision to buy out a specific quantity of shares of a certain type and/or class from specific shareholders subject to their consent. In this case, the decision must contain last names (names) of shareholders, from whom shares are being bought out, and the number of shares of a certain type and/or class bought out from such shareholders.

3. Shares bought out by the joint stock company shall be disregarded for the purposes of the profit allocation, the voting and the ascertainment of the general meeting quorum. The company must sell shares bought out by the company or annul them in accordance with the decision of the general meeting, which provided for the buy-out of own shares by the company, within one year since the time of buy-out.

The sales price of shares bought out by the company may not be lower than their market price determined in accordance with Article 8 of this Law.

Legal instruments related to the conveyance of the ownership of shares bought out by the company executed with the violation of requirements of this part shall be null and void.

4. The joint stock company shall have the right to buy out securities other than shares placed thereby by decision of the supervisory council subject to the consent of owners of such securities, if so provided by the company charter and the issue prospectus of such securities.

and (2); and

(c) only fully paid-up shares may be included in the transaction.

art. 23

Shares acquired in contravention of Articles 21 and 22 shall be disposed of within one year of their acquisition. Should they not be disposed of within that period, Article 22(3) shall apply.

art. 24

1. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall make the holding of those shares at all times subject to at least the following conditions:

(a) among the rights attaching to the shares, the right to vote attaching to the company's own shares shall in any event be suspended;

(b) if the shares are included among the assets shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the liabilities.

2. Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his own name but on the company's behalf, they shall require the annual report to state at least:

(a) the reasons for acquisitions made during the financial year;

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| | <p>(b) the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;</p> <p>(c) in the case of acquisition or disposal for a value, the consideration for the shares;</p> <p>(d) the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.</p> | |
| <p>Article 67. Limitation of the Share Buy-out by a Joint Stock Company</p> | | |
| <p>1. The general meeting of a joint stock company shall have no right to make decisions to buy-out shares, if:</p> <p>1) the company has mandatory share buy-out liabilities under Article 68 hereof as of the share buy-out date;</p> <p>2) the company is insolvent or will become insolvent as a result of the share buy-out;</p> <p>3) the equity of the company is lower than the sum of its authorized capital and reserved capital, and the exceedence of the liquidation value of preference shares over their par value, or will become lower than the said sum as a result of the said buy-out.</p> <p>2. The joint stock company shall have no right to place ordinary shares placed thereby until the full disbursement of the current dividend under preference shares.</p> <p>The joint stock company shall have no right to buy out preference shares placed thereby until the full disbursement of the current dividends under preference shares, whose holders enjoy priority in terms of the obtainment of dividends.</p> | <p>Directive 2012/30/EU (“Capital Directive”) Art. 21 (supra)</p> | <p>The Directive’s requirements are met.</p> |

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| <p>3. The joint stock company shall have no right to make decisions that provide for the company share buy-out without the annulment thereof, if the portion of the company's shares in circulation will become lower than 80 per cent of the authorized capital after the buy-out.</p> | | |
| <p>Article 68. Mandatory Share Buy-out by a Joint Stock Company on Demand of Shareholders</p> | | |
| <p>1. Each shareholder holding ordinary shares in the company shall have the right to demand a mandatory buy-out by the joint stock company of the voting shares held by the shareholder, if the shareholder has registered for the participation in the general meeting and voted against a decision of the general meeting on:</p> <p>1) the merger, the affiliation, the division, the transformation, the spin off and the modification of the type of a company;</p> <p>2) the engagement of the company into a substantial transaction;</p> <p>3) the modification of the amount of the authorized fund;</p> <p>2. Each shareholder holding preference shares in the company shall have the right to demand a mandatory buy-out by the joint stock company of the preference shares held by the shareholder, if the shareholder has registered for the participation in the general meeting and voted against a decision of the general meeting on:</p> <p>1) the introduction of changes into the company charter that provide for the placement of a new class of preference shares, whose owners will have preference in terms of the priority of the receipt of dividends or disbursements in case of the joint stock company liquidation;</p> <p>2) the increase in the extent of rights of shareholders that own the placed preference shares that have preference in terms of the priority of the receipt of dividends or disbursements in case of the joint stock company liquidation.</p> <p>3. In cases covered with parts one and two of this article, the joint stock company shall be required to buy out the shares held by the</p> | <p>Directive 82/891/EEC art. 5 par. 2.</p> <p>Where shares in the recipient companies are allocated to the shareholders of the company being divided otherwise than in proportion to their rights in the capital of that company, Member States may provide that the minority shareholders of that company may exercise the right to have their shares purchased. In such case, they shall be entitled to receive consideration corresponding to the value of their shares. In the event of a dispute concerning such consideration, it must be possible for the consideration to be determined by a court.</p> <p>art. 13</p> <p>Holders of securities, other than shares, to which special rights are attached, must be given rights in the recipient companies against which such securities may be invoked in accordance with the draft terms of division, at least equivalent to the rights they possessed in the company being divided, unless the alteration of those rights has been</p> | <p>Ukrainian law goes beyond the standard set by the directive. Inspiration by American Law visible. It is recommended to review and further extend the catalogue of triggering events, borrowing from Italian, Spanish, German and Japanese law. In particular Spanish and Italian laws contain a list of appraisal rights codified in a transparent way within few provisions of the code.</p> |

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| <p>shareholder.</p> <p>4. The list of shareholders eligible for demanding a mandatory buy-out of shares held by them under parts one and two of this article shall be compiled on the basis of a list of shareholders registered for the participation in the general meeting, at which decisions that underlie the demand for the mandatory share buy-out have been made.</p> | <p>approved by a meeting of the holders of such securities, if such a meeting is provided for under national laws, or by the holders of those securities individually, or unless the holders are entitled to have their securities repurchased.</p> | |
| <p>Article 69. Procedure of the Exercise by Shareholders of the Right to Demand the Mandatory Buy-out of Their Shares by the Joint Stock Company</p> | | |
| <p>1. The share buy-out price may not be lower than their market price.</p> <p>The share buy-out price shall be calculated as of the date preceding the date of the publication of the notice of the general meeting, at which decisions that underlie the demand for the mandatory share buy-out have been made, in accordance with the established procedure.</p> <p>The market value of shares shall be determined according to the procedure prescribed by Article 8 hereof.</p> <p>The contract between the joint stock company and the shareholder on the mandatory buy-out of the shareholder's shares by the company shall be concluded in writing.</p> <p>2. A shareholder intent on exercising the right to demand the mandatory share buy-out shall submit a written demand to the company within 30 days of the decision of the general meeting, which underlies the demand for the mandatory share buy-out. The shareholder's mandatory share buy-out demand must indicate the shareholder's last name (name), place of residence (seat), the number, the type and/or the class of shares whose mandatory buy-out is demanded by the shareholder.</p> <p>3. The company shall pay the value of shares at the buy-out price stated in the notice of the demand for the mandatory buy-out of shares held by the shareholder within 30 days of receipt of the demand of the shareholder for the mandatory share buy-out, while the relevant shareholder must take all actions required for the obtainment of the</p> | <p>n/a</p> | <p>Procedure of executing appraisal rights are left up to national discretion, with the only requirement that fair purchase price is offered to dissenting shareholders.</p> |

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| <p>ownership of the shares, whose mandatory buy-out the shareholder is requiring, by the company.</p> <p>The shares shall be paid in cash, unless the parties have agreed on a different form of payment within the time frames specified in this article.</p> | | |
| Section 13. Significant Transaction and Non-Arm's Length Transaction | | |
| Article 70. Significant Transaction | | |
| <p>1. A decision to engage into a significant transaction shall be made by the supervisory council, if the market value of the property or the services being the object thereof ranges from 10 to 25 per cent of the value of assets according to the latest annual financial statement of the joint stock company.</p> <p>The charter of a joint stock company may specify additional criteria for the categorization of a transaction as significant.</p> <p>In case of the failure of the supervisory council to make a decision on the engagement into a significant transaction, the issue of such a transaction may be raised at the general meeting.</p> <p>2. A decision to engage into a significant transaction shall be made by the general meeting on the basis of a proposal by the supervisory council, if the market value of the property or the services being the object thereof exceeds 25 per cent of the value of assets according to the latest annual financial statement of the joint stock company.</p> <p>A decision to engage into a significant transaction shall be made by the simple majority of votes of shareholders registered for the participation in a general meeting and holding shares that vote on the issue in question, if the market value of the property or the services being the object thereof exceeds 25 per cent and is lower than 50 per cent of the value of assets according to the latest annual financial statement of the joint stock company.</p> <p>A decision to engage into a significant transaction shall be made by more than 50 per cent of the total number of shareholders, if the market value of the property, the work or the services being the object thereof equals or exceeds 50 per cent of the value of assets according to</p> | n/a | <p>However, see the Proposal for a Directive amending Directive 2007/36/EC (SRD) as regards the encouragement of long-term shareholder engagement (Presidency compromise text of November 10th, 2014), motive No. 19 of the Preamble: Transactions with related parties may cause prejudice to companies and their shareholders, as they may give the related party the opportunity to appropriate value belonging to the company. Thus, adequate safeguards for the protection of shareholders' interests are of importance. For this reason Member States should ensure that related party transactions representing more than 5 % of the companies' assets or transactions which can have a significant impact on profits or turnover should be submitted to a vote by the shareholders in a general meeting. Where the related party transaction involves a shareholder, this shareholder should be excluded from that vote. The company should not be allowed to conclude the transaction before the shareholders' approval of the transaction.</p> |

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| <p>the latest annual financial statement of the joint stock company.</p> <p>3. If it is not possible to determine as of the general meeting date, what kind of significant transactions will be carried out by the joint stock company in the course of the day-to-day business, the general meeting may make a decision to pre-approve significant transactions that can be carried out by the company within not more than one year of the said decision date with the indication of the type of transactions and their ultimate aggregate value. In this case, the relevant provisions of part two of this article must be applied depending on the ultimate aggregate value of such transactions.</p> <p>4. Requirements of this section for the significant transaction procedure shall be applied as additional to other requirements for the procedure of the performance of certain transactions set out by law or the charter of a joint stock company.</p> <p>5. It shall be prohibited to divide the object of the transaction in order to evade the procedure of making decisions on substantial transactions provided for hereby.</p> | | <p>For transactions with related parties that represent more than 1% of their assets companies should publicly announce such transactions at the time of the conclusion of the transaction, and accompany the announcement by a report from an independent third party assessing whether the transaction is on market terms and confirming that the transaction is fair and reasonable from the perspective of the shareholders, including minority shareholders.</p> <p>Member States should be allowed to exclude transactions entered into between the company and its wholly owned subsidiaries. Member States should also be able to allow companies to request the advance approval by shareholders for certain clearly defined types of recurrent transactions above 5 percent of the assets, and to request from shareholders an advance exemption from the obligation to produce an independent third party report for recurrent transactions above 1 percent of the assets, under certain conditions, in order to facilitate the conclusion of such transactions by companies.</p> <p>See also art. 9c of the compromise text of the draft amending Directive.</p> |
| <p>Article 71. Non-Arm's Length Transaction</p> | | |
| <p>1. An officer; his family member being a spouse, parents (adoptive parents), tutors (guardians), a brother, a sister, children and their spouses, a legal entity, in which the share held by the officer of bodies of the company or his family members accounts for 25 or more</p> | <p>n/a</p> | <p>See above</p> |

per cent; a shareholder, who owns 25 or more per cent of ordinary shares in the company personally or together with his family members shall be deemed to be a person interested in the performance of a transaction by a joint stock company, provided that the said person (persons, jointly or severally) meets at least one of the following criteria:

1) he (it) is a party to the said transaction or is a member of the executive body of the legal entity being a party to the transaction;

2) he (it) is remunerated for the engagement into the said transaction by the company (officers of the company) or a party to the transaction;

3) he (it) acquires property as a result of the said transaction;

4) he (it) takes part in a transaction as a representative or an intermediary (other than the representation of the company by officers).

A party interested in a transaction must inform the company of his (its) interest within three business days of the emergence of the interest on the party's part.

2. The executive body of a joint stock company shall be required to provide the supervisory council (or, lacking the supervisory council, each shareholder in person) with the information about non-arm's length transactions within five days of receipt of the information about the possible engagement into a non-arm's length transaction; the information shall include, for instance, the following:

1) the object of the transaction;

2) the unit cost of the commodities or services, if envisaged by the transaction;

3) the total amount of the transaction in respect of the acquisition, the alienation or the possible alienation of the property, the performance of work, the provision or the receipt of services;

4) the party interested in the engagement into such a transaction.

If a non-arm's length transaction violates interests of the company, the supervisory council may prohibit its commission or

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| <p>present it for review by the general meeting.</p> <p>The supervisory council must make a decision on the performance of a non-arm's length transaction by the company or the refusal of the company to do so within five business days of receipt of the information about the non-arm's length transaction.</p> <p>If the party interested in the transaction is a member of the supervisory council, the said party shall not take part in the vote on the engagement into such a transaction. If the majority of members of the supervisory council are the parties interested in the said transaction or if the supervisory council has not been established or has not made a decision on the performance or the refusal to perform the non-arm's length transaction within the time frame prescribed by this article, the relevant issue shall be presented to the general meeting for review.</p> <p>The supervisory council may make a decision to engage into the transaction or to refuse to engage into the transaction.</p> <p>3. Provisions of this article shall not be applied in case of:</p> <p>1) the exercise of the pre-emptive right by shareholders under Article 27 of this Law;</p> <p>2) the buy-out by the company of shares placed by the company from shareholders under Article 66 hereof;</p> <p>3) the spin off and the termination of a joint stock company;</p> <p>4) the provision of a guarantee or suretyship (including property suretyship), pledge or mortgage to parties, which grant a loan to the company, by an officer of bodies of the company or a shareholder, which holds 25 and more per cent of ordinary shares in the company unilaterally or together with affiliated entities, free of charge.</p> | | |
| <p>Article 72. Results of the Failure to Meet Requirements for the Procedure of the Engagement into a Non-Arm's Length Transaction</p> | | |
| <p>1. A transaction performed with the violation of requirements of Article 71 hereof may be invalidated by court.</p> <p>2. The person interested in the performance of a transaction in question by the joint stock company shall be liable for the damage</p> | <p>n/a</p> | |

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| <p>caused to the company by the transaction committed with the violation of requirements of Article 71 hereof.</p> | | |
| <p>Section 14. Review of financial and economic activity of Joint Stock Company</p> | | |
| <p>Article 73. Controlling Commission (Controller)</p> | | |
| <p>1. The general meeting may elect a controlling commission (a controller) in order to inspect financial and business activities of a joint stock company.</p> <p>The position of an controller shall be instituted (or the controlling commission shall be elected) in joint stock companies with up to 100 holders of ordinary shares of the company; the controlling commission only may be elected in joint stock companies with more than 100 holders of ordinary shares of the company.</p> <p>Members of the controlling commission in joint stock companies shall be elected solely by means of the cumulative voting from among individuals with the full civil law capability and/or from among shareholding legal entities. The chairman of the controlling commission shall be elected by members of the controlling commission from among them by the majority vote of the total number of members of the controlling commission, unless otherwise provided by the charter of the joint stock company.</p> <p>The charter of the joint stock company may provide for additional requirements in respect of the election of the controlling commission (the controller), the number of members in the controlling commission, the procedure of its operation, and the additional powers (competences) of the controlling commission (the controller).</p> <p>The controlling commission (controller) may be elected for the special inspection of financial and business activities of the company or for a certain period. The term of office of members of the controlling commission (controller) shall be until the date of the next due annual general meeting, unless the charter of the company or the charter of the controlling commission, or a decision of the general meeting of the joint stock company provides for another term of office, but not longer than five years.</p> | <p>n/a</p> | <p>Needs to be reconsidered in connection with the Recommendation on board committees, in particular the audit committee.</p> |

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| <p>2. The following individuals may not be members of the controlling commission (controller):</p> <ol style="list-style-type: none"> 1) a member of the supervisory council; 2) a member of the executive body; 3) the corporate secretary; 4) a party that does not enjoy full capability under civil law; 5) members of other bodies of the company. <p>Members of the controlling commission (examiner) may not be members of the counting commission of the company.</p> <p>3. Rights and duties of members of the controlling commission (the controller) shall be defined by this Law, other acts of legislation, the charter, and the contract to be concluded with each member of the controlling commission (the controller).</p> <p>The controlling commission (controller) shall have the right to make proposals on the agenda of the general meeting, and require an extraordinary general meeting. Members of the controlling commission (controller) shall have the right to be present at the general meeting and to take part in discussing agenda items with the deliberative vote.</p> <p>Members of the controlling commission (controller) shall have the right to take part in meetings of the supervisory council and the executive body in cases envisaged by this Law, the charter, or internal policies of the company.</p> | | |
| <p>Article 74. Examination of Financial and Business Activities of a Joint Stock Company of the Company</p> | | |
| <p>1. The controlling commission (controller) shall examine the financial and business activities of the joint stock company as a result of the financial year, unless otherwise provided by the charter of the company. The executive body shall provide members of the controlling commission (controller) with access to the information within the limits envisaged by the charter or the examining commission charter.</p> <p>2. The controlling commission (controller) shall prepare an opinion as a result of the examination of financial and business activities</p> | n/a | |

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| <p>of a joint stock company of the company as a result of a financial year with the following information:</p> <p>the confirmation of the adequacy and the completeness of the financial reporting data for the relevant period;</p> <p>facts of the violation of the legislation during the exercise of the financial and business activities, as well as the prescribed procedure of the maintenance of accounts and the submission of statements.</p> | | |
| <p>Article 75. Auditor</p> | | |
| <p>1. Annual financial statements of a public joint stock company shall require a statutory audit by an independent auditor.</p> <p>2. Officers of the company must provide access for an independent auditor to all documents needed for the inspection of results of the financial and business activities of the company.</p> <p>3. The following parties may not be an independent auditor:</p> <ol style="list-style-type: none"> 1) an affiliated party of the company; 2) an affiliated party of an officer of the company; 3) a party that provides consultancy services to the company. <p>4. In addition to the data envisaged by the legislation on audit activities, the audit report must contain the information envisaged by part two of Article 74 of this Law, and the assessment of the completeness and the trueness of the presentation of the financial and business standing of the company in its accounting statements.</p> <p>5. An audit of activities of a joint stock company may also be carried out on demand of a shareholder (shareholders) that own more than 10 per cent of ordinary shares in the company. In this case, the shareholder (shareholders) shall enter into a contract for the audit of the financial and business activities of the company with an auditor (audit firm) chosen thereby indicating the scope of the audit.</p> <p>Expenses related to the performance of the audit shall be borne by the shareholder (shareholders) that have demanded the audit. A general shareholder meeting may make a decision to reimburse the</p> | <p>Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.</p> | <p>Provisions of the Directive 2006/43/EC are prescribed in the Law of Ukraine On Audit Activities dated 22.04.1993 No.3125-XII. See a separate approximation table.</p> |

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| <p>shareholder (shareholders) for expenses for such an audit.</p> <p>6. The company must provide the auditor with the possibility of the performance of the audit within 10 days of receipt of an inquiry of the shareholder (shareholders) in respect of such an audit. The executive body must issue a response to the shareholder (shareholders) with the information about the audit commencement date within the specified time frame.</p> <p>The audit on request of a shareholder (shareholders) holding more than 10 per cent of shares in the company may be carried out not more than twice a calendar year.</p> <p>In case of the audit of the company performed on the basis of a request of the shareholder (shareholders), which own more than 10 per cent of ordinary shares in the company, the executive body of the company must provide copies of all documents authenticated with a signature of an authorized officer of the company and the seal of the company on demand of such a shareholder (shareholders) within five business days of receipt of the relevant request from the auditor.</p> | | |
| <p>Article 76. Special Inspection of Financial and Business Activities of a Joint Stock Company</p> | | |
| <p>1. A special inspection of the financial and business activities of a joint stock company shall be carried out by the examining commission (the examiner) or, lacking the same, by the auditor. The said inspection shall be carried out on the initiative of the examining commission (the examiner), on decision of the general meeting, the supervisory council, the executive body or on demand of the shareholder (shareholders) that together own at least 10 per cent of ordinary shares in the company as of the demand submission date.</p> <p>2. Regardless of the existence of the examining commission (the examiner) in the company, the special inspection of financial and business activities of a joint stock company may be performed by an auditor on demand and at the expense of the shareholder (shareholders) that together own at least 10 per cent of ordinary shares in the company as of the demand submission date.</p> | | <p>The threshold allowing shareholder to demand special inspection of a JSC should be reduced to 5% in order to improve the level of protection of minority shareholders, at least in public JSCs.</p> |
| <p>Section 15. Storage of Documents of a Joint Stock Company. Information about JSC</p> | | |
| <p>Article 77. Storage of Documents of a Joint Stock Company.</p> | | |

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| <p>1. A joint stock company shall be required to store:</p> <ol style="list-style-type: none"> 1) the charter of the company, the changes to the charter, the constituting (founding) contract; 2) charters of the general meeting, the supervisory council, the executive body and the examining commission, other internal policies that regulate activities of bodies of the company and changes thereto; 3) charters of each branch and each representative office of the company; 4) documents that confirm the interests of the company in property; 5) the principles (code) of the corporate governance of the company; 6) the minutes of general meetings; 7) the materials, with which shareholders can (could) familiarize themselves during the preparation for the general meeting; 8) minutes of meetings of the supervisory council and the collegiate executive body, orders and instructions of a collegiate or single-person executive body; 9) minutes of meeting of the examining commission, decisions of the examiner of the company; 10) opinions of the examining commission (examiner) and the auditor of the company; 11) annual financial statements; 12) accounting documents; 13) reporting documents submitted to the relevant state authorities; 14) the issue prospectus, certificates of the state registration of the issue of shares and other securities of the company; 15) a list of affiliated parties of the company with the indication | <p>n/a</p> | <p>National discretion.</p> |
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| <p>of the number, the type and/or the class of shares owned by them;</p> <p>16) the special information about the company in accordance with requirements of the legislation;</p> <p>17) other documents envisaged by the legislation, the charter of the company, its internal policies, decisions of the general meeting, the supervisory council and the executive body.</p> <p>2. Documents referred to in part one of this article shall be kept in the joint stock company in its seat.</p> <p>The responsibility for the storage of documents of the company shall be vested in the head of the collegiate executive body (the individual who exercises powers of the single-person executive agency) and the chief accountant as regards the accounting and financial reporting documents.</p> <p>3. Documents referred to in part one of this article shall be kept for the whole period of activities of the company, except for accounting documents, whose storage periods shall be determined in accordance with the legislation.</p> | | |
| <p>Article 78. Disclosure of the Information by a Joint Stock Company</p> | | |
| <p>1. A joint stock company shall provide each shareholder with access to documents referred to in items 1 to 3, 5 to 11, 13, 14, 16 and 17 of part one of Article 77 hereof.</p> <p>2. The corporate secretary or, in his absence, the executive body of the joint stock company must provide a shareholder with the copies of the relevant documents referred to in part one of this article authenticated with the signature of the authorized person of the company and the seal of the company within 10 days of receipt of a written request therefor from the shareholder. The company may charge a fee not exceeding the cost of the production of copies of documents and the mailing of documents for the provision of copies.</p> <p>Any shareholder shall have the right to familiarize itself with documents referred to in part one of this article at the premises of the company in its seat during working hours, subject to the notification of the executive body thereof at least five business days in advance. The</p> | <p>n/a</p> | |

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| <p>executive body of the company shall have the right to limit the time frame for the familiarization with documents of the company; however, the period of the familiarization may not be shorter than 10 business days of the date of receipt by the company of the notice of intent to familiarize with documents of the company.</p> <p>Shareholders may obtain additional informational about activities of the company subject to the consent of the executive body of the company or in cases and under the procedure envisaged by the charter or a decision of the general meeting of the joint stock company.</p> <p>3. A public joint stock company shall be required to have a web site on the Internet for the placement of the information to be disclosed in accordance with the legislation, the information referred to in items 1 to 3, 5, 6, 10, 11, 13 to 16 of part one of Article 77 hereof, and the information referred to in part three of Article 35 hereof in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.</p> <p>4. The company shall provide a list of affiliated parties and the information about shares in the company held by them on request of a shareholder or the National Commission for Securities and Stock Market.</p> <p>5. The joint stock company must disclose information in accordance with laws of Ukraine.</p> | | |
| Section 16. Spin off and Termination of a Joint Stock Company | | |
| Article 79. Termination of a Joint Stock Company | | |
| <p>1. A joint stock company shall be terminated as a result of the conveyance of its entire property, rights and duties to other business corporations succeeding the company (by means of the merger, the affiliation, the division, the transformation) or as a result of the liquidation.</p> <p>2. The voluntary termination of a joint stock company shall be carried out on the basis of a decision of the general meeting in accordance with the procedure prescribed by this Law in line with requirements of the Civil Code of Ukraine and other acts of legislation. Other grounds for, and the procedure of, the termination of the joint</p> | n/a | |

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| <p>stock company shall be specified by the legislation.</p> | | |
| <p>Article 80. Merger, Affiliation, Division, Spin off and Transformation of a Company</p> | | |
| <p>1. The merger, the affiliation, the division, the spin off and the transformation of a joint stock company shall be carried out on the basis of a decision of the general meeting or, in cases covered by law, by decision of court or appropriate authorities.</p> <p>In cases envisaged by law, the division of a joint stock company or the spin off of one or several joint stock companies therefrom shall be undertaken on the basis of the decision of appropriate state authorities or by court decision.</p> <p>Law may provide for the obtainment of the consent from relevant state authorities to the termination of a joint stock company by means of the merger or the affiliation.</p> <p>A joint stock company may not undertake the merger, the affiliation, the division, the spin off and/or the transformation simultaneously.</p> <p>2. Shares of a company terminated as a result of the division shall be converted into shares of successor companies and placed among their shareholders.</p> <p>Shares of companies terminated as a result of the merger or the affiliation shall be converted into shares of the successor company and placed among its shareholders.</p> <p>Shares of a company being transformed shall be converted into interests (units) in the successor business corporation and allocated among its participants.</p> <p>In case of the spin off, shares of a company, from which another company is separated, shall be converted into the shares of the joint stock company in question and the separating joint stock company, and placed among shareholders of the company, from which another company is being separated.</p> <p>Shares of companies that take part in the merger, the affiliation, the division, the spin off or the transformation owned by shareholders</p> | <p>Directive 2011/35/EU Article 3</p> <p>1. For the purposes of this Directive, ‘merger by acquisition’ shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 % of the nominal value of the shares so issued or, where they have no nominal value, of their accounting par value.</p> <p>2. A Member State’s laws may provide that merger by acquisition may also be effected where one or more of the companies being acquired is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.</p> <p>Article 23</p> <p>1. Articles 5, 6 and 7 and Articles 9 to 22 of this Directive shall apply, without prejudice to Articles 12 and 13 of Directive 2009/101/EC, to merger by formation of a new company. For this purpose, ‘merging companies’ and ‘company being acquired’ shall mean</p> | <p>The definitions of mergers and divisions from the Directives 2011/35/EU and 82/891/EEC shall be implemented into Ukrainian legal system.</p> <p>A new law on corporate transformations (see German or Spanish examples), embracing all transformations of all companies’ types and including rules on domestic as well as cross-border mergers and divisions should be enacted. This should also provide legal certainty and reliable framework for mergers and divisions involving different corporate forms, and possibly also partnerships. The new law should be free of gaps but also of overlaps resulting from possible collisions with provisions on transformation contained in other laws.</p> |

that have demanded a mandatory share buy-out from the joint stock company and are eligible therefor shall not be converted.

The procedure of the conversion of shares to be terminated into shares of a newly established joint stock company shall be specified by the National Commission for Securities and Stock Market.

3. Issued securities (other than shares) of joint stock companies taking part in the merger, the affiliation, the division, the spin off or the transformation must vest their holders with at least the same extent of rights as they were vested with before the merger, the affiliation, the division, the spin off or the transformation. It shall be disallowed to reduce the extent of rights of holders of such securities.

4. Shareholders of companies taking part in the merger, the affiliation, the division or the spin off may also receive monetary payments not exceeding an amount specified in the charter of the company in the course of the conversion of shares in the course of the merger, the affiliation, the division or the spin off of a joint stock company.

The procedure of making such payments shall be specified by the merger (affiliation) contract or the division (spin off) plan.

5. Each participant shall have the number of votes at a meeting of participants of the successor business corporation that would be vested in the participant with shares (units, interests) in the successor business corporation, which can come into the participant's ownership as a result of the merger, the affiliation, the division, the spin off or the transformation of the joint stock company.

6. The merger, the division or the transformation of a joint stock company shall be deemed completed on the date of the entry of a record of termination of the joint stock company and a record of the registration of the successor business corporation (corporations) into the Unified State Register.

The affiliation of a joint stock company to another joint stock company shall be deemed completed on the date of the entry of record of the termination of such a joint stock company into the Unified State Register of Legal Entities and Individual Entrepreneurs.

the companies which will cease to exist, and 'acquiring company' shall mean the new company.

Point (a) of Article 5(2) of this Directive shall also apply to the new company.

2. The draft terms of merger and, if they are contained in a separate document, the memorandum or draft memorandum of association and the articles or draft articles of association of the new company shall be approved at a general meeting of each of the companies that will cease to exist.

Directive 82/891/EEC

Article 2

1 . For the purposes of this Directive, 'division by acquisition' shall mean the operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division (hereinafter referred to as 'recipient companies ') and possibly a cash payment not exceeding 10% of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.

Article 21

For the purposes of this Directive, 'division by Article 23 the formation of new companies' means the operation

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| <p>The spin off of a joint stock company shall be deemed completed on the date of entry of a record of the establishment of the separated joint stock company into the Universal State Register.</p> <p>The affiliation of a joint stock company to another joint stock company shall be deemed completed on the date of the entry of record of the termination of such a joint stock company into the Unified State Register of Legal Entities and Individual Entrepreneurs.</p> | <p>whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and possibly a cash payment not exceeding 10% of the nominal value of the shares allocated or, where they have no nominal value, of their accounting par value.</p> | |
| <p>Article 81. Joint Stock Companies Merger (Affiliation) Contract and Joint Stock Company Division (Spin off, Transformation) Plan</p> | | |
| <p>1. The supervisory council of each joint stock company taking part in the merger, the affiliation, the division, the spin off or the transformation shall develop terms and conditions of a merger (affiliation) contract or a division (spin off, transformation) plan, which must contain:</p> <p>1) the full name and details of each company involved into the merger, the affiliation, the division, the spin off or the transformation;</p> <p>2) the procedure and the factors of conversion of shares and other securities, as well as the amount of possible pay-outs to shareholders;</p> <p>3) the information about the rights to be granted by the successor business corporation to owners of securities of the company other than shares in the company whose activities are to be terminated as a result of the merger, the affiliation, the division, the transformation, or from which the spin off is taking place, and/or the list of measures to be taken in respect of such securities;</p> <p>4) the information about the individuals who will become the officers of the company in the successor business corporation upon completion of the merger, the affiliation, the division, the spin off or the transformation, and the remuneration or the compensation offered</p> | <p>Directive 2011/35/EU Art. 5</p> <p>1. The administrative or management bodies of the merging companies shall draw up draft terms of merger in writing.</p> <p>2. Draft terms of merger shall specify at least:</p> <p>(a) the type, name and registered office of each of the merging companies;</p> <p>(b) the share exchange ratio and the amount of any cash payment;</p> <p>(c) the terms relating to the allotment of shares in the acquiring company;</p> <p>(d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;</p> | <p>The following data should be added to the terms and conditions of mergers (divisions):</p> <p>-the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;</p> <p>-the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company.</p> |

for the payment to such individuals;

5) the procedure of voting at the joint general shareholder meeting of companies taking part in the merger or the affiliation.

2. The supervisory council of each joint stock company taking part in the merger, the affiliation, the division, the spin off or the transformation must prepare notes to terms and conditions of the merger (affiliation) contract or the division (spin off, transformation) plan for shareholders.

The said note must contain an economic substantiation of the appropriateness of the merger, the affiliation, the division, the spin off or the transformation, the list of methods used for the valuation of the property of the joint stock company and the calculation of the conversion factor of shares and other securities of the joint stock company.

4. Materials sent to shareholders of a company involved into the merger (affiliation), the division (spin off, transformation) in the course of the preparation for the general meeting which is to consider the issue of the approval of terms and conditions of the merger (affiliation) contract or the division (spin off, transformation) plan, or the deed of conveyance must include:

1) the draft merger (affiliation) contract, division (spin off, transformation) plan;

2) the notes to the terms and conditions of the merger (affiliation) contract or the division (spin off, transformation) plan;

3) the opinion of an independent expert on terms and conditions of the merger, the affiliation, the division or the spin off in events covered by part three of this article;

4) in case of the merger (the affiliation), the annual financial statements of other companies involved into the merger (the affiliation) for the last three years.

5. On the basis of proposals of a supervisory council, the general meeting of each joint stock company involved into the merger, the affiliation, the division, the spin off or the transformation shall solve

(e) the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company;

(f) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;

(g) any special advantage granted to the experts referred to in Article 10(1) and members of the merging companies' administrative, management, supervisory or controlling bodies.

Directive 82/891/EEC

2. Draft terms of division shall specify at least :

(a) the type, name and registered office of each of the companies involved in the division ;

(b) the share exchange ratio and the amount of any cash payment ;

(c) the terms relating to the allotment of shares in the recipient companies ;

(d) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting that entitlement;

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| <p>the issue of the termination (the merger, the affiliation, the division, the spin off or the transformation), as well as the approval of terms and conditions of the merger (affiliation) contract or the division (spin off, transformation) plan, the deed of conveyance (in case of the merger, the affiliation or the transformation) or the distribution balance sheet (in case of the division and the spin off).</p> <p>Essential terms and conditions of the merger (affiliation) contract approved by general meetings of each of the said companies must be identical.</p> | <p>(e) the date from which the transactions of the company being divided shall be treated for accounting purposes as being those of one or other of the recipient companies ;</p> <p>(f) the rights conferred by the recipient companies on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them ;</p> <p>(g) any special advantage granted to the experts referred to in Article 8(1) and members of the administrative, management, supervisory or controlling bodies of the companies involved in the division ;</p> <p>(h) the precise description and allocation of the assets and liabilities to be transferred to each of the recipient companies ;</p> <p>(i) the allocation to the shareholders of the company being divided of shares in the recipient companies and the criterion upon which such allocation is based .</p> | |
| <p>Article 82. Protection of Creditors in Case of the Merger, the Affiliation, the Division, the Spin off or the Transformation of a Joint Stock Company</p> | | |
| <p>1. Within 30 days of the date of the decision of the general meeting to terminate a joint stock company by means of the division or the transformation, as well as the decision on the spin off or, in case of the termination by means of the merger or the affiliation, of the date of the relevant decision by the general meeting of the last joint stock</p> | <p>Directive 2011/35/EU Art. 13 1. The laws of the Member States must provide for an adequate system of protection of the interests of creditors</p> | <p>The Directives' requirements are met.</p> |

company involved into the merger or the affiliation, the company must notify thereof creditors of the company in writing, and publish a notice of the decision in an official printed bulletin. A public company must also notify each stock exchange, at which it is listed, of the said decision.

2. A creditor, whose claims to a joint stock company, whose activities are being terminated as a result of the merger, the affiliation, the division, the transformation or from which the spin off takes place, are not secured with pledge or surety contracts may demand the company in writing that one of the following measures be taken at discretion of the company within 20 days of being sent a notice of the company termination: the securing of the liabilities by means of the entry into the pledge or surety contract, the early termination or the performance of liabilities to the creditor and the reimbursement for damages, unless otherwise provided by the contract between the company and the creditor. If the creditor has failed to submit a written demand to the company within the time frame prescribed by this part, it shall be deemed that the creditor does not require the company to take additional measures in respect of liabilities to the creditor in question.

The merger, the affiliation, the division, the spin off or the transformation may not be completed until the satisfaction of claims presented by creditors.

If the distribution balance sheet or the deed of conveyance does not make it possible to determine the successor, to which the liability was transferred or whether the company from which the spin off has taken place remained liable, then the successors and the company form which the spin off has taken place shall be jointly liable under such a liability.

of the merging companies whose claims antedate the publication of the draft terms of merger and have not fallen due at the time of such publication.

2. To that end, the laws of the Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

Member States shall lay down the conditions for the protection provided for in paragraph 1 and in the first subparagraph of this paragraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the merger the satisfaction of their claims is at stake and that no adequate safeguards have been obtained from the company.

3. Such protection may be different for the creditors of the acquiring company and for those of the company being acquired.

Directive 82/891/EEC

Article 12

1 . The laws of Member States must provide for an adequate system of protection for the interests of the creditors of the companies involved in a division whose claims antedate

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| | <p>publication of the draft terms of division and have not yet fallen due at the time of such publication.</p> <p>2 . To that end, the laws of Member States shall at least provide that such creditors shall be entitled to obtain adequate safeguards where the financial situation of the company being divided and that of the company to which the obligation will be transferred in accordance with the draft terms of division make such protection necessary and where those creditors do not already have such safeguards.</p> <p>3 . In so far as a creditor of the company to which the obligation has been transferred in accordance with the draft terms of division has not obtained satisfaction, the recipient companies shall be jointly and severally liable for that obligation. Member States may limit that liability to the net assets allocated to each of those companies other than the one to which the obligation has been transferred. However, they need not apply this paragraph where the division operation is subject to the supervision of a judicial authority in accordance with Article 23 and a majority in number representing three-fourths in value of the creditors or any class of creditors of the company being divided have agreed to forego such joint and several liability at a meeting held pursuant to Article 23 (1) (c).</p> | |
| <p>Article 83. Merger of Joint Stock Companies</p> | | |

1. The emergence of a new successor joint stock company with the conveyance of all property, rights and duties of two and more joint stock companies simultaneously with their termination on the basis of deeds of conveyance shall be deemed to be the merger of joint stock companies.

A joint stock company may take part in the merger only with another joint stock company.

2. The supervisory council of each joint stock company taking part in the merger shall present the issue of the company termination by means of the merger, the approval of the merger contract, the charter of the company established as a result of the merger and the approval of the deed of conveyance to the general meeting of each joint stock company taking part in the merger for approval.

3. The bodies of the successor joint stock company shall be formed at a joint general shareholder meeting of the company taking part in the merger.

4. Shares in companies terminated as a result of the merger that have been bought out by the issuing company or owned by the company taking part in the merger together with the issuing company shall not be subject to the conversion.

Such shares shall be annulled in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.

5. In case of the merger of companies, all rights and liabilities of each company shall be vested in the successor company in accordance with the deed of conveyance.

6. The merger of joint stock companies shall take place in accordance with the following procedure:

1) the making of a decision to terminate the company by means of the merger, to establish the company termination commission and to elect members of the termination commission by general meetings of each joint stock company taking part into the merger;

2) the satisfaction of claims of creditors presented to each joint

Directive 2011/35/EU
Article 5-7, 9-22
Article 11

1. All shareholders shall be entitled to inspect at least the following documents at the registered office at least 1 month before the date fixed for the general meeting which is to decide on the draft terms of merger:

(a) the draft terms of merger;

(b) the annual accounts and annual reports of the merging companies for the preceding three financial years;

(c) where applicable, an accounting statement drawn up as at a date which must not be earlier than the first day of the third month preceding the date of the draft terms of merger, if the latest annual accounts relate to a financial year which ended more than 6 months before that date;

(d) where applicable, the reports of the administrative or management bodies of the merging companies provided for in Article 9;

(e) where applicable, the report referred to in Article 10(1).

For the purposes of point (c) of the first subparagraph, an accounting statement shall not be required if the company publishes a half-yearly financial report in accordance with Article 5 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency

The provisions concerning shareholders' rights to inspect documents related to mergers, civil liability towards the shareholders of the company being acquired of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger, as well as provisions on the nullity grounds shall be implemented.

stock company taking part in the merger in accordance with part two of Article 82 hereof;

3) the exercise of the right to demand the mandatory buy-out of shares in a company owned by shareholders of each joint stock company taking part in the merger in accordance with the procedure prescribed by Articles 68 and 69 of this Law;

4) the compilation of the deed of conveyance by the each joint stock company taking part in the merger;

5) the making of a decision to approve the draft charter of the joint stock company established as a result of joint stock companies, to approve the draft joint stock companies merger contract, to approve notes to the merger contract, to approve the deed of conveyance prepared by the company termination commission, as well as to approve terms and conditions of the conversion of shares of the terminated company into shares of the company established as a result of the merger of joint stock companies by the supervisory council of each joint stock company taking part in the merger;

6) the obtainment of an opinion of an independent expert on terms and conditions of the joint stock companies merger contract by the supervisory council of each joint stock company taking part in the merger;

7) the making of a decision to approve the deed of conveyance, to approve the joint stock companies merger contract, to approve the charter of the joint stock company, and to elect officers of the joint stock company authorized to take further action to terminate the joint stock company by means of the merger by the general meeting of each company taking part in the merger;

8) the submission of the application and all necessary documents for the registration of the issue of shares to the National Commission for Securities and Stock Market by authorised officers of joint stock companies taking part in the merger;

9) the registration of the issue of shares by the National Commission for Securities and Stock Market, and the issue of the provisional share issue registration certificate;

requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (1) and makes it available to shareholders in accordance with this paragraph. Furthermore, Member States may provide that an accounting statement shall not be required if all the shareholders and the holders of other securities conferring the right to vote of 3. Every shareholder shall be entitled to obtain, on request and free of charge, full or, if so desired, partial copies of the documents referred to in paragraph 1. Where a shareholder has consented to the use by the company of electronic means for conveying information, such copies may be provided by electronic mail.

4. A company shall be exempt from the requirement to make the documents referred to in paragraph 1 available at its registered office if, for a continuous period beginning at least 1 month before the day fixed for the general meeting which is to decide on the draft terms of merger and ending not earlier than the conclusion of that meeting, it makes them available on its website. Member States shall not subject that exemption to any requirements or constraints other than those which are necessary in order to ensure the security of the website and the authenticity of the documents and may impose such requirements or constraints only to the extent that they are proportionate in order to achieve those objectives.

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| <p>10) the assignment of the international securities identification number to shares;</p> <p>11) the entry into a contract for the service of the share issue with a depository;</p> <p>12) the exchange of shares in the company established as a result of the merger for shares in the companies being terminated;</p> <p>13) the approval of results of the placement (exchange) of shares by authorised bodies of the joint stock companies taking part in the merger;</p> <p>14) the state registration of the charter of the joint stock company established as a result of the merger with the state registration agencies;</p> <p>15) the submission of the share placement (exchange) results report to the National Commission for Securities and Stock Market;</p> <p>16) the registration of the report on results of the placement (exchange) of shares in the company established as a result of the merger by the National Commission for Securities and Stock Market, and the reversal of the registration of the issue of shares in terminated companies by the National Commission for Securities and Stock Market;</p> <p>17) the state registration of the termination of the joint stock companies that have been terminated by means of merger;</p> <p>18) the obtainment of the certificate of state registration of the issue of shares in the company established as a result of the merger.</p> | <p>Article 20</p> <p>The laws of the Member States shall at least lay down rules governing the civil liability towards the shareholders of the company being acquired of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger.</p> <p>Article 22</p> <p>1. The laws of the Member States may lay down nullity rules for mergers in accordance with the following conditions only:</p> <p>(a) nullity must be ordered in a court judgment;</p> <p>(b) mergers which have taken effect pursuant to Article 17 may be declared void only if there has been no judicial or administrative preventive supervision of their legality, or if they have not been drawn up and certified in due legal form, or if it is shown that the decision of the general meeting is void or voidable under national law;</p> <p>(c) nullification proceedings may not be initiated more than 6 months after the date on which the merger becomes effective as against the person alleging nullity or if the situation has been rectified;</p> <p>(d) where it is possible to remedy a defect liable to render a merger void,</p> | |
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| | <p>the competent court shall grant the companies involved a period of time within which to rectify the situation;</p> <p>(e) a judgment declaring a merger void shall be published in the manner prescribed by the laws of each Member State in accordance with Article 3 of Directive 2009/101/EC;</p> <p>(f) where the laws of a Member State permit a third party to challenge such a judgment, that party may do so only within 6 months of publication of the judgment in the manner prescribed by Directive 2009/101/EC;</p> <p>(g) a judgment declaring a merger void shall not of itself affect the validity of obligations owed by or in relation to the acquiring company which arose before the judgment was published and after the date on which the merger takes effect;</p> <p>(h) companies which have been parties to a merger shall be jointly and severally liable in respect of the obligations of the acquiring company referred to in point (g).</p> | |
| <p>Article 84. Affiliation of a Joint Stock Company</p> | | |
| <p>1. The termination of a joint stock company (several companies) with the conveyance of all their property, rights and liabilities to another successor joint stock company under a deed of conveyance shall be deemed to be the affiliation of a joint stock company.</p> <p>2. The supervisory council of each acceding joint stock company shall present the issue of the affiliation and the approval of the affiliation contract for approval by the general meeting. The supervisory</p> | <p>Directive 2011/35/EU Articles 5-22 The same as in the previous article.</p> | <p>The terminology should be unified (see art. 80) The same as in the previous article.</p> |

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| <p>council of the acceding company shall also present the issue of the approval of the deed of conveyance to the general shareholder meeting for approval.</p> <p>3. The joint general meeting of shareholders of companies taking part in the affiliation shall make a decision to amend the charter of the company to be acceded to and, if necessary, on other issues.</p> <p>4. If the acceded joint stock company owns more than 90 per cent of ordinary shares in the acceding company and the affiliation does not make it necessary to amend the charter of the acceded company related to changes in rights of its shareholders, then the decision to accede, to approve the deed of conveyance and conditions of the affiliation contract may be made on behalf of the acceded company by its supervisory council. In this case, it shall not be necessary to prepare notes to terms and conditions of the affiliation contract and to obtain an opinion of an independent expert on the contract.</p> <p>5. The shares of the acceding company that have been bought out by the said company or that are owned by the acceded company, or owned by another acceding company shall not be subject to conversion.</p> <p>The shares of the acceded company that have been owned by the acceding company shall not be subject to conversion.</p> <p>Such shares shall be annulled in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.</p> <p>6. The joint stock company affiliation procedure shall be implemented in accordance with the procedure specified in part six of Article 83 of this Law.</p> | | |
| <p>Article 85. Division of a Joint Stock Company</p> | | |
| <p>1. The termination of a joint stock company with the conveyance of all its property, rights and liabilities to more than one new successor joint stock companies on the basis of the distribution balance sheet shall be deemed to be the division of a joint stock company.</p> <p>2. The supervisory council of the joint stock company to be</p> | <p>Directive 82/891/EEC</p> | <p>The provisions concerning shareholders' rights to inspect documents related to divisions, civil liability towards the shareholders of the company being divided of the members of the administrative or management</p> |

terminated by means of the division shall present the issue of the termination of the company by means of the division, the procedure and conditions of the division, the establishment of the successor companies and the procedure of the conversion of shares in the company to be terminated into shares of companies to be established and the approval of the distribution balance sheet to the general shareholder meeting for approval.

3. The general meeting of the company to be terminated by means of the division shall make decisions to terminate the company by means of the division, to approve the procedure and conditions of the division, to establish the new companies, to approve the procedure of the conversion of shares in the company to be terminated into shares of companies to be established and to approve the distribution balance sheet. The general meeting of each joint stock company to be established shall make a decision to approve the charter and set up bodies of the company.

4. The shares of successor companies must be placed with the preservation of the ratio among shareholders in the authorised capital of the joint stock company terminated by means of the division. Each shareholder of the terminated company shall receive shares of each successor company.

Shares of the company terminated by means of the division that have been bought out by the said company shall not be subject to conversion. Such shares shall be annulled in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.

5. The successor company shall be subject to the subsidiary liability under liabilities of the joint stock company, whose activities are terminated by means of the division, that have come into existence before the division and were vested in another successor joint stock company. If there are two and more successor joint stock companies with the subsidiary liability, they shall be jointly liable.

6. The joint stock company division procedure shall be implemented in accordance with the procedure specified in part six of Article 83 of this Law.

bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the division, as well as provisions on the nullity grounds shall be implemented.

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| <p>Article 86. Spin off of a Joint Stock Company</p> | | |
| <p>1. The establishment of one or several joint stock companies with the conveyance of a part of the property, rights and liabilities of the joint stock company, from which the spin off takes place, on the basis of a distribution balance sheet without the termination of such a joint stock company shall be deemed to be a spin off of the joint stock company.</p> <p>Only a joint stock company may separate from a joint stock company.</p> <p>2. The supervisory council of the joint stock company, from which the spin off takes place, shall present the issue of the spin off, the procedure and conditions of the spin off, the establishment of the new company (companies), the conversion of a part of shares in the company from which the spin off takes place into shares in the company to be established (the allocation of shares in the company to be established among shareholders from which the spin off takes place, the acquisition of shares of the company to be established by the company from which the spin off takes place), and the procedure of such conversion (allocation, acquisition), and the approval of the distribution balance sheet to the general shareholder meeting for approval.</p> <p>3. The general shareholder meeting of the company, from which the spin off takes place, shall make decisions on the spin off, the procedure and conditions of the spin off, the establishment of the new company (companies), the conversion of a part of shares in the company from which the spin off takes place into shares in the company to be established (the allocation of shares in the company to be established among shareholders from which the spin off takes place and/or the acquisition of shares of the company to be established by the company from which the spin off takes place), and the procedure of such conversion (allocation and/or acquisition), and the approval of the distribution balance sheet.</p> <p>The general shareholder meeting of each joint stock company to be established shall make a decision to approve the charter and set up its bodies.</p> | <p>Directive 82/891/EEC</p> | |

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| <p>4. The shares in the separated company shall be placed with the preservation of the ratio among shareholders in the charter capital of the company from which the spin off has taken place.</p> <p>Shares in the company from which the spin off has taken place that have been bought out by the company may not be conveyed into assets of the successor company and shall not be subject to the conversion. Such shares shall be annulled in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.</p> <p>5. The joint stock company from which the spin off takes place shall bear subsidiary liability under liabilities vested in the separated company in accordance with the distribution balance sheet. The separated company shall bear subsidiary liability under liabilities that have come into existence in the company from which the spin off takes place before the spin off but have not been vested in the separated company. If there are two or more separated companies, they shall bear joint subsidiary liability together with the company from which the spin off has taken place.</p> <p>6. The joint stock company spin off procedure shall be implemented in accordance with the procedure specified in part six of Article 83 of this Law.</p> | | |
| <p>Article 87. Transformation of a Joint Stock Company</p> | | |
| <p>1. The modification of the organizational and legal form of a joint stock company with the termination thereof and the conveyance of all its property, rights and liabilities to a successor business corporation on the basis of the deed of conveyance shall be deemed to be the transformation of a joint stock company.</p> <p>A joint stock company may only be transformed into another business corporation or a production co-operative society.</p> <p>2. The supervisory council of the joint stock company to be transformed shall present the issue of the transformation of the company, the procedure and conditions of the transformation, the procedure of the exchange of shares in the company into interests (units) in the successor business corporation to the general meeting of</p> | <p>n/a</p> | <p>National discretion</p> |

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| <p>the joint stock company for approval.</p> <p>3. The general shareholder meeting of the company to be transformed shall make decisions on the transformation of the company, the procedure and conditions of the transformation, the procedure of the exchange of shares in the company into interests (units) in the successor business corporation.</p> <p>Participants of the new business corporation established in the course of the transformation shall make decisions at their joint meeting on the approval of constituting documents of such a legal entity and the election (appointment) of managing bodies in accordance with requirements of the legislation.</p> <p>4. The interests (units) in the successor business corporation shall take place with the preservation of the same ratios among shares of shareholders in the charter capital of the joint stock company that has been transformed.</p> <p>The shares in the company to be transformed that have been bought out by the company in question, which have not been sold and/or annulled in accordance with this Law as of the date of the decision to terminate the company, shall not be subject to the exchange. Such shares shall be annulled in accordance with the procedure prescribed by the National Commission for Securities and Stock Market.</p> | | |
| Article 88. Liquidation of a Joint Stock Company | | |
| <p>1. The voluntary liquidation of a joint stock company shall be carried out on the basis of a decision of the general meeting, for instance, due to the expiry of the period for which the company has been established or after the attainment of the objective of its establishment in accordance with the procedure specified by the Civil Code of Ukraine and other acts of legislation subject to the specific features instituted by this Law. Other grounds for, and the procedure of, the termination of the company shall be specified by the legislation.</p> <p>2. If the joint stock company is not liable to creditors as of the time of the decision to liquidate, its property shall be allocated among shareholders in accordance with Article 89 of this Law.</p> | n/a | National discretion |

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| <p>3. The decision on the liquidation of the joint stock company, the election of the liquidation commission, the approval of the liquidation procedure and the procedure of the allocation of the property remaining after the satisfaction of claims of creditors among the shareholders shall be solved by the general meeting of the joint stock company, unless otherwise prescribed by law.</p> <p>4. The powers of a supervisory council and an executive body of a joint stock company shall be vested in the liquidation commission upon the election thereof. The liquidation balance sheet compiled by the liquidation commission shall require the approval by the general meeting.</p> <p>5. The liquidation of a joint stock company shall be deemed completed and the company shall be deemed terminated from the date of entry of a record of the state registration of the termination of the company as a result of its liquidation into the Universal State Register.</p> | | |
| <p>Article 89. Allocation of the Property of a Joint Stock Company To Be Liquidated Between Creditors and Shareholders</p> | | |
| <p>1. In case of the liquidation of a solvent legal entity, the claims of its creditors and shareholders shall be satisfied in the following sequence:</p> <p>firstly, the claims for the reimbursement for the damage caused by the mutilation, other health impairment or death, and claims of creditors secured with pledge;</p> <p>secondly, the claims of employees related to labour relations, claims of authors for the fee for the utilization of the result of his intellectual or creative activities;</p> <p>thirdly, the claims related to taxes, duties (statutory fees);</p> <p>fourthly, all other demands of creditors;</p> <p>fifthly, the disbursement of the dividend accrued but not paid under preference shares;</p> <p>sixthly, the disbursements under preference shares to be bought out under Article 68 of this Law;</p> <p>seventhly, the disbursement of the liquidation value of</p> | <p>n/a</p> | <p>National discretion</p> |

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| <p>preference shares;</p> <p> eighthly, the disbursements under ordinary shares to be bought out under Article 68 of this Law;</p> <p> ninthly, the allocation of the property among shareholders that own ordinary shares in the company in proportion to the number of shares held by them.</p> <p> 2. Demands of each priority shall be satisfied after the complete satisfaction of claims of creditors (shareholders) of the preceding priority.</p> <p> In case of the placement of several classes of preference shares by the company, the sequence of the allocation of the property among shareholders that own each class of preference shares shall be determined by the charter of the company.</p> <p> In case of the insufficiency of the property of the company to be liquidated for the allocation among all creditors (shareholders) of the relevant priority line, the property shall be allocated among them in proportion of claim amounts (the number of shares held by them) of each creditor (shareholder) of the relevant priority line.</p> | | |
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| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
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| <p>Decision of the NSSMS No. 822 dated 14.05.2013 ON APPROVAL OF THE PUBLIC OR PRIVATE JOINT STOCK COMPANY CHARTER CAPITAL INCREASE (REDUCTION) PROCEDURE</p> | | |
| <p>In accordance with item 13 of Article 8 of the Law of Ukraine "On State Regulation of the Securities Market in Ukraine", Articles 28, 32, and 33 of the Law of Ukraine "On Securities and Stock Market", part four of Article 14, part one of Article 15, part one of Article 16 of the Law of Ukraine "On Joint Stock Companies", in order to specify the procedure of increasing (reducing) the charter capital of a joint stock company, the National Securities and Stock Market Commission has DECIDED as follows:</p> | n/a | Nothing to mention |
| <p>1. The attached Public or Private Joint Stock Company charter Capital Increase (Reduction) Procedure shall be approved.</p> | n/a | Nothing to mention |
| <p>2. Decision of the State Commission for Securities and Stock Market #1181 August 30, 2011, "On Approval of the Public or Private Joint Stock Company charter Capital Increase (Reduction) Procedure" registered with the Ministry of Justice of Ukraine on November 16, 2011 under #1308/20046 shall be declared null and void.</p> | n/a | Nothing to mention |
| <p>3. The Corporate Governance and Corporate Finance Department (A. Papaika) shall cause this decision to be submitted for the state registration to the Ministry of Justice of Ukraine.</p> | n/a | Nothing to mention |
| <p>4. The Information Technologies, External and Internal Communications Directorate (A. Zayika) shall cause this Decision to be published in accordance with requirements of the legislation of Ukraine.</p> <p>5. This Decision shall come into effect from the date of its official publication.</p> | n/a | Nothing to mention |
| <p>6. The control over the performance of this decision shall be laid upon A. Amelin, member of the National Securities and Stock Market Commission.</p> | n/a | Nothing to mention |
| <p>PUBLIC OR PRIVATE JOINT STOCK COMPANY CHARTER CAPITAL INCREASE (REDUCTION)</p> | | |

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| PROCEDURE | | |
| I. General Provisions | | |
| <p>1. This Procedure shall apply to public and private joint stock companies (other than joint investment institutions) that undertake an increase or a reduction in the charter capital.</p> <p>This Procedure shall not apply to events of the increase in the charter capital of a joint stock company undertaken in connection with the conversion of liabilities of the company into shares, the change in the amount of the charter capital of the joint stock company in connection of the accession or the separation.</p> | <p>2012/30/EU Article 29</p> <p>4. This Article shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.</p> | |
| <p>2. The share tranche registration, the share issue prospectus registration, the share issue prospectus changes registration, the public share placement results report registration, the private share placement results report registration or the refusal of the relevant registration shall be undertaken by the National Securities and Stock Market Commission (hereinafter referred to as the "Commission") in accordance with a regulatory act of the Commission that governs the procedure of the registration of a share tranche in case of a change in the amount of the charter capital of the joint stock company.</p> | n/a | Nothing to mention |
| <p>3. The joint stock company shall have the right to increase the charter capital after the registration of reports on results of the placement of all prior share tranches.</p> <p>The increase in the charter capital of the joint stock company in case of the existence of shares bought out by the company shall be disallowed.</p> <p>The general shareholder meeting may not make decisions to increase the charter capital until the registration of reports on placement results of all prior share tranches and/or in case of the availability of shares bought out by the company.</p> | <p>2012/30/EU Article 29</p> <p>1. Any increase in capital must be decided upon by the general meeting. Both that decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC.</p> | |
| <p>4. The charter capital value after the increase (reduction) therein must meet the requirements of part one of Article 14 of the Law of Ukraine "On Joint Stock Companies".</p> | <p>2012/30/EU Article 29</p> <p>2. Nevertheless, the statutes or instrument of incorporation or the general meeting, the decision of which must be published in accordance with the</p> | |

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| <p>The reduction in the charter capital of a joint stock company below the value prescribed by law shall result in the liquidation of the joint stock company.</p> | <p>rules referred to in paragraph 1, may authorise an increase in the subscribed capital up to a maximum amount which they shall fix with due regard for any maximum amount provided for by law. Where appropriate, the increase in the subscribed capital shall be decided on within the limits of the amount fixed by the company body empowered to do so. The power of such body in this respect shall be for a maximum period of five years and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.</p> <p>Article 38 The subscribed capital may not be reduced to an amount less than the minimum capital laid down in accordance with Article 6. However, Member States may permit such a reduction if they also provide that the decision to reduce the subscribed capital may take effect only when the subscribed capital is increased to an amount at least equal to the prescribed minimum.</p> | |
| <p>5. A joint stock company shall not have the right to make a decision to increase the charter capital by means of the public placement of shares, if the value of its equity is lower than the value of its charter capital.</p> <p>In this case, the value of the issuer's equity as of the last reporting date preceding the date of decision to increase the charter capital by means of the public placement of shares shall be used as the basis.</p> | <p>n/a</p> | <p>Nothing to mention</p> |
| <p>6. The pre-emptive right of shareholders to the acquisition of shares additionally placed by the joint stock company (hereinafter referred to as the "pre-emptive right") shall only be effective in the course of the private placement of shares.</p> <p>The pre-emptive right of a shareholder that owns ordinary shares shall be understood as the right of a shareholder to acquire ordinary shares placed by the company in proportion to the percentage of ordinary shares held thereby in the total number of ordinary shares.</p> | <p>2012/30/EU Article 31 1. Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares. 2. The laws of a Member State: . (a) need not apply paragraph 1 to shares which carry a limited right to participate in distributions within the meaning of Article</p> | |

The pre-emptive right of a shareholder that owns preference shares shall be the right to acquire preference shares of the same or another class placed by the company, if shares of such class vest their holders with preferences in respect of the priority of the receipt of dividends or disbursements in case of the company liquidation, in proportion to the percentage of preference shares of a certain class held by the shareholder in the total number of preference shares of the class in question.

17 and/or in the company's assets in the event of liquidation; or

- . (b) may permit, where the subscribed capital of a company having several classes of shares carrying different rights with regard to voting, or participation in distributions within the meaning of Article 17 or in assets in the event of liquidation, is increased by issuing new shares in only one of these classes, the right of pre-emption of share-holders of the other classes to be exercised only after the exercise of that right by the shareholders of the class in which the new shares are being issued.

3. Any offer of subscription on a pre-emptive basis and the period within which that right must be exercised shall be published in the national gazette appointed in accordance with Directive 2009/101/EC. However, the laws of a Member State need not provide for such publication where all of a company's shares are registered. In such case, all the company's shareholders must be informed in writing. The right of pre-emption must be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the date of dispatch of the letters to the shareholders.

4. The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. The general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 44. Its decision shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC.

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| | <p>5. The laws of a Member State may provide that the statutes, the instrument of incorporation or the general meeting, acting in accordance with the rules for a quorum, a majority and publication set out in paragraph 4, may give the power to restrict or withdraw the right of pre-emption to the company body which is empowered to decide on an increase in subscribed capital within the limit of the authorised capital. That power may not be granted for a longer period than the power for which provision is made in Article 29(2).</p> <p>6. Paragraphs 1 to 5 shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.</p> <p>7. The right of pre-emption is not excluded for the purposes of paragraphs 4 and 5 where, in accordance with the decision to increase the subscribed capital, shares are issued to banks or other financial institutions with a view to their being offered to shareholders of the company in accordance with paragraphs 1 and 3.</p> | |
| <p>7. In case of the increase or the reduction in the charter capital of a joint stock company, in whose respect the court has opened bankruptcy proceedings, the stages of the increase or the reduction in the charter capital may be modified subject to requirements of the Law of Ukraine "On Restoring Debtor's Solvency or Declaring a Debtor Bankrupt".</p> | n/a | Nothing to mention |
| <p>8. If the National Bank of Ukraine appoints the provisional administration of a bank, the stages of the increase or reduction in the charter capital may be modified subject to requirements of the banking legislation.</p> | n/a | Nothing to mention |
| <p>9. A joint stock company shall place each share at a price lower than its market value, and may not place shares at a price below their par value.</p> | <p>2012/30/EU Article 8 Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par. However, Member States may allow those who</p> | <p>Isn't it too strict to require company to place each share at a price lower than its market value. This means that shares cannot be placed even at a price equal to market value.</p> |

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| <p>A joint stock company must buy out the voting shares held by a shareholder, if the shareholder has registered for the participation in the general meeting and voted against the decision of the general meeting to modify the charter capital. In this case, the shares shall be bought out in accordance with the procedure and within the time frame prescribed by the Law of Ukraine "On Joint Stock Companies" at a buy-out price that equals the market value of shares, unless a higher buy-out price has been approved with a decision of the general shareholder meeting or the supervisory council (if the supervisory council is vested with powers required for the approval of the buy-out price in accordance with the charter).</p> | <p>undertake to place shares in the exercise of their profession to pay less than the total price of the shares for which they subscribe in the course of that transaction.</p> | <p>Does this mean that if you do not agree with modification of the capital you have no right to be a shareholder of the company?</p> |
| <p>10. The market value of the property (other than stock exchange-traded equity securities) and/or property interests contributed by way of the payment for shares shall be determined on the basis of the independent valuation carried out in accordance with the legislation on the valuation of the property, property interests and professional valuation activities.</p> <p>The market value of the exchange-traded equity securities contributed as the payment for shares shall be determined on the basis of the exchange quotation as of the last business day preceding the payment date or, if the securities are traded at more than one stock exchange, they shall be marked to market at the lowest of the stock-exchange quotations determined and published at each stock exchange as of the last business day preceding the payment date.</p> <p>The conveyance of interests in intellectual property rights objects being the objects of technology and contributed as the payment for shares of the company shall take place in accordance with the Law of Ukraine "On State Regulation of Activities in the Area of the Technology Transfer".</p> | <p>2012/30/EU Article 10</p> <p>1. A report on any consideration other than in cash shall be drawn up before the company is incorporated or is authorised to commence business, by one or more independent experts appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State.</p> <p>2. The experts' report referred to in paragraph 1 shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of those methods correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them.</p> | |
| <p>11. The documents (copies) submitted pursuant to this Order shall be sealed with a stamp (seal) upon the existence of such stamp (seal).</p> | <p>n/a</p> | <p>Nothing to mention</p> |

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| II. Increase in the Charter Capital of a Joint Stock Company | | |
| 1. Sources and Ways of Increasing the Charter Capital of a Joint Stock Company | | |
| <p>1. A joint stock company may increase its charter capital solely by decision of the general shareholder meeting.</p> | <p>2012/30/EU Article 29 1. Any increase in capital must be decided upon by the general meeting. Both that decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 3 of Directive 2009/101/EC.</p> | |
| <p>2. The sources of the increase in the charter capital of a joint stock company shall be as follows:</p> <ol style="list-style-type: none"> 1) additional contributions; 2) the supplementary capital or a part thereof (except for banks and non-bank financial institutions); 3) the profit or a part thereof. <p>3. The ways of increase in the charter capital of a joint stock company shall be as follows:</p> <ol style="list-style-type: none"> 1) the increase in the par value of shares; 2) the placement of additional shares of the existing par value. | <p>2012/30/EU Article 31 1. Where shares are issued for a consideration other than in cash in the course of an increase in the subscribed capital the consideration must be transferred in full within a period of five years from the decision to increase the subscribed capital. 2. The consideration referred to in paragraph 1 shall be the subject of a report drawn up before the increase in capital is made by one or more experts who are independent of the company and appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies and firms under the laws of each Member State. Article 10(2) and (3) and Articles 11 and 12 shall apply. 3. Member States may decide not to apply paragraph 2 in the event of an increase in subscribed capital made in order to give effect to a merger, a division or a public offer for the purchase or exchange of shares and to pay the shareholders of the company which is being absorbed or divided or which is the object of the public offer for the purchase or exchange of shares. In the case of a merger or a division, however, Member States shall apply the first subparagraph</p> | |

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| | <p>only where a report by one or more independent experts on the draft terms of merger or division is drawn up.</p> <p>Where Member States decide to apply paragraph 2 in the case of a merger or a division, they may provide that the report under this Article and the report by one or more independent experts on the draft terms of merger or division may be drawn up by the same expert or experts.</p> <p>4. Member States may decide not to apply paragraph 2 if all the shares issued in the course of an increase in subscribed capital are issued for a consideration other than in cash to one or more companies, on condition that all the shareholders in the company which receive the consideration have agreed not to have an experts' report drawn up and that the requirements of points (b) to (f) of Article 10(4) are met.</p> | |
| <p>4. The increase in the charter capital of a joint stock company with the lodgement of additional contributions shall be carried out by means of the placement of additional shares.</p> | n/a | Nothing to mention |
| <p>5. The increase in the charter capital of a joint stock company by means of the channelling of the supplementary capital (a part thereof) and/or the profit (a part thereof) to the charter capital shall be carried out by means of the increase in the par value of shares.</p> | n/a | Nothing to mention |
| <p>6. In case of the placement of shares, they shall be paid with cash or, subject to an agreement between the company and the investor, with property interests, non-property interests with the monetary value, securities (other than equity securities issued by the acquiring party, and promissory notes), and with other property.</p> <p>Restrictions upon the forms of payment for shares shall be specified by law and the charter of the joint stock company.</p> | <p>2012/30/EU Article 30</p> <p>Shares issued for a consideration, in the course of an increase in subscribed capital, must be paid up to at least 25 % of their nominal value or, in the absence of a nominal value, of their accountable par. Where provision is made for an issue premium, it must be paid in full.</p> | |
| <p>7. The increase in the charter capital of the company by means of channelling the profit (a part thereof) into the charter capital shall be possible subject to the approval of the allocation of the profit, which (whose part) is channelled for the increase in the charter</p> | n/a | Nothing to mention |

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| capital, by the general shareholder meeting. | | |
| <p>8. While increasing the charter capital, the joint stock company shall not have the right:</p> <p>to combine ways of increasing the charter capital specified in item 3 of this chapter;</p> <p>to combine additional contributions with other charter capital increase sources specified in item 2 of this chapter.</p> | n/a | Nothing to mention |
| 2. Procedure of Increasing the Charter Capital of a Joint Stock Company by Way of Additional Contributions | | |
| <p>1. In case of the increase in the charter capital of a public joint stock company by way of additional contributions, the shares to be placed may be disseminated by means of the public or private placement.</p> <p>The public placement of shares in a public joint stock company shall be undertaken by offering them to an unspecified number of parties on the basis of a publication of the share issue prospectus in the official printed bulletin of the Commission.</p> <p>The private placement of shares in a public joint stock company shall be undertaken by means of their direct offering to shareholders of such a company and to a pre-defined group of parties not exceeding 100 parties.</p> | n/a | Nothing to mention |
| <p>2. In case of the increase in the charter capital of a private joint stock company by way of additional contributions, the shares to be placed may be disseminated solely by means of the private placement.</p> <p>In case of the decision of the general meeting of a private joint stock company to carry out the public share placement, the charter of the company shall be properly amended, for instance, by means of the modification of the company type from private to public.</p> <p>The private placement of shares in a private joint stock company shall be undertaken by means of their direct offering to shareholders of such a company and to a pre-defined group of parties not exceeding 100 parties.</p> | n/a | Nothing to mention |

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| <p>The number of shareholders of a private joint stock company as a result of the private placement of shares may not exceed 100 shareholders.</p> | | |
| <p>3. The increase in the charter capital of a joint stock company by means of the public placement of additional shares of the existing par value shall comprise the following stages:</p> <p>1) the approval of the market value of shares by the supervisory council or the general shareholder meeting of the company, if the company charter does not provide for the establishment of the supervisory council.</p> <p>The market value of shares shall be determined in accordance with the legislation as of the date preceding the day of the publication of the notice of convention of the general meeting in accordance with the established procedure, whose agenda includes the issue of the increase in the charter capital of a joint stock company by means of the public placement of additional shares of the existing par value. If the joint stock company is not required by law to publish the notice of the general meeting and does not publish the same, the market value of shares shall be determined as of the date preceding the first day of the dispatch of a written notice for shareholders of the general meeting, whose agenda includes the issue of the increase in the charter capital of the joint stock company;</p> <p>2) the making of decisions by the general shareholder meeting of the company on:</p> <p>the increase in the charter capital of a joint stock company by means of the public placement of additional shares of the existing par value at the expense of additional contributions;</p> <p>the public placement of shares;</p> <p>the nomination, if necessary, of the charter body of the issuer (the executive body, the supervisory council) vested with powers listed hereinbelow, unless otherwise specified in the charter:</p> <p>the involvement of an underwriter into the placement;</p> <p>the changing of dates of the commencement and the completion of the entry into contracts with the first holders in the process of the public placement of shares;</p> | <p>n/a</p> | <p>Nothing to mention</p> |

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| <p>the changes in the minimum share offering price;</p> <p>the introduction of changes into the fund share issue prospectus;</p> <p>the making of a decision on the on the early termination of the entry into contracts with the first holders in the process of the public placement of shares (provided that the planned quantity of shares is covered with contracts with first owners and the shares have been paid in full);</p> <p>the approval of results of the entry into contracts with the first holders in the process of the public placement of shares;</p> <p>the approval of results of the public placement of shares;</p> <p>the approval of the public share placement results report;</p> <p>the making of the decision to waive the placement of shares;</p> <p>the return of contributions lodged as the payment for shares in case of the invalidation of the issue or the non-approval of results of the entry into contracts with the first holders in the process of the public placement of shares within time frames prescribed by the legislation by the issuer's body charter to make such a decision or in case of the decision to waive the placement of shares.</p> <p>The general shareholder meeting may nominate charter officers of the issuer vested with the following powers:</p> <p>to take action in respect of securing the entry into contracts with the first holders in the process of the public placement of shares;</p> <p>to take action to undertake the obligatory share buy-out from shareholders exercising their right to require the joint stock company to buy out the shares held by them;</p> <p>3) the compilation of a list of shareholders entitled to require the obligatory buy-out of shares held by them;</p> <p>4) the notification of the shareholders listed in the list compiled under sub-item 3 of this item of their right to demand the obligatory share buy-out within 10 business days of the date of the general shareholder meeting at the latest;</p> <p>5) the performance of the obligatory buy-out of shares held by shareholders by the joint stock company in accordance with the</p> | | |
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procedure and within the time frames prescribed by the Law of Ukraine "On Joint Stock Companies";

6) the submission of an application and all the documents required for the registration of the share tranche and the share issue prospectus to the head office or territorial agencies of the Commission in line with the delegated powers;

7) the registration of the share tranche, the share issue prospectus with the Commission, and the issue of a provisional share tranche registration certificate to the company together with the registered share issue prospectus;

8) the introduction of changes into the share issue prospectus by the charter body of the issuer, if necessary;

9) the submission of an application and all the documents required for the share issue prospectus changes registration (in case of the decision of the charter body of the company to introduce changes in question) to the head office or territorial agencies of the Commission in line with the delegated powers;

10) the registration of changes to the share issue prospectus by the Commission (in case of the decision of the charter body of the company to introduce such changes);

11) the assignment of the international identification number to shares;

12) the entry into an issue service contract (unless a valid contract is available) with a depository;

13) the execution and the deposition of the provisional global certificate;

14) the issuer's disclosure of the information contained in the registered share issue prospectus and changes to the share issue prospectus (if any) in full within 10 days prior to the date of commencement of the entry into contracts with the first holders in the process of the public placement of shares specified in the issue prospectus in a manner prescribed by Article 30 of the Law of Ukraine "On Securities and Stock Market". At that, the share issue prospectus may be published immediately after the registration thereof; the changes to the share issue prospectus may be published immediately after the registration thereof;

15) the entry into contracts with the first holders in the process of the public placement of shares.

The first holder shall submit an application for the acquisition of shares and a share sales contract shall be concluded in accordance with conditions of the public placement within the time frame specified in the issue prospectus (changes to the issue prospectus). The first holder shall pay in full for shares in accordance with placement conditions, but not later than the time of the approval of results of the public placement of shares by the charter body of the issuer;

16) the approval of the market value of the property, non-property interests that have monetary value determined in accordance with the Law of Ukraine "On Joint Stock Companies" in case of the payment for shares with the property or non-property interests that have monetary value by the supervisory council or the general shareholder meeting, if the company charter does not provide for the establishment of the supervisory council;

17) the approval of results of the entry into contracts with the first holders in the process of the public placement of shares by the charter body of the joint stock company;

18) the approval of results of the public placement of shares by the charter body of the joint stock company;

19) the approval of public share placement results report by the charter body of the joint stock company;

20) the introduction of changes by the general shareholder meeting to the charter in connection with the increase in the charter capital of a joint stock company taking into account the results of the placement of shares;

21) the registration of changes in the charter of the company in connection with the increase in the charter capital of a joint stock company with state registration agencies;

22) the submission of an application and all the documents required for the public share placement results report registration to the head office or territorial agencies of the Commission in line with the delegated powers;

23) the registration of the public share placement results

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| <p>report by the Commission;</p> <p>24) the obtainment of a share tranche registration certificate and the registered public share placement results report;</p> <p>25) the re-issue of the global certificate earlier executed and lodged to the depository earlier taking account of the placed shares, whose tranche issue has been formalised with the provisional global certificate;</p> <p>26) the disclosure of the information contained in the public share placement results report by the issuer by means of the publication of the report in the official printed bulletin of the Commission within 15 business days of the registration of the said report by the Commission.</p> | | |
| <p>4. The increase in the charter capital of a public joint stock company or a private joint stock company by means of the private placement of additional shares of the existing par value shall comprise the following stages:</p> <p>1) the approval of the market value of shares by the supervisory council or the general shareholder meeting of the company, if the company charter does not provide for the establishment of the supervisory council.</p> <p>The market value of shares shall be determined in accordance with the legislation as of the date preceding the day of the publication of the notice of convention of the general meeting in accordance with the established procedure, whose agenda includes the issue of the increase in the charter capital of a joint stock company by means of the private placement of additional shares of the existing par value. If the joint stock company is not required by law to publish the notice of the general meeting and does not publish the same, the market value of shares shall be determined as of the date preceding the first day of the dispatch of a written notice for shareholders of the general meeting, whose agenda includes the issue of the increase in the charter capital of the joint stock company;</p> <p>2) the making of decisions by the general shareholder meeting of the company on:</p> <p>the increase in the charter capital of a joint stock company by</p> | n/a | Nothing to mention |

means of the private placement of additional shares of the existing par value at the expense of additional contributions;

the private placement of shares (with the indication of the list of persons taking part in such placement).

In a private joint stock company, the number of persons taking part in the private placement (other than shareholders) may not exceed the difference between the maximum number of parties, among which the private share placement may be carried out, as specified by the Law of Ukraine "On Securities and Stock Market" and the number of shareholders of such a company as of the date of the decision on the private share placement.

In case of a public joint stock company, the total number of persons taking part in the private placement may not exceed 100 persons, other than shareholders of the company;

the nomination, if necessary, of the charter body of the issuer (the executive body, the supervisory council) vested with powers listed hereinbelow, unless otherwise specified in the charter:

the involvement of an underwriter into the placement;

the introduction of changes into the fund share issue prospectus;

the making of a decision on the on the early termination of the entry into contracts with first holders in the process of the private placement of shares (provided that the planned quantity of shares is covered with contracts with first owners and the shares have been paid in full);

the approval of results of the entry into contracts with first holders in the process of the private placement of shares;

the approval of results of the private placement of shares;

the approval of results of the private placement of shares;

the making of the decision to waive the placement of shares;

the return of contributions lodged as the payment for shares in case of the non-approval of results of the entry into contracts with first holders in the process of the private placement of shares within time frames prescribed by the legislation by the issuer's body charter

to make such a decision or in case of the decision to waive the placement of shares;

the written notification of each shareholder enjoying the pre-emptive right to the acquisition of shares placed by a joint stock company of the possibility for the exercise of the said right, and the publication of the notice thereof in the official printed bulletin.

The general shareholder meeting may nominate charter officers of the issuer vested with the following powers:

to take action aimed at supporting the exercise by shareholders of their pre-emptive right to the acquisition of shares covered by the decision to place shares;

to take action in respect of securing the entry into contracts with first holders in the process of the public placement of shares;

to take action to undertake the mandatory share buy-out from shareholders exercising their right to require the joint stock company to buy out the shares held by them;

3) the compilation of a list of shareholders entitled to require the obligatory buy-out of shares held by them;

4) the notification of the shareholders listed in the list compiled under sub-item 3 of this item of their right to demand the obligatory share buy-out within 10 business days of the date of the general shareholder meeting at the latest;

5) the performance of the obligatory buy-out of shares held by shareholders by the joint stock company in accordance with the procedure and within the time frames prescribed by the Law of Ukraine "On Joint Stock Companies";

6) the written notification of the procedure of the exercise of the pre-emptive right of each shareholder eligible for the exercise of the said right not later than 30 days prior to the commencement of the placement of shares;

7) the publication of the notice of the procedure of the exercise of the pre-emptive right to the acquisition of shares placed by a joint stock company by shareholders in the official printed bulletin not later than 30 days prior to the commencement of the placement of shares;

8) the submission of an application and all the documents required for the registration of the share tranche and the share issue prospectus to the head office or territorial agencies of the Commission in line with the delegated powers;

9) the registration of the share tranche, the share issue prospectus with the Commission, and the issue of a provisional share tranche registration certificate to the company together with the registered share issue prospectus;

10) the introduction of changes into the share issue prospectus by the charter body of the issuer, if necessary;

11) the submission of an application and all the documents required for the share issue prospectus changes registration (in case of the decision of the charter body of the company to introduce changes in question) to the head office or territorial agencies of the Commission in line with the delegated powers;

12) the registration of changes to the share issue prospectus by the Commission (in case of the decision of the charter body of the company to introduce such changes);

13) the assignment of the international identification number to shares;

14) the entry into an issue service contract (unless a valid contract is available) with a depository;

15) the execution and the deposition of the provisional global certificate;

16) the provision by the issuer of a copy of the registered share issue prospectus and a copy of the registered changes to the share issue prospectus (if any) to persons taking part in the placement in accordance with the relevant decision of the issuer at least 10 days prior to the date of commencement of the entry into contracts with the first holders in the process of the private placement of shares specified in the share issue prospectus;

17) the exercise by shareholders of their pre-emptive right to the acquisition of shares covered by the private placement decision.

The pre-emptive right provided for by Article 27 of the Law of Ukraine "On Joint Stock Companies" shall be exercised by the parties being shareholders as of the date of the decision to increase

the charter capital by means of the private placement of shares.

Shareholders intent on exercising their pre-emptive right shall submit written applications for the share acquisition and transfer funds in the amount equivalent to the value of shares so procured by them to the joint stock company within the time frame prescribed by the decision to place shares. The application and the transferred funds shall be accepted by the company not later than on the day that precedes the date of commencement of the entry into contracts with the first holders in the process of the private share placement.

The time frame for the exercise of the pre-emptive right of shareholders to the acquisition of shares covered by the private placement decision may not be shorter than 15 calendar days;

18) the issue of written undertakings to sell the appropriate number of shares within 5 business days of receipt of the relevant funds by the company, but not later than the day preceding the date of commencement of the entry into contracts with the first holders in the process of the private share placement on the basis of written applications for the acquisition of shares and funds in the amount equivalent to the value of the shares acquired by them received from shareholders;

19) the entry into contracts with the first holders in the process of the private placement of shares taking place in two stages.

Stage 1: a share sales contract shall be concluded with the shareholder within the time frame specified in the decision to place shares and the share issue prospectus for shares, in whose respect the shareholder has submitted an application for the acquisition and transferred appropriate funds in accordance with conditions of the private placement of shares.

The duration of stage one shall depend on the number of shareholders as of the date of the decision on the private placement of shares and it shall last for at least 5 business days in joint stock companies with not more than 100 shareholders or 15 business days in companies with more than 100 shareholders.

Stage 2: once Stage 1 is over, the contracts are concluded with the first holders in the process of the private placement of shares not covered by contracts concluded at Stage 1 among persons taking part in the private placement of shares in accordance with the

decision to place shares.

Participants of the private share placement shall submit an application and a share sales contract shall be concluded within the time frame specified in the decision to place shares and the share issue prospectus. The payment for shares shall be made in full in accordance with placement conditions, but not later than the day preceding the date of approval of the private share placement results by the charter body;

20) the approval of the market value of the property, non-property interests that have monetary value determined in accordance with the Law of Ukraine "On Joint Stock Companies" in case of the payment for shares with the property or non-property interests that have monetary value by the supervisory council or the general shareholder meeting, if the company charter does not provide for the establishment of the supervisory council. If the supervisory council has not approved the market value of non-property interests that have monetary value lodged as payment for shares, the said market value shall be approved by the general meeting of the joint stock company;

21) the approval of results of the entry into contracts with the first holders in the process of the private placement of shares by the charter body of the joint stock company;

22) the approval of results of the private placement of shares by the charter body of the joint stock company;

23) the approval of private share placement results report by the charter body of the joint stock company;

24) the introduction of changes by the general shareholder meeting to the charter in connection with the increase in the charter capital of a joint stock company taking into account the results of the placement of shares;

25) the registration of changes in the charter of the company in connection with the increase in the charter capital of a joint stock company with state registration agencies;

26) the submission of an application and all the documents required for the private share placement results report registration to the head office or territorial agencies of the Commission in line with the delegated powers;

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| <p>27) the registration of the private share placement results report by the Commission;</p> <p>28) the obtainment of a share tranche registration certificate and the registered private share placement results report;</p> <p>29) the re-issue of the global certificate earlier executed and lodged to the depository earlier taking account of the placed shares, whose tranche issue has been formalised with the provisional global certificate.</p> | | |
| <p>5. In case of the decision made by the Commission to invalidate the issue of shares at stages referred to in sub-items 15 to 20 of item 3 of this chapter, the joint stock company shall:</p> <p>notify the first holders of shares in person of the invalidation of the share issue;</p> <p>refund contributions to the first holders lodged by them as payment for shares, whose issue has been invalidated, in accordance with the procedure and within the time frames specified in the issue prospectus, but not later than six months of the date of the decision to invalidate the share issue.</p> | n/a | Nothing to mention |
| <p>6. In case of the decision to waive the placement of shares, the joint stock company shall:</p> <p>publish information about the waiver of the share placement in the same official printed bulletin of the Commission, in which the share issue prospectus and changes to the share issue prospectus (if any) have been published (in case of the public placement) or notify persons taking part in the private placement of shares listed in the decision on the private placement of shares of the waiver of the share placement (in case of the private placement) within 5 business days of the decision to waive the placement;</p> <p>suspend the placement of shares (provided that the decision in question is made before the date of completion of the entry into contracts with the first holders in the process of the placement of shares specified in the issue prospectus);</p> <p>refund contributions lodged by the first holders as the payment for shares in accordance with the procedure and within the time frames specified in the decision to place shares, but not later than 30 calendar days of the date of the decision to waive the</p> | n/a | Nothing to mention |

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| <p>placement;</p> <p>submit an application and all the documents required for the share placement results report registration and the share tranche registration reversal to the head office or territorial agencies of the Commission in line with the delegated powers.</p> | | |
| <p>7. In case of the failure of the body of a joint stock company charter to make decisions on the approval of results of the entry into contracts with the first holders to approve the results of the entry into contracts with the first holders within the time frames prescribed by the Law of Ukraine "On Securities and Stock Market", the joint stock company shall:</p> <p>notify first holders of shares thereof in person within 5 business days;</p> <p>refund contributions lodged by the first holders as the payment for shares in accordance with the procedure and within the time frames specified in the decision to place shares and the share issue prospectus not exceeding six months of the date of completion of the entry into contracts with the first holders in the process of the placement of shares specified in the share issue prospectus;</p> <p>submit an application and all the documents required for the share placement results report registration and the share tranche registration reversal to the head office or territorial agencies of the Commission in line with the delegated powers.</p> | n/a | Nothing to mention |
| <p>3. Increase in the Charter Capital of a Joint Stock Company by Means of the Channelling of the Supplementary Capital (a Part Thereof) and/or Profit (a Part Thereof) to the Charter Capital</p> | | |
| <p>1. The increase in the charter capital of a joint stock company by means of the channelling of the supplementary capital (a part thereof) and/or the profit (a part thereof) to the charter capital shall be carried out solely by means of the increase in the par value of shares.</p> <p>The increase in the charter capital at the expense of the supplementary capital (a part thereof) or the profit (a part thereof) may be undertaken with the combination of sources in question.</p> | n/a | Nothing to mention |

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| <p>2. The total sum of the supplementary capital (a part thereof) and/or the profit (a part thereof) channelled for the increase in the charter capital must provide for the integer value of the par value of a share after the completion of the procedure of increase in the charter capital taking account of the requirement for the minimum par value of a share.</p> | n/a | Nothing to mention |
| <p>. The increase in the charter capital of a joint stock company by means of the increase in the par value of shares funded by channelling of the supplementary capital (a part thereof) and/or the profit (a part thereof) to the charter capital shall be carried out in the following stages:</p> <p>1) the approval of the market value of shares by the supervisory council or the general shareholder meeting of the company, if the company charter does not provide for the establishment of the supervisory council;</p> <p>The market value of shares shall be determined in accordance with the legislation as of the date preceding the day of the publication of the notice of convention of the general meeting in accordance with the established procedure, whose agenda includes the issue of the increase in the charter capital of a joint stock company by means of the increase in the par value of shares. If the joint stock company is not required by law to publish the notice of the general meeting and does not publish the same, the market value of shares shall be determined as of the date preceding the first day of the dispatch of a written notice for shareholders of the general meeting, whose agenda includes the issue of the increase in the charter capital of the joint stock company;</p> <p>2) the making of decisions by the general shareholder meeting of the company on:</p> <p>the approval of performance results of the company for the year, in which the profit being the source of the increase in the charter capital has been obtained (unless they have already been approved);</p> <p>the allocation of the profit of the company and the specification of the profit portion channelled for the increase in the charter capital;</p> <p>the increase in the charter capital of a joint stock company by means of the increase in the par value of shares by channelling the</p> | n/a | Nothing to mention |

supplementary capital (a part thereof) and/or the profit (a part thereof) to the charter capital;

the issue of shares with the new par value;

the introduction of changes into the company charter related to the increase in the charter capital by means of increasing the par value of shares.

Decisions covered with paragraphs two and three of this sub-item shall be made, if the profit is the source (one of sources) of the increase in the charter capital;

3) the compilation of a list of shareholders entitled to require the obligatory buy-out of shares held by them;

4) the notification of the shareholders listed in the list compiled under sub-item 3 of this item of their right to demand the obligatory share buy-out within 10 business days of the date of the general shareholder meeting at the latest;

5) the performance of the obligatory buy-out of shares held by shareholders by the joint stock company in accordance with the procedure and within the time frames prescribed by the Law of Ukraine "On Joint Stock Companies";

6) the registration of changes in the charter of the company in connection with the increase in the charter capital of a joint stock company with state registration agencies;

7) the submission of an application and all the documents required for the registration of the tranche of shares with the new par value to the head office or territorial agencies of the Commission in line with the delegated powers;

8) the registration of the share tranche by the Commission, and the issue of a share tranche registration certificate to the company;

9) the assignment of the international identification number to shares;

10) the entry into an issue service contract (unless a valid contract is available) with a depository;

11) the execution (re-execution) and the deposition of the

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| <p>global certificate;</p> <p>12) the performance of transactions by the depository and custodians in the depository accounting system aimed at servicing the process of changing the par value of shares.</p> | | |
| <p>III. Reduction in the Charter Capital of a Joint Stock Company</p> | | |
| <p>1. A joint stock company may reduce its charter capital solely by decision of the general shareholder meeting.</p> | <p>2012/30/EU Article 34 Any reduction in the subscribed capital, except under a court order, must be subject at least to a decision of the general meeting acting in accordance with the rules for a quorum and a majority laid down in Article 44 without prejudice to Articles 40 and 41. Such decision shall be published in the manner laid down by the laws of each Member State in accordance with Article 3 of Directive 2009/101/EC. The notice convening the meeting must specify at least the purpose of the reduction and the way in which it is to be carried out.</p> | |
| <p>2. The following shall be the ways of the reduction in the charter capital of a joint stock company:</p> <p>1) the reduction in the par value of shares;</p> <p>2) the annulment of shares bought out by the company earlier, and the reduction in the total number thereof, if the company charter so provides.</p> | <p>n/a</p> | <p>Nothing to mention</p> |
| <p>3. While reducing the charter capital, the joint stock company may not combine the ways of reducing its charter capital referred to in item 3 hereof.</p> | <p>n/a</p> | <p>Nothing to mention</p> |
| <p>4. A joint stock company shall have the right to make decisions to reduce the charter capital by means of the annulment of shares bought out earlier and the reduction in the total number thereof to the extent not exceeding the number of shares so bought out held in the balance sheet of the joint stock company as of the time of the decision to reduce the charter capital.</p> | <p>2012/30/EU Article 21 . 1. (d) that certain companies, as determined by Member States, may be required to cancel the acquired shares provided that an amount equal to the nominal value of the shares cancelled must be included in a</p> | |

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| | <p>reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital; that reserve may be used only for the purposes of increasing the subscribed capital by the capitalisation of reserves;</p> <p>Article 22</p> <p>3. If the shares are not disposed of within the period laid down in paragraph 2, they must be cancelled. The laws of a Member State may make that cancellation subject to a corresponding reduction in the subscribed capital. Such a reduction must be prescribed where the acquisition of shares to be cancelled results in the net assets having fallen below the amount specified in Article 17(1) and (2).</p> | |
| <p>5. The reduction in the charter capital of a joint stock company by means of the reduction in the par value of shares shall comprise the following stages:</p> <p>1) the approval of the market value of shares by the supervisory council or the general shareholder meeting of the company, if the company charter does not provide for the establishment of the supervisory council;</p> <p>The market value of shares shall be determined in accordance with the legislation as of the date preceding the day of the publication of the notice of convention of the general meeting in accordance with the established procedure, whose agenda includes the issue of the reduction in the charter capital of a joint stock company by means of the reduction in the par value of shares. If the joint stock company is not required by law to publish the notice of the general meeting and does not publish the same, the market value of shares shall be determined as of the date preceding the first day of the dispatch of a written notice for shareholders of the general meeting, whose agenda includes the issue of the reduction in the charter capital of the joint stock company;</p> <p>2) the making of decisions by the general shareholder meeting of the company on:</p> <p>the reduction in the charter capital of a joint stock company by means of the reduction in the par value of shares;</p> | <p>n/a</p> | <p>Nothing to mention</p> |

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| <p>the issue of shares with the new par value;</p> <p>the introduction of changes into the company charter related to the reduction in the charter capital by means of reducing the par value of shares;</p> <p>3) the compilation of a list of shareholders entitled to require the obligatory buy-out of shares held by them;</p> <p>4) the notification of the shareholders listed in the list compiled under sub-item 3 of this item of their right to demand the obligatory share buy-out within 10 business days of the date of the general shareholder meeting at the latest;</p> <p>5) the notification of creditors, whose claims to the joint stock company are not secured with pledge, guarantee or suretyship, of the decision to reduce the charter capital in accordance with the procedure prescribed by Article 16 of the Law of Ukraine "On Joint Stock Companies";</p> <p>6) the performance of the obligatory buy-out of shares held by shareholders by the joint stock company in accordance with the procedure and within the time frames prescribed by the Law of Ukraine "On Joint Stock Companies";</p> <p>7) the registration of changes in the charter in connection with the reduction in the charter capital of a joint stock company with state registration agencies;</p> <p>8) the submission of an application and all the documents required for the share tranche registration to the head office or territorial agencies of the Commission in line with the delegated powers;</p> <p>9) the registration of the share tranche by the Commission, and the issue of a share tranche registration certificate to the company;</p> <p>10) the assignment of the international identification number to shares;</p> <p>11) the entry into an issue service contract (unless a valid contract is available) with a depository;</p> <p>12) the execution (re-execution) and the deposition of the</p> | | |
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| <p>global certificate;</p> <p>13) the performance of transactions by the depository and custodians in the depository accounting system aimed at servicing the process of changing the par value of shares.</p> | | |
| <p>6. The par value of a share after the completion of the charter capital reduction procedure must be integer subject to the requirement for the minimum par value of a share.</p> | n/a | Nothing to mention |
| <p>7. The reduction in the charter capital of a joint stock company by means of the annulment of shares bought out earlier and the reduction in the total number thereof shall comprise the following stages:</p> <p>1) the approval of the market value of shares by the supervisory council or the general shareholder meeting of the company, if the company charter does not provide for the establishment of the supervisory council;</p> <p>The market value of shares shall be determined in accordance with the legislation as of the date preceding the day of the publication of the notice of convention of the general meeting in accordance with the established procedure, whose agenda includes the issue of the reduction in the charter capital of a joint stock company by means of the annulment of shares bought out earlier and the reduction in the total number thereof. If the joint stock company is not required by law to publish the notice of the general meeting and does not publish the same, the market value of shares shall be determined as of the date preceding the first day of the dispatch of a written notice for shareholders of the general meeting, whose agenda includes the issue of the reduction in the charter capital of the joint stock company;</p> <p>2) the making of decisions by the general shareholder meeting of the company on:</p> <p>the annulment of shares bought out;</p> <p>the reduction in the charter capital of the company by the amount of the aggregate par value of shares to be annulled;</p> <p>the introduction of changes into the charter in connection with the reduction in the charter capital of the company;</p> | n/a | Nothing to mention |

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| <p>3) the compilation of a list of shareholders entitled to require the obligatory buy-out of shares held by them;</p> <p>4) the notification of the shareholders listed in the list compiled under sub-item 3 of this item of their right to demand the obligatory share buy-out within 10 business days of the date of the general shareholder meeting at the latest;</p> <p>5) the notification of creditors, whose claims to the joint stock company are not secured with pledge, guarantee or suretyship, of the decision to reduce the charter capital in accordance with the procedure prescribed by Article 16 of the Law of Ukraine "On Joint Stock Companies";</p> <p>6) the performance of the obligatory buy-out of shares held by shareholders by the joint stock company in accordance with the procedure and within the time frames prescribed by the Law of Ukraine "On Joint Stock Companies";</p> <p>7) the registration of changes in the charter in connection with the reduction in the charter capital of a joint stock company with state registration agencies;</p> <p>8) the submission of an application and all the documents required for the share tranche registration to the head office or territorial agencies of the Commission in line with the delegated powers;</p> <p>9) the registration of the share tranche by the Commission, and the issue of a share tranche registration certificate to the company;</p> <p>10) the assignment of the international identification number to shares;</p> <p>11) the entry into an issue service contract (unless a valid contract is available) with a depository;</p> <p>12) the execution (re-execution) and the deposition of the global certificate.</p> | | |
| <p>IV. Specific Features of Increase or Reduction in the Charter Capital of Specific Categories of Joint Stock Companies</p> | | |
| <p>1. Specific Features of Increase or Reduction in the Charter</p> | | |

| Capital of a Joint Stock Company with a Single Shareholder | | |
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| <p>1. The increase in the charter capital of a joint stock company with a single shareholder by means of the public placement of additional shares of the existing par value shall comprise the stages prescribed by item 3 of Chapter 2 of Section II hereof in the following sequence: sub-items 1, 2 and 6 to 26; the stages covered with sub-items 16 to 20 may be undertaken by means of the simultaneous adoption of the following decisions by the shareholder singlehandedly:</p> <p>the approval of the market value of the property, non-property interests that have monetary value determined in accordance with the Law of Ukraine "On Joint Stock Companies" in case of the payment for shares with the property or non-property interests that have monetary value;</p> <p>the approval of results of the entry into contracts with the first holders in the process of the public placement of shares; the results of the public placement of shares, the public share placement results report;</p> <p>the introduction of changes into the charter in connection with the increase in the charter capital of a joint stock company taking into account the results of the placement of shares.</p> | n/a | Nothing to mention |
| <p>2. The increase in the charter capital of a joint stock company by means of the private placement of additional shares of the existing par value shall be undertaken as follows:</p> <p>1) if the conditions of the private placement approved by the shareholder specify a list of persons taking part in the said placement (other than the single shareholder of the company), then it shall be undertaken in stages referred to in item 4 of Chapter 2 of Section II hereof in the following sequence: sub-items 1, 2 and 8 to 29; the stages covered with sub-items 20 to 24 may be undertaken by means of the simultaneous adoption of the following decisions by the shareholder singlehandedly:</p> <p>the approval of the market value of the property, non-property interests that have monetary value determined in accordance with the Law of Ukraine "On Joint Stock Companies" in case of the</p> | n/a | Nothing to mention |

payment for shares with the property or non-property interests that have monetary value;

the approval of results of the entry into contracts with the first holders in the process of the private placement of shares, the results of the private placement of shares, the private share placement results report;

the introduction of changes into the charter in connection with the increase in the charter capital of a joint stock company taking into account the results of the placement of shares;

2) if the conditions of the private placement approved by the shareholder specify a list of persons taking part in the said placement comprising only the single shareholder of the company, then it shall be undertaken in stages referred to in item 4 of Chapter 2 of Section II hereof in the following sequence: sub-items 1, 2, 8 to 15, 19 to 29; at that:

the share issue prospectus does not contain information about the time frames and the procedure of the exercise of the pre-emptive right by shareholders in case of the additional issue;

the private placement is carried out as a single stage, whose duration may not be shorter than one business day;

stages covered with sub-items 20 to 24 may be undertaken by means of the simultaneous adoption of the following decisions by the shareholder singlehandedly:

the approval of the market value of the property, non-property interests that have monetary value determined in accordance with the Law of Ukraine "On Joint Stock Companies" in case of the payment for shares with the property or non-property interests that have monetary value;

the approval of results of the entry into contracts with the first holders in the process of the private placement of shares, the results of the private placement of shares, the private share placement results report;

the introduction of changes into the charter in connection with the increase in the charter capital of a joint stock company taking into account the results of the placement of shares.

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| <p>3. In case of the increase in the charter capital of a joint stock company with a single shareholder by means of the placement of additional shares of the existing par value, the market value of shares determined as of the date preceding the date of the decision to increase the charter capital by not more than one month shall be used.</p> | n/a | Nothing to mention |
| <p>4. The increase in the charter capital of a joint stock company with a single shareholder by means of the channelling of the supplementary capital (a part thereof) and/or profit (a part thereof) to the charter capital shall be undertaken in stages covered with item 3 of Chapter 3 of Section II hereof in the following sequence: sub-items 2, 6 to 12.</p> | n/a | Nothing to mention |
| <p>5. The reduction in the charter capital of a joint stock company with a single shareholder by means of the reduction in the par value of shares shall comprise the stages prescribed by item 5 of Section III hereof in the following sequence: sub-items 2, 5, 7 to 13.</p> | n/a | Nothing to mention |
| <p>6. The reduction in the charter capital of a joint stock company with a single shareholder by means of the annulment of shares bought out earlier and the reduction in the total number thereof shall comprise the stages prescribed by item 7 of Section III hereof in the following sequence: sub-items 2, 5, 7 to 12.</p> | n/a | Nothing to mention |
| <p>7. The decision of the individual shareholder shall be executed by him in writing (in the form of a decision) and authenticated with the company seal or notarised.</p> <p>A decision of a legal-entity shareholder shall be made by an agency of the said shareholder or a person, who acts on behalf of the shareholder in accordance with constituting documents, the power of attorney or by law and who is competent to make decisions on the securities placement and circulation, executed in writing (in the form of a decision or another instructive document), authenticated by the head of the charter body (person), which (who) has made the relevant decision or the person who acts on behalf of the legal-entity shareholder in accordance with constituting documents of the legal-entity shareholder, the power of attorney or by law, and with the corporate seal, or notarised.</p> | n/a | Nothing to mention |
| 2. Specific Features of the Increase or Reduction in the Charter | | |

| Capital of a Joint Stock Company, Whose General Shareholder Meeting Functions are Performed by Another Entity in Accordance with the Legislation | | |
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| <p>1. The increase in the charter capital of a public joint stock company, whose general shareholder meeting functions are performed by another person in accordance with the legislation (hereinafter referred to as the "joint stock company with governance specifics") by means of the public placement of additional shares of the existing par value shall comprise the stages prescribed by item 3 of Chapter 2 of Section II hereof in the following sequence: sub-items 1, 2, 6 to 26; at that, the stages covered with sub-items 16 to 20 shall be implemented by means of the simultaneous making of the following decisions by the person tasked with general meeting functions in accordance with the legislation:</p> <p>the approval of the market value of the property, non-property interests that have monetary value determined in accordance with the Law of Ukraine "On Joint Stock Companies" in case of the payment for shares with the property or non-property interests that have monetary value;</p> <p>the approval of results of the entry into contracts with the first holders in the process of the public placement of shares; the results of the public placement of shares, the public share placement results report;</p> <p>the introduction of changes into the charter in connection with the increase in the charter capital of a joint stock company taking into account the results of the placement of shares.</p> | n/a | Nothing to mention |
| <p>2. The increase in the charter capital of a joint stock company with governance specifics by means of the private placement of additional shares of the existing par value shall comprise the stages prescribed by item 4 of Chapter 2 of Section II hereof in the following sequence: sub-items 1, 2, 6 to 29; at that:</p> <p>1) the notice of the procedure of the exercise of the pre-emptive right of each shareholder shall be served in accordance with the list of shareholders as of the date of the decision to increase the charter capital by means of the private placement;</p> <p>2) stages covered with sub-items 20 to 24 of item 4 of Chapter 2 of Section II shall be implemented by means of the</p> | n/a | Nothing to mention |

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| <p>simultaneous making of the following decisions by the person tasked with general meeting functions in accordance with the legislation:</p> <p>the approval of the market value of the property, non-property interests that have monetary value determined in accordance with the Law of Ukraine "On Joint Stock Companies" in case of the payment for shares with the property or non-property interests that have monetary value;</p> <p>the approval of results of the entry into contracts with the first holders in the process of the private placement of shares, the results of the private placement of shares, the private share placement results report;</p> <p>the introduction of changes into the charter in connection with the increase in the charter capital of a joint stock company taking into account the results of the placement of shares.</p> | | |
| <p>3. The increase in the charter capital of a joint stock company with governance specifics by means of the channelling of the supplementary capital (a part thereof) and/or profit (a part thereof) to the charter capital shall be undertaken in stages covered with item 3 of Chapter 3 of Section II hereof.</p> | n/a | Nothing to mention |
| <p>4. The reduction in the charter capital of a joint stock company with governance specifics by means of the reduction in the par value of shares shall comprise the stages prescribed by item 5 of Section III hereof.</p> | n/a | Nothing to mention |
| <p>5. The reduction in the charter capital of a joint stock company with governance specifics by means of the annulment of shares bought out earlier and the reduction in the total number thereof shall comprise the stages prescribed by item 7 of Section III hereof in the following sequence: sub-items 2, 5, 7 to 12.</p> | n/a | Nothing to mention |

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
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| <p align="center">DECISION No. 1518 dated 25.10.2012 of the National Securities and Stock Market Commission On approval of the supervisory procedure for the registration of the shareholders, holding of general meetings, voting and votes counting at the general meetings of the joint stock companies</p> | | |
| <p align="center">I.General Provisions</p> | | |
| <p>1. This Procedure has been developed for the National Securities and Stock Market Commission and its territorial bodies (hereinafter - the Commission) to verify the compliance with the laws on securities and joint stock companies; it defines the procedure for the appointment of members of the Commission to supervise the registration of shareholders (their representatives), holding of general meetings, voting and votes counting at the general meeting of the joint stock companies (hereinafter - Supervision), as well as the procedure of such supervision at joint stock companies.</p> | | |
| <p>2. The representatives of the Commission supervise the compliance with the laws on securities and joint stock companies for the registration of the shareholders (their representatives), holding of general meetings, voting and votes counting at the general meetings of the joint stock companies.</p> | | |
| <p>3. Representatives of the Commission are the staff members of the Commission, who participate in the creation of the control group (head and members of the control group) to supervise the compliance with the laws on securities and joint stock</p> | | |

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| <p>companies for the registration of the shareholders (their representatives), holding of general meetings, voting and votes counting at the general meetings of the joint stock companies (hereinafter - Representatives of the Commission).</p> | | |
| <p>II.Appointment procedure for the Representatives of the Commission supervising the registration of the shareholders (their representatives), holding of general meetings, voting and votes counting at the general meetings of the joint stock companies</p> | | |
| <p>1. Representatives of the Commission performing the supervision may be appointed:</p> <ul style="list-style-type: none"> at the request of the shareholder (s) (or their representatives by proxy), whose powers are confirmed with an extract from the securities account (personal account), made as of the date after the notice of general meeting; at the request of the officer (s) of the joint stock company bodies; at the request of the Depository institution or the Central Securities Depository, if the powers of the Registration commission and/or Counting commission have been transferred to the Depository institution or the Central Securities Depository under the contract (a copy of the contract shall be attached); at the initiative of the Commission and/or its territorial bodies. | | |
| <p>2. Appeals to the Commission shall be reasonable and include, particularly, information on:</p> <ul style="list-style-type: none"> annual or extraordinary meetings; initiators of the general meeting (if the applicant has such information); time and place of registration of shareholders at the general meetings of the joint stock company (a copy of the notice of the | | |

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| <p>general meeting or a copy of the publication of the notice of the general meeting);</p> <p>agenda of the general meeting of the joint stock company's shareholders;</p> <p>state share in the authorized capital of the joint stock company (if such information is available).</p> | | |
| <p>3. Appeals of the persons referred to in the paragraph 1 of this section with regard to the appointment of Representatives of the Commission shall be submitted to the Commission not later than 15 calendar days before the general meeting.</p> | | |
| <p>4. If there are grounds provided for in the paragraph 1 of this section and in order to the appoint the Representatives of the Commission, the structural unit of the central office of the Commission responsible for organization, coordination and implementation of control and audit activities shall prepare the proposals for appointment of a representative of the Commission, determine the volume of Supervisory actions, and submit them for consideration to the Chairman of the Commission and/or member of the Commission that has relevant authority consistent with the allocation of responsibilities in accordance with the order of the Chairman of the Commission.</p> | | |
| <p>5. Decision on appointment of the Representatives of the Commission for supervision shall be made in form of assignment for supervision over the registration of the shareholders, holding of general meetings, voting and votes counting at the general meetings of the joint stock companies (hereinafter - Assignment) in the form specified in the Annex 1.</p> <p>In case the staff members of several structural units of the central office of the Commission and/or representatives of the central office of the Commission and/or of its territorial body (ies) join the Representatives of the Commission, the decision on appointment of the Representatives of the Commission for</p> | | |

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| <p>the supervision shall be executed by the order of the Chairman of the Commission and the Assignment.</p> | | |
| <p>6. Where there are grounds provided for in the paragraph 1 of this section, the head of the territorial body of the Commission shall be entitled to make Assignment at his reasonable discretion for supervision over the registration of shareholders, holding of general meetings, voting and votes counting for those joint stock companies, general meetings of which are held on the territory of the administrative-territorial unit of territorial body.</p> <p>List of the supervising Representatives of the territorial body of the Commission shall be determined by the head of the territorial body of the Commission.</p> | | |
| <p>7. A control group consisting of at least two people shall be organized for the performance of supervisory actions.</p> | | |
| <p>8. Chairman of the Commission and members of the Commission may perform the supervisory actions without Assignment on the basis of the official ID card.</p> <p>The Representatives of the Commission perform supervision on the basis of the official ID card and Assignment.</p> <p>The Chairman or the member of the Commission, who has the appropriate power consistent with the allocation of responsibilities in accordance with the order of the Chairman of the Commission, may appoint the staff members of the central office of the Commission for supervision.</p> <p>Head of the relevant territorial body of the Commission appoints the staff members of the territorial body of the Commission in accordance with the authority granted by the Commission.</p> | | |
| <p>9. The head of the control group is appointed by the Chairman or the member of the Commission, who has the appropriate power consistent with the allocation of responsibilities in accordance with the order of the Chairman,</p> | | |

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| <p>or by the head of the relevant territorial body of the Commission, from among the Representatives of the Commission, and such appointment shall be indicated in the Assignment.</p> <p>The head of the control group has the right:</p> <ul style="list-style-type: none"> to make independent decisions on issues related to organization and consistency of supervision; to allocate supervisory responsibilities among the members of the control group; to exercise powers provided for in the paragraph 4 of section III of this Procedure; to address, if necessary, the law enforcement agencies, which shall take appropriate action in accordance with the Article 10 of the Law of Ukraine “On State Regulation of the Securities Market in Ukraine”. | | |
| <p>10. Chairman of the Commission, member of the Commission, head of the territorial body of the Commission, or a staff member of the Commission may participate in supervision on condition there is no conflict of interest.</p> | | |
| <p>11. In the event of a conflict of interest after the appointment of the control group, the staff member of the Commission appointed to such control group, shall notify in writing the authorized person of the Commission that appointed him/her about such conflict in order to settle the issue about his/her possible performance of supervision.</p> | | |
| <p>12. If the staff members of the central office of the Commission are assigned for supervision, the territorial body of the Commission, on the administrative territory of which will be held a general meeting of the joint stock company, shall be notified about such Assignment. Such notification can be given by letter (signed by the head of the structural unit of the central office of the Commission who was assigned with the responsibilities for organization, coordination and</p> | | |

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| <p>implementation of control and audit activities), in person, by fax or email.</p> <p>When such notification indicated in the first paragraph of this clause has been received by the territorial body of the Commission, and if there is an Assignment made by the territorial body of the Commission with respect to such joint stock company, the head of the territorial body shall immediately cancel such Assignment.</p> | | |
| <p>13. The Assignment shall be issued in two copies given to the control group.</p> | | |
| <p>14. Records of the issued Assignments are kept by the structural unit of the central office of the Commission responsible for organization, coordination and implementation of control and audit activities and by the territorial bodies of the Commission in a separate log in accordance with the form provided by the Commission.</p> | | |
| <p>III. Procedure for execution of supervision over the registration of the shareholders, holding of general meetings, voting and votes counting at the general meetings of the joint stock companies</p> | | |
| <p>1. Structural unit of the central office of the Commission responsible for organization, coordination and implementation of control and audit activities or territorial bodies of the Commission shall inform the joint stock companies in writing about the appointment of Representatives of the Commission before the registration of shareholders for participation in the general meeting and, if necessary, determine the list of documents required for the control group to perform supervision pursuant to the Law of Ukraine “On State Regulation of the Securities Market in Ukraine”.</p> | | |
| <p>2. Notification about the appointment of the</p> | | |

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| <p>Representatives of the Commission for supervision over the registration of shareholders, holding of general meetings, voting and votes counting at the general meetings of the joint stock companies (hereinafter - Notification) in the form specified in the Annex 2 shall be sent to the joint stock company by mail (registered mail) and, if necessary, by fax, or it should be handed out against the receipt of signature of the head or a member of the supervisory board of the company, or the head of the executive body of the company (if there are no such bodies - of any other person responsible for the registration of shareholders and/or holding of general meeting of shareholders) before the registration of shareholders.</p> <p>If such Notification is delivered personally to the indicated person, the copy of such notification shall be notated with its receipt. Such notation shall include full name of this person, date and time of receipt of this notification, and the signature of the person who has received it.</p> | | |
| <p>3. Confirmation of timely notification of the joint stock company about appointment of the Representative of the Commission is as following:</p> <p>if sent by mail - second copy of Notification containing the original registration number of the Commission or its territorial body and posting registry;</p> <p>if sent by fax - information about fax receipt;</p> <p>if handed over against the signature of the persons referred to in the paragraph 2 of this section - a notation on the copy of Notification, and in case there persons refuse to receive such Notification - a notation of refusal (made by the head and members of the control group and certified by their signatures).</p> | | |
| <p>4. When performing supervision the Representatives of the Commission have the right:</p> <p>to freely enter to the places of general meeting, registration of shareholders, voting and votes counting at the general</p> | | |

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| <p>meetings of the joint stock companies with official ID card; to access the documents and other materials necessary for supervision; to require written explanations, documents (properly certified copies), statements, extracts from relevant documents required by the Representative of the Commission for supervision, and other information from officers of the joint stock company and/or persons authorized to convene a general meeting, hold registration of shareholders (or their representatives), voting and votes counting at the general meetings of the joint stock company and/or members of the legal person that keeps records of share ownership of the company and/or shareholders (or their representatives) due to execution of their powers for performance of supervision; to institute proceedings in accordance with the Assignment on violation of the acts of law at the securities market, and make acts of such violations at the securities market (relative to the legal entities); to make up protocols on administrative violations (relative to the physical persons or officials).</p> | | |
| <p>5. When performing supervision the Representatives of the Commission are required to comply with requirements of the law.</p> | | |
| <p>6. Before the supervision the head of the control group: has to verify the powers of the officers of the joint stock company, depository institution or the Central Securities Depository, if the powers of the Registration commission and/or Counting commission have been transferred under the contract to such person or other persons responsible for registration of shareholders (their representatives) and/or holding of general meetings, voting and votes counting at the general meeting, and such powers have to be confirmed by the relevant documents;</p> | | |

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| <p>has to hand out one copy of the Assignment (indicating the grounds for such supervision) against the receipt of signature of the head or a member of the supervisory board of the company, or the head of the executive body of the company (if there are no such bodies - of any other person responsible for the registration of shareholders (their representatives) and/or holding of general meeting, voting and votes counting at the general meeting), and notation about such delivery has to be made in another copy of the Assignment;</p> <p>shall represent members of the control group;</p> <p>shall make notification about the powers of the Representatives of the Commission in accordance with the Laws of Ukraine “On State Regulation of the Securities Market in Ukraine” and “On Joint Stock Companies”;</p> <p>shall discuss and resolve organizational issues related to supervision.</p> | | |
| <p>7. Officers of the joint stock company and/or persons authorized to convene a general meeting, hold registration of shareholders (or their representatives), general meetings, voting and votes counting at the general meetings of the joint stock company and/or representatives of the legal person that keeps records of share ownership of the company and/or shareholders (or their representatives) shall be notified by the head of the control group that they are obliged to:</p> <p>comply with the law, which establish the procedure for registration of the shareholders (their representatives), holding of general meetings, voting and votes counting at the general meetings of the joint stock companies</p> <p>provide free access for all Representatives of the Commission to all premises, documents and other information required for the supervision and execution of the supervision protocol for the registration of shareholders, holding of general meetings, voting and votes counting (hereinafter - Protocol)</p> | | |

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| <p>according to the form provided in the Annex 3;</p> <p>create proper conditions for Representatives of the Commission for supervision, including provision of a place to work, possibility to use communications, office equipment and other technical services upon their request at the place of registration of shareholders, holding of general meeting, voting and votes counting for the period of time, necessary for the supervision and execution of protocols;</p> <p>provide documents (certified true copies), statements, extracts from documents and other information required by the Representatives of the Commission for supervision.</p> | | |
| <p>8. While supervising the registration of shareholders the Representatives of the Commission should verify:</p> <p>correspondence of the list of shareholders of the joint stock company that are eligible to participate in the general meeting, which was provided for registration, to the requirements established by law on depository system of Ukraine and joint stock companies;</p> <p>full powers of the registration commission and its members;</p> <p>compliance of the documents confirming the right for participation of the shareholders (or their representatives by proxy) in general meetings with the requirements of the laws on securities and joint stock companies, and existence of grounds for refusal in registration;</p> <p>presence of quorum of the general meeting in accordance with the protocol provided by the registration commission.</p> | | |
| <p>9. While supervising holding of general meetings, voting and votes counting at the general meetings of the joint stock companies the Representatives of the Commission should verify:</p> <p>correspondence of the list of issues addressed by the general meeting to the agenda approved by the supervisory</p> | | |

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| <p>board of the joint stock company (in the event of an extraordinary general meeting convened at the request of shareholders in cases specified in the part six of Article 47 of the Law of Ukraine “On Joint Stock Companies” - to the agenda approved by the shareholders requesting holding of such meeting), and the agenda that was made public in accordance with the law;</p> <p>full powers of the counting commission and its members;</p> <p>compliance of voting and counting procedures with the requirements of laws on securities and joint stock companies.</p> | | |
| <p>10. Representatives of the Commission have the right to require written explanations, documents (properly certified copies), statements, extracts from relevant documents required by the Representative of the Commission for supervision, and other information from officers of the joint stock company and/or persons authorized to convene a general meeting, hold registration of shareholders (or their representatives), general meetings, voting and votes counting at the general meetings of the joint stock company and/or representatives of the legal person that keeps records of share ownership of the company and/or shareholders (or their representatives) due to execution of their powers for performance of supervision.</p> <p>Officers of the joint stock company and/or persons authorized to convene a general meeting, hold registration of shareholders (or their representatives), general meetings, voting and votes counting at the general meetings of the joint stock company and/or representatives of the legal person that keeps records of share ownership of the company shall certify the copies of the documents at the request of the control group for their attachment to the supervision protocol.</p> | | |
| <p>IV.Procedure for presentation of the results of supervision over the registration of the shareholders, holding of general meetings, voting and votes counting at the general</p> | | |

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| <p align="center">meetings of the joint stock companies</p> | | |
| <p>1. Based on the results of supervision, the control group shall draw a protocol in two copies.</p> | | |
| <p>2. Results of the supervision shall be shown in the protocol in accordance with the powers given to the Representatives of the Commission under the Assignment.</p> | | |
| <p>3. Protocol shall be signed by the head and members of the control group. Any corrections and additions to the Protocol after it has been signed by the control group shall be certified by the signatures of all members of the control group.</p> <p>Pages of the protocol shall be numbered and signed by the head and all members of the control group. Protocol shall be annexed with documents according to the list referred to in the Protocol.</p> | | |
| <p>4. In case if the officers of the joint stock company and/or persons authorized to convene a general meeting, hold registration of shareholders (or their representatives), general meetings, voting and votes counting at the general meetings of the joint stock company and/or representatives of the legal person that keeps records of share ownership of the company and/or shareholders (or their representatives) do not provide written explanations, documents (properly certified copies), statements, extracts from relevant documents required by the Representative of the Commission for supervision, as well as any other information regardless of the reasons of such non-provision, the protocol should contain an entry indicating the reasons for such non-provision.</p> <p>Entry to the protocol about non-provision of the written explanations, documents (properly certified copies), statements, extracts from relevant documents and any other information required by the Representative of the Commission for supervision by the officers of the joint stock company and/or</p> | | |

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| <p>persons authorized to convene a general meeting, hold registration of shareholders (or their representatives), general meetings, voting and votes counting at the general meetings of the joint stock company and/or representatives of the legal person that keeps records of share ownership of the company and/or shareholders (or their representatives) may constitute grounds for unscheduled inspection of the joint stock company on issues related to compliance with the requirements of the laws on securities and/or joint stock companies when convening and holding general meeting of the company in accordance with the procedure set by the Commission.</p> | | |
| <p>5. If a member of the control group does not agree with the contents of the Protocol, he/she has the right to submit written justification of his/her separate opinion to the authorized person who appointed him/her.</p> | | |
| <p>6. After the signature of the protocol by all members of the control group, it shall also be signed by the officer of the joint stock company and/or person authorized to convene a general meeting, hold registration of shareholders (or their representatives), general meetings, voting and votes counting at the general meetings of the joint stock company and/or representatives of the legal person that keeps records of share ownership of the company. One copy of such protocol shall be handed over to such person, and the notation about such delivery shall be made in the second copy. The protocol is handed over on the day of completion of supervision.</p> | | |
| <p>7. In case if the officer of the joint stock company and/or person authorized to convene a general meeting, hold registration of shareholders (or their representatives), general meetings, voting and votes counting at the general meetings of the joint stock company and/or representative of the legal person that keeps records of share ownership of the company refuse to sign and/or receive protocol, the appropriate entry</p> | | |

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| <p>about such refusal shall be made to the protocol by the head of the control group. Herewith, one copy of the protocol shall be sent to the address of the joint stock company within three working days by mail with advice of delivery.</p> | | |
| <p>8. Actions of the Representatives of the Commission may be appealed in the Commission or court in accordance with the law.</p> | | |
| <p>V.Actions of the Commission on the results of supervision</p> | | |
| <p>1. After completion of supervision by the control group that was formed from the staff members of the central office of the Commission, a copy of the Assignment and Protocol shall be returned by the head of the control group to the structural unit of the central office of the Commission responsible for organization, coordination and implementation of control and audit activities, and stored together with other materials of supervision.</p> | | |
| <p>2. After completion of supervision by the control group that was formed from the staff members of the territorial body of the Commission, a copy of the Assignment and Protocol shall be returned by the head of the control group to the territorial body of the Commission and stored together with other materials of supervision.</p> | | |
| <p>3. Copy of the protocol kept at the territorial body of the Commission shall be sent to the structural unit of the central office of the Commission that was assigned with the responsibilities for organization, coordination and implementation of control and audit activities withing five working days after completion of the supervision.</p> | | |
| <p>4. In case if the results of supervision detect violations, and the Commission does not have powers for application of enforcement actions against such violations, structural unit of the central office of the Commission that was assigned with the</p> | | |

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| <p>responsibilities for organization, coordination and implementation of control and audit activities or territorial body of the Commission shall send the materials about such violations to the relevant governmental authorities.</p> | | |
| <p>VI. Control of supervision over the registration of the shareholders, holding of general meetings, voting and votes counting at the general meetings of the joint stock companies</p> | | |
| <p>1. Structural unit of the central office of the Commission responsible for organization, coordination and implementation of control and audit activities shall control the supervision process.</p> | | |
| <p>2. Overall control over of the supervision of the Representatives of the Commission (including its territorial bodies) shall be performed by the Chairman of the Commission or member of the Commission in accordance with the allocation of responsibilities.</p> | | |

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
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| Law of Ukraine On Securities and Stock Market | | |
| Preamble | | |
| <p>This Law governs the relations coming into existence during the placement and the circulation of securities, and the exercise of professional activities on the stock market in order to ensure the transparency and the efficient operation of the stock market.</p> | n/a | Nothing to mention |
| SECTION I. GENERAL PROVISIONS | | |
| Article 1. Definition of Terms | | |
| <p>1. The terms used herein shall have the following meanings:</p> <p>1) "Associated person" - shall be understood as a husband or wife, direct relatives of a person (father, mother, children, brothers and sisters, grandparents, grandchildren), direct relatives of the husband or wife of the person or person's wife of a direct relative;</p> <p>2) "Buy-out of securities" shall be understood as a purchase of securities by the issuer or the person that issued the securities.</p> <p>3) "Securities issue" shall be understood as the totality of a certain type of issuable securities of the same issuer with the same par value with the same form of the issue and the international identification number that provide their holders with the identical rights regardless of the time of the acquisition and the placement on the stock market;</p> <p>4) "Delisting" shall be understood as the procedure of the exclusion of securities from the register of a stock exchange, if they fail to meet the rules of the stock exchange with the subsequent termination of the circulation thereof via the stock exchange or with the transformation into a category of securities allowed to circulate without being included into the register of the stock exchange;</p> <p>5) "Issue" shall be understood as the sequence of actions of an issuer prescribed by the legislation in respect of the issue and the placement of issuable securities among their first holders;</p> <p>6) "Endorsement" shall be understood as the endorsement on an order security that certifies the conveyance of rights under a security to another person;</p> <p>7) "Endorser" shall be understood as an individual or a</p> | n/a | Nothing to mention |

legal entity that owns an order security and performs the endorsement. Endorsement may be full (personalized) – issues in the name of a definite person or blanc (bearer) – issued without indication of the person's name;

8) "Quotation" shall be understood as the mechanism of determining and/or fixing the market price of a security listed on the stock exchange;

9) "Listing" shall be understood as the set of procedures related to the inclusion of securities into the register of a stock exchange and the exercise of control over the conformity of securities and the issuer with conditions and requirements prescribed by the rules of the stock exchange;

10) "International security identification number" shall be understood as a number (code) that makes it possible to unambiguously identify securities or other financial instruments, which assignment is provided for by laws of Ukraine;

11) "Circulation of securities" shall be understood as the execution of legal instruments related to the transfer of title to securities and rights under securities, except for the contracts concluded during the placement of securities, their buy-out by the issuer, and the sale of the bought-out securities by the issuer;

12) "First holder" shall be understood as the person that has acquired the title to securities directly from the issuer (or the person that has released a non-issue security) or the underwriter during the placement of securities;

13) "Issued securities redemption" shall be understood as a sequence of actions of an issuer and security holders regarding the termination of the circulation of issued debt securities, payment of the par value of the securities and interest on such securities to their holders (if provided in the prospectus of securities' issue) or the supply (delivery) of goods (services) within the period stipulated by the prospectus of securities' issue and the cancellation of securities;

14) "Officials of professional stock market members" shall be understood as a chairman and members of the supervisory board, a chairman and members of the collegial executive body (sole executive body and his/her deputies), a chairman and members of the audit commission (auditor), Corporate Secretary, Chief Accountant, Head and members of other professional stock market member bodies, which formation provided by its charter;

15) "Securities issue prospectus" shall be understood as the

document that contains the information about the placement of securities and other information envisaged by this and other laws regulating the peculiarities of placement of securities of different types;

16) "Prudential standards" shall be understood as qualitative and quantitative measures established by the National Securities and Stock Market Commission with the purposes of prudential supervision, obligatory for the professional stock market members.

17) "Regulated (organizationally formed) stock market" shall be understood as a stock exchange, operating permanently on the basis of a license issued by the National Securities and Stock Market Commission in the prescribed order, and ensures regular trading of securities and other financial instruments in accordance with established rules, and also organizes centralized conclusion and execution of agreements on securities and other financial instruments;

18) "Placement of securities" shall be understood as alienation of securities in the way envisaged by the prospectus of securities' issue;

19) "Maturity of bonds" shall be understood as a time frame starting with the date following the date of registration of the bond placement results report and the issue of the bond issue registration certificate by the National Securities and Stock Market Commission and ending on the date preceding the date of the commencement of the redemption of bonds in accordance with their issue prospectus;

20) "Financial instruments" shall be understood as securities, term contracts (futures), interest-based term contracts (forwards), term contracts for the swap (as of a certain date in the future) in case of the dependence of a price on the interest rate, the exchange rate, or the stock-market index (interest, exchange or index swaps), options granting the right to purchase or sell any of the financial instruments listed above, including those that provide for the monetary form of payment (exchange-rate and interest-rate options).

2. Terms "commercial good standing", "major shareholding", "controller", "control", "related person" and "shareholding structure" shall be used in this Law in the meaning they have in the Law of Ukraine "On Financial Markets and State

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| Regulation of Financial Services Market". | | |
| Article 2. Stock Market | | |
| <p>1. Stock market (securities market) is the totality of members of the stock market and the legal relations among them in respect of the placement, circulation and record of securities and derivative instruments.</p> <p>2. Stock market participants are the issuers or the persons that release non-issue securities, investors in securities, institutional investors, professional stock market participants, associations of professional stock market participants, including self-regulatory organizations of professional stock market participants.</p> <p>Issuer is a legal entity, the Autonomous Republic of Crimea or city councils, as well as the State represented by the state authorities authorized thereby or international financial organization that places issuable securities on its behalf and takes commitments thereunder to the holders thereof.</p> <p>Person releasing non-issue securities is an individual or legal entity that releases (fills) a certificate of non-issuable security on its behalf and assumes the obligations to the holder under such securities.</p> <p>Investors into securities are individuals and legal entities, residents and non-residents that have acquired the title to securities in order to obtain income from the invested funds and/or to acquire the relevant rights vested in the holder of securities in accordance with the legislation. Institutional investors are joint investment institutes (share and corporate investment funds), investment funds, mutual funds of investment companies, non-state pension funds, bank-managed funds, insurance companies, other financial institutions that transact with financial assets in interests of third parties on own account or on account of such persons and, in cases covered by the legislation, also at the expense of financial assets raised from other parties in order to obtain the profit or preserve the real value of financial assets.</p> <p>Peculiarities of investment by institutional investors are prescribed by law.</p> <p>Association of professional stock market participants is a non-profit association of professional stock market participants, which are engaged in professional activities in the securities market, namely, securities trading, depository activities and institutional investors asset management.</p> <p>Self-regulated organization of professional stock market</p> | n/a | <p>Suggestion to insert the below 2004/109/EC <i>Article 17</i></p> <p>Information requirements for issuers whose shares are admitted to trading on a regulated market</p> <p>1. The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.</p> <p>2. The issuer shall ensure that all the facilities and information necessary to enable holders of shares to exercise their rights are available in the home Member State and that the integrity of data is preserved. Shareholders shall not be prevented from exercising their rights by proxy, subject to the law of the country in which the issuer is incorporated. In particular, the issuer shall:</p> <p>(a) provide information on the place, time and agenda of meetings, the total number of shares and voting rights and the rights of holders to participate in meetings;</p> <p>(b) make available a proxy form, on paper or, where applicable, by electronic means, to each person entitled to vote at a shareholders' meeting, together with the notice concerning the meeting or, on request, after an announcement of the meeting;</p> <p>(c) designate as its agent a financial institution through which shareholders</p> |

participants is a not-profit association of the stock market participants that exercise professional activities on the stock market on the trade of securities, management of assets of institutional investors, depository activities save for the depositories, established in accordance with the criteria and requirements envisaged by the National Securities and Stock Market Commission.

Professional participants of stock market are legal entities incorporated as joint-stock companies or limited liability companies that exercise professional activities as specified by the laws of Ukraine on the stock market on the basis of a license issued by the National Securities and Stock Market Commission.

4. Unless otherwise envisaged by law or unless a party to the agreement demands otherwise, transactions on securities entered into outside of stock exchange, shall not require notary certification.

may exercise their financial rights; and
(d) publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion.

3. For the purposes of conveying information to shareholders, the home Member State shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:

(a) the use of electronic means shall in no way depend upon the location of the seat or residence of the shareholder or, in the cases referred to in Article 10(a) to (h), of the natural persons or legal entities;

(b) identification arrangements shall be put in place so that the shareholders, or the natural persons or legal entities entitled to exercise or to direct the exercise of voting rights, are effectively informed;

(c) shareholders, or in the cases referred to in Article 10(a) to (e) the natural persons or legal entities entitled to acquire, dispose of or exercise voting rights, shall be contacted in writing to request their consent for the use of electronic means for conveying information and, if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing, and

(d) any apportionment of the costs

entailed in the conveyance of such information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.

4. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1, 2 and 3. It shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).

Article 18

Information requirements for issuers whose debt securities are admitted to trading on a regulated market

1. The issuer of debt securities admitted to trading on a regulated market shall ensure that all holders of debt securities ranking pari passu are given equal treatment in respect of all the rights attaching to those debt securities.

2. The issuer shall ensure that all the facilities and information necessary to enable debt securities holders to exercise their rights are publicly available in the home Member State and that the integrity of data is preserved. Debt securities holders shall not be prevented from exercising their rights by proxy, subject to the law of country in which the issuer is

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| | | <p>incorporated. In particular, the issuer shall:</p> <ul style="list-style-type: none">(a) publish notices, or distribute circulars, concerning the place, time and agenda of meetings of debt securities holders, the payment of interest, the exercise of any conversion, exchange, subscription or cancellation rights, and repayment, as well as the right of those holders to participate therein;(b) make available a proxy form on paper or, where applicable, by electronic means, to each person entitled to vote at a meeting of debt securities holders, together with the notice concerning the meeting or, on request, after an announcement of the meeting; and(c) designate as its agent a financial institution through which debt securities holders may exercise their financial rights. <p>3. If only holders of debt securities whose denomination per unit amounts to at least EUR 50 000 or, in the case of debt securities denominated in a currency other than Euro whose denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.</p> <p>4. For the purposes of conveying information to debt securities holders, the home Member State, or the Member State chosen by the issuer pursuant to</p> |
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| | | <p>paragraph 3, shall allow issuers the use of electronic means, provided such a decision is taken in a general meeting and meets at least the following conditions:</p> <p>(a) the use of electronic means shall in no way depend upon the location of the seat or residence of the debt security holder or of a proxy representing that holder;</p> <p>(b) identification arrangements shall be put in place so that debt securities holders are effectively informed;</p> <p>(c) debt securities holders shall be contacted in writing to request their consent for the use of electronic means for conveying information and if they do not object within a reasonable period of time, their consent shall be deemed to be given. They shall be able to request, at any time in the future, that information be conveyed in writing; and</p> <p>(d) any apportionment of the costs entailed in the conveyance of information by electronic means shall be determined by the issuer in compliance with the principle of equal treatment laid down in paragraph 1.</p> <p>5. The Commission shall, in accordance with the procedure provided for in Article 27(2), adopt implementing measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to ensure the uniform application of paragraphs 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights</p> |
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provided for in paragraph 2(c).

2010/73/EU

Article 1

Amendments to Directive 2003/71/EC

Article 14 is amended as follows:

(a)

in paragraph 2:

(i)

point (c) in the first subparagraph is replaced by the following:

‘(c)

in electronic form on the issuer’s website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or’;

(ii)

the second subparagraph is replaced by the following:

‘Member States shall require issuers or the persons responsible for drawing up a prospectus that publish their prospectus in accordance with point (a) or (b) also to publish their prospectus electronically in accordance with point (c).’;

2003/71/EC

Article 14

Publication of the prospectus

1. Once approved, the prospectus shall be filed with the competent authority of the home Member

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| | | <p>State and shall be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as practicable and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.</p> <p>2. The prospectus shall be deemed available to the public when published either:</p> <p>(a) by insertion in one or more newspapers circulated throughout, or widely circulated in, the Member States in which the offer to the public is made or the admission to trading is sought; or</p> <p>(b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or</p> |
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| | | <p>(c) in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or</p> <p>(d) in an electronic form on the website of the regulated market where the admission to trading is sought; or</p> <p>(e) in electronic form on the website of the competent authority of the home Member State if the said authority has decided to offer this service.</p> <p>A home Member State may require issuers which publish their prospectus in accordance with (a) or (b) also to publish their prospectus in an electronic form in accordance with (c).</p> |
| <p>Article 3. Securities and their types</p> | | |
| <p>1. Security is a documents of the prescribed format with appropriate details that certifies the pecuniary or other property rights, determine mutual relations of issuer (person that released security) and the person that holds rights to the security, and provides for the performance of liabilities under such security, as well as the possibility to transfer rights to the security and the rights arising from these securities to other persons.</p> <p>2. Non-issue securities may exist only in certificated form and be only either order or bearer security. Non-issue securities may be released and exist only in certificated form as hardcopy or softcopy. The list of securities that may exist as softcopy is established by the National Securities and Stock Market Commission and approved by the National Bank of Ukraine.</p> <p>3. Existence form of the securities may be either certificated or non-certificated.</p> | <p>n/a</p> | <p>Section II of this law also discusses types of securities</p> |

Non-certificated security is a record made in the securities account in the depository system.

Certificated security is a hardcopy or softcopy document executed in the form envisaged by legislation that contains type of the security and the requisites prescribed by law.

4. Based on issuance form securities may be either bearer, inscribed or order.

Rights for the certificated security and the rights pertaining to such security belong to:

Bearer of the security (bearer security);

Person indicated in the security (inscribed security);

Person indicated in the security who may exercise such rights on its own or appoint other authorized person (order security).

Order securities may be only certificated.

Rights for the non-certified security and the rights pertaining from such non-certified security belong to the owner of the securities account opened with the depository institution, in case the securities are placed for the notary deposit – to the respective creditor.

Issuer of bearer securities shall not have the right to obtain information on the owners of such securities in any form from the depository system, save for the cases envisaged by the National Commission for Securities and Stock Market.

Issuer of inscribed securities is entitled to obtain information on the owners of such securities from the depository system in the form of shareholders register.

Inscribed issue securities exist only in non-certificated form.

Issue bearer securities may be transferred into non-certificated form by depositing of such securities on the securities accounts with the Central depository of securities or the National Bank of Ukraine depending on the authority envisaged by the Law of Ukraine "On Depository System of Ukraine" (blocked) in the order set by the National Commission of Securities and Stock Market. Issuer non-certificated bearer securities may not be transferred into certificated form.

5. The following groups of securities shall be allowed for the civil circulation:

1) equity securities - the securities that certify the participation of their holder in equity (other than investment certificates and real-estate transaction fund certificates), vest the holder thereof with the right to take part in the management of the issuer (other than investment certificated and real-estate transaction fund certificates) and to receive a part of the profit, for instance, in the form of dividends, and a part of the estate in case of the liquidation of the issuer (other than real-estate transaction fund certificates). The following shall be the equity securities:

- a) shares;
- b) investment certificated;
- c) real-estate transaction fund certificates;
- d) shares of corporate investment funds.

2) Debt securities are the securities that certify debt and provide for the obligation of the issuer or a person that released a non-issue security to pay funds, deliver goods or services within the specified time in accordance with the undertaking. Debt securities shall include:

- a) corporate bonds;
- b) government bonds of Ukraine;
- c) local authority bonds;
- d) treasury notes of Ukraine;
- e) savings certificates (certificates of deposit);
- f) bills of exchange;
- g) bonds of international financial organizations.

3) mortgage securities – securities which issue is secured with the mortgage cover (mortgage pool) that certifies the right of holders to obtain the due funds from the issuer. Mortgage securities include:

- a) mortgage bonds;
- b) mortgage certificates;
- c) mortgage letters;

4) privatization securities are the securities that certify owner's right for the free obtainment of a part of the property of state-owned enterprises, the state-owned housing fund, and the land fund in the course of privatization;

5) derivative securities are the securities, which issue and circulation mechanism is associated with the right to acquire or sell securities, other financial and/or commodity resources during a period specified by the contract;

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| <p>6) commodity securities are the securities that vest the holder with the right to dispose of the property indicated in the said documents.</p> | | |
| <p>Article 4. Transfer of rights to securities and rights pertaining to the securities</p> | | |
| <p>1. The entity that has acquired right to a security shall be vested with all rights certified thereby (rights pertaining to the security), save for the cases established by law or the transaction.</p> <p>The restriction of the circulation and/or the exercise of the rights under securities may be instituted solely in cases and in accordance with the procedure prescribed by law.</p> <p>2. Rights for bearer security and rights pertaining to the bearer security existing in hardcopy and certificated form shall be transferred by handing of the security to other person, and the way of transfer of the rights for bearer security and rights pertaining to the bearer security existing in softcopy and certificated form shall be prescribed by the National Bank of Ukraine – for financial bank promissory notes and the Cabinet of Ministers of Ukraine – for financial treasury promissory notes.</p> <p>Rights for non-certified bearer security and rights pertaining to such security shall be transferred in the order prescribed for the transfer of rights to inscribed securities.</p> <p>Transfer of rights to blocked bearer securities and execution of rights pertaining to such securities is subject to obligatory identification of the owner by the depository institution that keeps the securities account of such owner.</p> <p>No register is held for the owners of bearer securities.</p> <p>3. Rights for the inscribed securities and rights pertaining to such securities shall be transferred in accordance with the legislation on depository system of Ukraine.</p> <p>Information about the owners of inscribed securities shall be obtained by the issuer in the form of shareholders register. Transfer of rights for inscribed securities and execution of rights pertaining to such securities is subject to obligatory identification of the owner by the depository institution that keeps the securities account of such owner.</p> <p>4. Rights certified with an order security shall be transferred to another person by means of the endorsement of the security in question. The Endorsement may be either blanc – without indication of the endorsee or order – with identification of</p> | <p>2004/25/EC Article 10</p> <p>1. Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:</p> <p>(b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;</p> <p>(g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights within the meaning of Directive 2001/34/EC;</p> <p>Article 11</p> <p>2. Any restrictions on the transfer of securities provided for in the articles of association of the offeree company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid laid down in Article 7(1).</p> <p>4. Where, following a bid, the offeror holds 75 % or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights referred to in paragraphs 2 and 3 nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of association of the offeree company shall apply; multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called by the offeror in order to amend the articles of association or to remove or appoint board members.</p> | <p>Member States should take the necessary measures to afford any offeror the possibility of acquiring majority interests in other companies and of fully exercising control of them. To that end, restrictions on the transfer of securities, restrictions on voting rights, extraordinary appointment rights and multiple voting rights should be removed or suspended during the time allowed for the acceptance of a bid and when the general meeting of shareholders decides on defensive measures, on amendments to the articles of association or on the removal or appointment of board members at the first general meeting of shareholders following closure of the bid. Where the holders of securities have suffered losses as a result of the removal of rights, equitable compensation should be provided for in accordance with the technical arrangements laid down by Member States.</p> <p>Article 46 of Directive 2001/34/EC says that shares must be freely negotiable.</p> |

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| endorsee. 5. Specific features of the transfer of rights to securities and rights pertaining to such securities shall be established by the National Securities and Stock Market Commission and the agreement. | | |
| Article 5. Performance of Liabilities under a Security | | |
| 1. The person that has placed (issued) an order security and the persons that have endorsed the same shall be jointly and severally liable to the legal holder thereof unless otherwise envisaged by law. In case of the satisfaction of a request of the legal possessor of an order security for the performance of the liability certified with the security in question by one or several persons from among those having such an obligation, the endorsers of the security shall acquire the right of subrogation (recourse) versus other persons that have liabilities under the security. 2. Refusal to perform a liability certified with the security with the reference to the lack of ground for the liability or the invalidity thereof shall be disallowed. 3. Profits under issue securities shall be paid in accordance with the procedure envisaged by the depository legislation of Ukraine. | n/a | Nothing to mention |
| Article 5¹. Peculiarities of conclusion, change, termination and performance of contract of purchase and sale of securities. | | |
| 1. The contract of purchase and sale of securities being placed on Stock Exchange is concluded after fixing the fact of conclusion of the contract by this Stock Exchange in accordance with its rules. The said contract cannot be terminated, except for cases prescribed by law. 2. Maximum time terms for performing of contracts of purchase and sale of securities are established by the National Securities and Stock Market Commission. | n/a | Nothing to mention |
| Article 5². Conversion of Securities | | |
| 1. Conversion of Securities - the exchange of securities of one issue for securities of another issue of the same issuer. 2. The decision to hold the conversion is made by the body of issuer authorized to make such decisions. | 2003/71/EC Article 4 2. The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of the following | |

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| <p>3. In conducting the conversion the issuer is obliged to buy out convertible securities from their holders, who do not agree with the decision to conduct the conversion.</p> <p>The procedure for notification the security holders of conduction the conversion of securities, the procedure for notification the issuer of agreement (or disagreement) with the decision about the conduction of conversion by security holders, and the period of time when the securities shall be brought to their owners for buy-out, shall be prescribed by the decision of the body of the issuer to conduct the conversion.</p> <p>Buy-out of securities from the holders, who disagree with the decision to conduct the conversion, is carried out at the market value, but not lower than the nominal value of those securities.</p> <p>Market value is determined by:</p> <ul style="list-style-type: none"> the exchange rate - for the securities included in the exchange list of the Stock Exchange; the value determined by an independent appraiser in accordance with the legislation on the valuation of property, property rights and professional valuation activities - for securities that are not included in the exchange list of the Stock Exchange. <p>4. Having conducted the payments with the holders of securities, the registration of converted securities is a subject to cancellation in the manner prescribed by the National Securities and Stock Market Commission.</p> <p>The Procedure for conversion is specified by the National Securities and Stock Market Commission.</p> <p>5. Peculiarities of converting securities of joint investment institutions are prescribed by the legislation of joint investment institutions.</p> | <p>types of securities:</p> <p>.... (g) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market;</p> | |
| <p>Section II. TYPES OF SECURITIES Article 6. Shares</p> | | |
| <p>1. Shares are inscribed securities that certify the property interests of their owner (shareholder) in a joint-stock company, including the holder's right to receive a part of the profit of the joint-stock company in the form of dividend and the right to receive a part of the estate of the joint stock company in case of the liquidation thereof, the right to manage the joint stock company, as well as non-property rights envisaged by the Civil Code of Ukraine and the law that governs the establishment, the operation and the termination of joint-stock companies.</p> | <p>n/a</p> | <p>Nothing to mention</p> |

A share shall not be divisible. The procedure of the exercise of rights by co-owners of shares (a share) shall be specified by the [Civil Code of Ukraine](#) and the law that governs the establishment, the operation and the termination of joint-stock companies.

2. A shareholder of a private or public company shall enjoy the pre-emptive right to acquire shares of the additional issue.

The following rights of shareholders shall be considered as pre-emptive:

the right of a shareholder that owns ordinary shares to acquire ordinary shares placed by the company in the course of the private placement in proportion to the percentage of ordinary shares held thereby in the total number of the issued ordinary shares;

the right of a shareholder that owns preference shares to acquire preference shares of the same or new class placed by the company in the course of the private placement, if shares of such class vest their holders with preferences in respect of the priority of the receipt of dividends or disbursements in case of the company liquidation, in proportion to the percentage of preference shares of a certain class held by the shareholder in the total number of preference shares of the class in question.

The procedure of the exercise of the pre-emptive right to the acquisition of additional issue shares shall be specified by the National Securities and Stock Market Commission;

3. Only a joint-stock company shall be an issuer of shares. The procedure of the making a decision to place shares by the relevant body of a joint-stock company shall be specified by the legislation that governs the establishment, the operation and the termination of joint-stock companies.

Shares shall only exist in a non-certificated form.

4. A share shall have its par value denominated in national currency. The minimum par value of a share may not be less than one kopeck.

5. A joint-stock company shall place only inscribed shares. If shares exist in a certificated form, the shareholder shall be issued a share certificate.

The share (shares) certificate shall specify the type of the securities, the name of the joint-stock company, the series and the number of the certificate, the international identification number of the securities item, the type and the class of shares, the par value of

a share, the number of shares held by the shareholder on the basis of the said certificate, the name of the holder, the signature of the manager of the issuer or another authorized officer authenticated with the seal of the issuer (authorized officer).

The National Securities and Stock Market Commission may specify additional details to be included into the share (shares) certificate.

6. A joint-stock company shall place shares of two types: ordinary and preference shares.

7. The ordinary shares shall vest the holders thereof with the right to obtain a part of the profit of the joint-stock company in the form of dividends, to participate in the management of a joint-stock company, to obtain a part of the property of a joint-stock company in case of the liquidation thereof, and other rights envisaged by the law that governs the establishment, the operation and the termination of joint-stock companies. Ordinary shares shall vest holders thereof with the identical rights.

The ordinary shares shall not be convertible into preference shares or other securities of the joint-stock company.

It is prohibited to provide any guarantees regarding obtaining of profit (dividends) under ordinary shares.

8. The preference shares shall vest the holders thereof with the preferential right in comparison with the ordinary shareholders to obtain a part of the profit of the joint-stock company in the form of dividends and to obtain a part of the property of a joint-stock company in case of the liquidation thereof, and vest the holders with the right to participate in the management of a joint-stock company in cases covered by the charter and the law that governs the establishment, the operation and the termination of joint-stock companies.

9. A joint-stock company shall place preference shares of different classes (with the different extent of rights), if such a possibility is provided for in its charter. In this case, the prospectus of shares shall include the sequence of the obtainment of dividends and payments from the property of the liquidated company for each preference share class placed by the joint-stock company specified by the charter of the company. If provided for by the issuance prospectus, the preference shares of certain classes may be converted into ordinary shares or preference shares of other classes.

The share of preference shares in the charter capital of a

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| <p>joint-stock company may not exceed 25 per cent.</p> <p>10. Issue of shares shall be registered by the National Securities and Stock Market Commission in accordance with the procedure specified thereby. The circulation of shares shall only be allowed after the registration of the share placement report and the issue of the share issue registration certificate by the National Securities and Stock Market Commission.</p> <p>11. The specific features of the issue, the circulation, the accounting and the repurchase of shares of the corporate investment funds shall be specified by the legislation.</p> | | |
| <p>Article 6¹. Shares of corporate investment fund</p> | | |
| <p>1. Share of a corporate investment fund is a security issued by a corporate investment fund that certifies property rights of its holder (participant of corporate investment fund), including the right to receive dividends, (for closed corporate investment fund), part of the corporate investment fund's property in case of liquidation, the right to participate in the management of the corporate investment fund, and also non-property rights envisaged by the legislation on collective investment undertakings.</p> <p>2. Shares of corporate investment fund may be only ordinary and exist in non-certificated form.</p> <p>3. Placement term for the shares of open and interval corporate investment funds is not limited.</p> <p>4. Shares of corporate investment fund may entitle their owners to receive dividends, save for open and interval corporate investment funds</p> <p>5. Issue, circulation, record and redemption of the shares of corporate investment funds are regulated by the legislation on collective investment undertakings.</p> | <p>skipped</p> | <p>skipped</p> |
| <p>Article 7. Bonds</p> | | |
| <p>1. Bond is a security that certifies the deposit of funds by its first owner, determines the loan relations between the bond holder and the issuer, confirms the undertaking of the issuer to repay to the bond holder the par value of the bond at the time envisaged by the bond placement prospectus (for the State bonds of Ukraine - by the terms of their placement) and pay profits on the bond, unless otherwise provided by the placement prospectus (for the State bonds of Ukraine - by the terms of their placement).</p> <p>Transfer of title to a bond of the issuer to another person</p> | <p>skipped</p> | <p>skipped</p> |

does not make the ground for the relief of the issuer from fulfilling of liabilities confirmed by the bond.

2. Bonds may exist only in non-certificated form.

3. An issuer may place interest-bearing, special-purpose and discount bonds in accordance with the procedure specified by the National Securities and Stock Market Commission.

Interest-bearing bonds are the bonds, on which the payment of the interest income is envisaged.

Special-purpose bonds are the bonds, obligations under which are performed by transfer of goods and/or provision of services under the terms established by the issue prospectus (for the State bonds of Ukraine - by the terms of their placement), and also by payment of funds to the holder of such bonds in cases and in accordance with the procedure established by the issue prospectus (for the State bonds of Ukraine - by the terms of their placement).

Discount bonds are the bonds placed at a price lower than their par value. The difference between the purchase price and the par value of a bond paid to the bond holder at the time of the redemption thereof, shall be the income (discount) on the bond.

4. Bonds may be placed with a fixed maturity date being the same for the whole issue. The early redemption of bonds on requests of holders thereof shall be allowed, if this possibility is provided for by placement prospectus (for the State bonds of Ukraine - by the terms of their placement) that specify the procedure of the ascertainment of the price of the early redemption of bonds, and the time frame, within which the bonds may be presented for the early redemption.

5. Bonds may be redeemed only in monies. Redemption of special-purpose bonds shall be performed by performed by transfer of goods and/or provision of services, and also by payment of funds to the holder of such bonds in cases and in accordance with the procedure established by the issue prospectus (for the State bonds of Ukraine - by the terms of their placement).

6. A bond shall have a par value denominated in national currency or, if the issue prospectus (for the State bonds of Ukraine - by the terms of their placement) so provides, a foreign currency. The minimum par value of a bond may not be less than one kopeck.

7. The issuer may place registered bonds and bearer bonds. The circulation of bonds shall be allowed after the registration of the bond placement report and the issue of the bond issue

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| <p>registration certificate by the National Securities and Stock Market Commission.</p> <p>9. The bonds shall be sold in national currency or, if so provided by the legislation and the issue prospectus (for the State bonds of Ukraine - by the terms of their placement) so provides, a foreign currency.</p> | | |
| <p>Article 8. Corporate Bonds</p> | | |
| <p>1. Corporate bonds shall be placed by legal entities solely after the full payment of their charter capital.</p> <p>Corporate bonds shall confirm the liabilities of the issuer thereunder and shall not grant the right to participate in the management of the issuer.</p> <p>2. It shall be prohibited to place corporate bonds for forming and increasing of the charter capital of the issuer, and for covering the business losses by means of the credit of the income from the sale of bonds as the current business performance result.</p> <p>3. A legal entity shall have the right to place interest-bearing and / or discount bonds in the amount not exceeding the triple value of its own capital or the value of the collateral provided thereto for the said purpose by third parties.</p> <p>Issue, circulation and redemption of special-purpose corporate bonds is established by the National Securities and Stock Market Commission.</p> <p>4. Issue prospectus of bonds placed by a joint-stock company may provide for the possibility of the conversion thereof into shares of the joint-stock company (convertible bonds).</p> <p>5. Decisions on the placement of corporate bonds shall be made by the relevant management body of the issuer in accordance with provisions of laws that govern the procedure of the establishment, the operation and the termination of legal entities of the relevant organizational and legal form.</p> <p>Funds attracted by issue of special-purpose corporate bonds shall be used for the purposes envisaged by the issue prospectus.</p> <p>6. The registration of issues of corporate bonds shall be carried out by the National Securities and Stock Market Commission in accordance with the procedure specified thereby.</p> <p>7. An issuer of corporate bonds may make a decision to extend the time frames of the circulation and the redemption of</p> | <p>n/a</p> | <p>Nothing to mention</p> |

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| <p>bonds specified in the issue prospectus in case of the issuer's buy out of the entire issue (series) of bonds or the consent of all owners of the relevant issue (series) of bonds for the extension of such time frames. In case of the said buy-out, the buy-out price may not be lower than the par value of bonds.</p> <p>The duration of the period of extension of time frames of the circulation and the redemption of corporate bonds may not exceed the duration of the period specified in the issue prospectus of such bonds.</p> <p>No repeated extension of time frames of the circulation and the redemption of corporate bonds shall be permitted.</p> <p>The procedure of the extension of time frames of the circulation and the redemption of corporate bonds shall be specified by the National Securities and Stock Market Commission.</p> | | |
| <p>Article 8¹. Special-purpose corporate bonds obligations under which are performed by the transfer of object (part of the object) of housing construction.</p> | | |
| <p>1. Issue of special-purpose corporate bonds obligations under which are performed by the transfer of object (part of the object) of housing construction may be carried out by a legal entity that is entitled in accordance with law to act as owner of such object or a legal entity that entered into an agreement on participation in the construction with governmental bodies, local authorities possessing title, lease or permanent usage rights to the land plot where the housing construction object transfer of which shall secure the fulfillment of obligations under special-purpose bonds shall be situated.</p> <p>2. Issuer of special-purpose corporate bonds obligations under which shall be fulfilled by the transfer of object (part of the object) of housing construction, has no right to perform any actions that may result in encumbrance of such object (part of the object) of housing construction, land plot designated for the construction of the housing construction object and property rights thereto.</p> <p>3. In case local or governmental authorities upon their initiative and in accordance with the law make decision resulting in the change of the owner of land plot designated for construction of housing construction object being financed with attraction of funds from individuals and / or legal entities by issue of special-purpose corporate bonds, the respective local budgets shall envisage</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>expenses for compensations of losses to the owners of such bonds. Disputes regarding compensation of such losses to the said owners shall be settled in accordance with law.</p> <p>Procedure for determination of such losses and making of compensations shall be established by the Cabinet of Ministers of Ukraine.</p> | | |
| <p>Article 9. Local Authority Bonds</p> | | |
| <p>1. Local authority bonds include domestic and foreign local loans.</p> <p>The decision to place local authority loan bonds shall be made by the Supreme Council of the Autonomous Republic of Crimea or the city council in accordance with requirements of the budget legislation.</p> <p>2. Registration of the issue of local-authority bonds shall be carried out by the National Securities and Stock Market Commission in accordance with the procedure specified thereby.</p> <p>3. Specific features of the redemption and the exercise of rights under the local authority loan bonds shall be determined by their placement prospectus.</p> | <p>skipped</p> | <p>skipped</p> |
| <p>Article 10. Government Bonds of Ukraine</p> | | |
| <p>1. Government bonds of Ukraine may be:</p> <ul style="list-style-type: none"> long-term bonds with the tenor over five years; mid-term bonds with the tenor of one to five years; short-term bonds with the tenor less than one year. <p>2. Government bonds of Ukraine shall be categorized into the domestic government loan bonds of Ukraine, the foreign government loan bonds of Ukraine, and special-purpose domestic government loan bonds of Ukraine.</p> <p>3. Domestic government loan bonds of Ukraine shall be understood as the government securities placed solely on the domestic stock market that confirm the undertaking of Ukraine to reimburse the holders of such bonds for their par value and pay the income in accordance with conditions of the placement of the bonds. Par value of internal government bonds of Ukraine may be denominated in foreign currency.</p> <p>4. Special-purpose domestic government loan bonds of Ukraine shall be understood as the bonds of domestic government loans, which issue is aimed at funding of the deficit of the state budget in the volumes envisaged by the law on the State Budget of</p> | <p>skipped</p> | <p>skipped</p> |

Ukraine for the relevant year and within the ultimate value of the state debt.

The major requisite of the special-purpose internal government loan bonds of Ukraine shall be the indication of the designated use of the funds derived from the placement of such bonds envisaged by the law on the State Budget of Ukraine for the relevant year.

Funds raised into the State Budget of Ukraine from the placement of the special-purpose domestic government loan bonds of Ukraine shall be used solely to fund the state or regional programs and projects on conditions of their repayment in volumes envisaged for the said purpose by the law on the State Budget of Ukraine for the relevant year. The funding shall take place in accordance with the loan agreements to be concluded between the state in the person of the Ministry of Finance of Ukraine and the recipient of funds. Conditions of the loan agreements must comply with conditions of the placement of the special-purpose domestic government loan bonds of Ukraine with the mandatory specification of the date of service and repayment of the loan five days prior to the date of service and repayment of the special-purpose domestic government loan bonds of Ukraine.

5. Foreign government loan bonds of Ukraine are the government debt securities placed on international stock markets that confirm the undertaking of Ukraine to reimburse the bearers of such bonds for their par value and pay the income in accordance with conditions of the placement of the bonds.

6. The issue of government bonds of Ukraine shall be a part of the budgetary process and shall not be regulated by the National Securities and Stock Market Commission.

7. The issue of the government bonds of Ukraine shall be regulated by the law of Ukraine on the State Budget of Ukraine for the relevant year that specifies the ultimate amounts of the state foreign and domestic debt.

The decision to place the domestic and foreign government loan bonds of Ukraine and conditions of their issue shall be made in accordance with the Budget Code of Ukraine.

The placement of government bonds of Ukraine shall take place in case of the compliance with the ultimate amounts of the state foreign and domestic debt set by Verkhovna Rada of Ukraine in the law on the State Budget of Ukraine for the relevant year as of

the end of the year.

8. Conditions of the placement and redemption of the internal government loan bonds of Ukraine and the special-purpose internal government loan bonds of Ukraine that are not covered by the placement conditions shall be specified by the Ministry of Finance of Ukraine in accordance with the legislation.

9. The National Bank of Ukraine shall perform the state debt service transactions related to the placement of the domestic government loan bonds of Ukraine and the special-purpose domestic government loan bonds of Ukraine, the redemption thereof and the interest payment thereunder, and carry out the depository activities in respect of such securities. The procedure of the performance of transactions related to the placement of such bonds shall be specified by the National Bank of Ukraine in concurrence with the Ministry of Finance of Ukraine. Specific features of the exercise of the depository activities with the government bonds of Ukraine shall be specified by the National Securities and Stock Market Commission together with the National Bank of Ukraine.

10. The placement, the service and the redemption of the foreign government loan bonds of Ukraine shall be performed by the Ministry of Finance of Ukraine; the latter may involve banks and investment companies, etc. to this end. Relations between the Ministry of Finance of Ukraine and these organizations shall be governed by the relevant contracts.

11. The expenses on the preparation of the placement, as well as the placement, the redemption of the government bonds of Ukraine, the payment of the interest shall be made in accordance with conditions of the placement of the government bonds of Ukraine at the expense of funds designated for such purposes in the State Budget of Ukraine.

12. The government bonds of Ukraine may be inscribed bonds or bearer bonds.

Government bonds of Ukraine shall be placed only in non-certificated form.

13. The domestic government loan bonds of Ukraine shall be sold in the domestic or a foreign currency; the foreign government loan bonds of Ukraine shall be sold in the borrowing currency.

14. The interest payment and the redemption of

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| <p>government bonds of Ukraine shall be made in monies or state bonds of Ukraine of other types subject to the agreement of the parties.</p> | | |
| <p>Article 10¹. Bonds of international financial organizations</p> | | |
| <p>1. International financial organization is an international organization that issues bonds within the territory of Ukraine in accordance with the terms specified in its constituent instrument and/or with the international treaty of Ukraine.</p> <p>According to the procedure established by the National Securities and Stock Market Commission international financial organizations may issue interest-bearing or discount bonds only through public placement on Ukrainian stock markets that are included by the National Securities and Stock Market Commission into the list approved by it.</p> <p>Issue of bond of international financial organizations are served in the depository system of Ukraine.</p> <p>2. Central governmental body that ensures formation of State financial policy, upon agreement with the National Bank of Ukraine, provides permit for issue of bonds by international financial organization. The decision on granting of the permit or on substantiated refusal to grant the same shall be made in accordance with the set procedure within five business days following the respective application by the international financial organization.</p> <p>3. Funds raised by international financial organizations where Ukraine is a member from placement of bonds shall be used for performance of operations by these organizations in accordance with their constituent documents and/or international treaties of Ukraine pursuant to the Constitution of Ukraine and the Law "On International Treaties of Ukraine</p> <p>If Ukraine is not a member of the international financial organizations and/or if no international treaty is concluded between Ukraine and this organization, the funds raised by this organization from the placement of bonds shall be used upon agreement with the Cabinet of Ministers of Ukraine and in accordance with the procedure set by it.</p> <p>Specific features of issue and circulation of bonds of international financial organizations, including list of documents to be submitted for registration of issue of such bonds and requirements to their execution, as well as time-terms for</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>registration of issue and report on results of the issue are established by the National Securities and Stock Market Commission.</p> <p>4. Par value of a bond of international financial organization is set in national currency.</p> <p>Placement, sale and redemption of such bonds is performed in national currency.</p> <p>5. Requirements to the disclosure of information by the international financial organizations – issuers of bonds, in particular the procedure, content and terms for submission of regular and irregular information by them shall be established by the National Securities and Stock Market Commission unless otherwise established international treaties of Ukraine.</p> <p>6. Provisions of fifth part of Article 30, second paragraph first part of Article 33, Articles 39, 40 and 41 of this Law shall not be applied to international financial organizations and bonds on international financial organizations.</p> | | |
| <p>Article 11. Treasury Notes of Ukraine</p> | | |
| <p>1. Treasury note of Ukraine is a government security placed solely on a voluntary basis among individuals that certify the fact of the debt of the State Budget of Ukraine to the holder of the treasury note of Ukraine, vest the holder with the right to receive the pecuniary income, and be redeemed in accordance with conditions of the placement of the treasury notes of Ukraine. Par value of treasury notes of Ukraine may be denominated either in domestic or foreign currency.</p> <p>The volume of the issue of treasury notes of Ukraine together with the issue of the internal government loan bonds of Ukraine may not exceed the ultimate amount of the domestic state debt and the volume of the expenses related to the state debt service specified by the law on the State Budget of Ukraine for the relevant year.</p> <p>The issue of treasury notes of Ukraine shall be a part of the budgetary process and shall not be regulated by the National Securities and Stock Market Commission.</p> <p>The redemption and the interest payment under treasury notes of Ukraine shall be guaranteed with the revenues of the State Budget of Ukraine.</p> <p>2. Treasury notes of Ukraine may be:</p> <p>long-term notes with the tenor over five years;</p> | <p>skipped</p> | <p>skipped</p> |

mid-term notes with the tenor of one to five years;
short-term notes with the tenor less than one year.

3. The State in the person of the Ministry of Finance of Ukraine on instruction of the Cabinet of Ministers of Ukraine shall be the issuer of the treasury notes of Ukraine.

4. The treasury notes of Ukraine may be inscribed notes or bearer notes.

Treasury notes of Ukraine shall be placed in a certificated or non-certificated form.

A certificate shall be issued in case of the placement of treasury notes of Ukraine in a certificated form.

Certificate of a treasury note of Ukraine shall indicate type of the security, name and location of the issuer, amount of payment, date of payment of interest, maturity date, indication of the place of the redemption, date and place of the issue of the treasury note of Ukraine, series and number of the certificate of the treasury note of Ukraine, signature of the chief executive officer of the issuer or another authorized officer authenticated with the seal of the issuer. The certificate of a registered treasury note of Ukraine shall also indicate the name of the holder.

Specific features of the redemption and the exercise of rights under the treasury notes of Ukraine shall be determined by their placement conditions, which are approved by the Ministry of Finance of Ukraine in accordance with the laws.

Sale, cash income payout and repayment of treasury notes of Ukraine shall be in national or foreign currency in accordance with the placement conditions.

5. The decision to place treasury notes of Ukraine shall be made in accordance with the Budget Code of Ukraine. The decision shall specify the conditions of the placement and the redemption of treasury notes of Ukraine.

6. Placement conditions of treasury notes of Ukraine may provide for the redemption thereof by means of the reduction in the liabilities of the holder of the treasury note of Ukraine to the State Budget of Ukraine by the value of the note in question.

7. The procedure of determining the selling value of the treasury notes of Ukraine during the placement thereof shall be specified by the Ministry of Finance of Ukraine.

8. Specific features of the exercise of the depository activities with the treasury notes of Ukraine shall be specified by

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| the National Securities and Stock Market Commission together with the National Bank of Ukraine. | | |
| Article 12. Investment Certificates | | |
| <p>1. Investment certificate is a security placed by an investment fund, an investment company, an asset management company of a unit investment fund that certifies the investor's ownership of a share in an investment fund, a mutual fund of an investment company and a unit investment fund.</p> <p>2. An investment fund, an investment company or an asset management company of a unit investment fund shall be the issuer of investment certificates.</p> <p>3. The number of the announced investment certificates of a unit investment fund shall be specified in the issue prospectus.</p> <p>The term of placement of investment certificates of an open-end and interval unit investment funds shall be unlimited.</p> <p>4. Investment certificates may entitle the holder thereof to obtain income in the form of dividends. Dividends on investment certificates of an open-ended and interval unit investment funds shall not accrue and shall not be disbursed.</p> <p>5. The placement of derivative securities, whose underlying asset is the right to obtain investment certificates, shall be disallowed.</p> <p>6. Specific features of issue, circulation, record, and redemption of investment certificates shall be specified by the relevant legislation.</p> | n/a | Nothing to mention |
| Article 13. Savings Certificates (Certificates of Deposit) | | |
| <p>1. Savings certificate (certificate of deposit) is a security that confirms the amount of the deposit lodged to a bank and the rights of the depositor (certificate holder) to receive the deposit amount and the interest as specified by the certificate from the issuing bank upon expiry of the specified term.</p> <p>2. Savings certificate (certificate of deposit) is a non-issue security released for a certain term (bearing interests envisaged by the terms of its release).</p> <p>The savings certificates (certificates of deposit) may be inscribed certificates or bearer certificates and may exist only in certificated form.</p> <p>3. A savings certificate (certificate of deposit) shall specify type of the security, name and location of the issuing bank, series</p> | skipped | skipped |

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| <p>and number of the certificate, issue date, amount of the deposit, interest rate, term for receipt of deposit, signature of the chief executive officer of the bank or another authorized officer authenticated with the seal of the bank.</p> <p>4. Rights pertaining to an inscribed saving certificate (certificate of deposit) shall be transferred according to the procedure established for cession of claims. Rights pertaining to a bearer saving certificate (certificate of deposit) shall be transferred by transfer of the savings certificate (certificate of deposit).</p> <p>5. Profits on the savings certificates (certificates of deposit) shall be disbursed at the time of the presentation thereof for payment to the bank that has placed the certificates in question.</p> <p>In case of the early presentation of a savings certificate (certificate of deposit) for redemption, the bank shall pay out the amount of the deposit and the interest (at the demand deposit rate), unless the certificate issue conditions provide for another interest rate.</p> | | |
| <p>Article 14. Promissory Note</p> | | |
| <p>1. Promissory note is a security that certifies the absolute pecuniary liability of the promisor or the promisor's order to a third party to pay the specified amount to the holder of the promissory note (promisee) on the onset of the time for payment.</p> <p>2. Promissory notes may be notes of hand or transfer notes, and shall exist solely in a certificated form.</p> <p>3. Specific features of the issue and the circulation of promissory notes, the transactions with promissory notes, the redemption of liabilities under promissory notes, and the collection on the basis of promissory notes shall be defined by law.</p> | <p>skipped</p> | <p>skipped</p> |
| <p>Article 15. Mortgage, Privatization, Derivative and Commodity Securities</p> | | |
| <p>1. The specific features of the issue, circulation of, and accounting for mortgage letters, mortgage certificates, mortgage bonds, RET certificates, privatisation, derivative and commodity securities, and the procedure of the disclosure in their respect shall be specified by the legislation.</p> | <p>skipped</p> | <p>skipped</p> |
| <p>Section III. PROFESSIONAL ACTIVITIES ON THE STOCK MARKET Article 16. Types of Professional Stock Market Activities</p> | | |
| <p>1. Professional stock market activity is the activity of joint-</p> | <p>skipped</p> | <p>skipped</p> |

stock companies and limited liability companies for provision of financial and other services in the field of the placement and the circulation of securities, the record of rights to securities and rights pertaining to such securities, management of assets of institutional investors meeting the requirements of this Law and the legislation for such activities.

It shall be prohibited to combine the professional stock market activities with other types of professional activities, other than:

Provision by the bank of activity on trading of securities, depository activity of the securities' custodian and activity on holding registers of the owners of inscribed securities;

Provision by the professional participant of stock market of consulting services regarding issue, circulation and record of securities, regarding rights and obligations of issuer, investor and/or the person that released a non-issue security, regarding circulation and record of other financial instruments, as also regarding making of financial investments into the said securities and other financial instruments;

Activity on administration of pension funds and/or activity on administration of mortgage pools by assets management company.

2. The following professional activities shall be exercised on the stock market:

- securities trading activities;
- institutional investor asset management activities;
- depository activities;
- stock market trading organization activities;
- clearing activities.

3. Professional stock market activities shall be exercised solely on the basis of a license issued by the National Securities and Stock Market Commission (except for the professional activity of the Central Depository of Securities and depository activity of the National Bank of Ukraine). The list of documents required for the obtainment of a license, its issue and annulment procedures shall be specified by the National Securities and Stock Market Commission.

Professional activity of the Central Depository of Securities is conducted on the basis of the rules of the Central Depository of Securities, registered by the National Securities and Stock Market Commission according to the procedure set by the

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| <p>law.</p> <p>Depository activity of the National Bank of Ukraine is conducted subject to the special features of depository and clearing activity with securities in accordance with the authority, envisaged by the Law of Ukraine "On depository System of Ukraine".</p> <p>4. Professional stock market activity of the stock market participants, except for stock exchanges and depositories, is conducted subject to participation in at least one association of professional stock market participants and/or self-regulating organization that unites professional stock market participants in accordance with the respective type of professional activity</p> <p>5. Professional stock market participants may establish separate subdivisions outside of Ukraine upon agreement with the National Securities and Stock Market Commission and in accordance with the procedure established by it.</p> <p>Professional stock market participants and their subdivisions, including foreign, must comply with the requirements regarding financial monitoring, envisaged by the legislation of Ukraine regulating anti-money laundering and anti-terrorist financing.</p> <p>If the requirements on financial monitoring contradict to the legislation of the foreign state where the subdivision is established, the professional stock market participant must inform the financial monitoring authority and the National Securities and Stock Market Commission about the impossibility for its subdivision to comply with the said requirements.</p> <p>6. In accordance with the procedure set by legislation a professional stock market participant takes measures for limitation of business relations or financial operations with persons acting within the territory of those countries that do not comply or improperly comply with the recommendations of international, inter-State organizations engaged in anti-money laundering and anti-terrorist financing.</p> | | |
| <p>Article 17. Securities Trading Activities</p> | | |
| <p>1. The professional stock market securities trading activities shall be exercised by securities traders being business companies, for which the transactions with securities and other financial documents are the sole business activity types, except for the cases envisaged by this Law and, as well as by banks.</p> <p>The professional securities trading activities shall include: brokerage;</p> | <p>skipped</p> | <p>skipped</p> |

dealer activity;
underwriting;
securities management activities.

A securities trader may exercise dealer activities, if it has the charter capital paid in cash in the amount of at least UAH 500,000; brokerage activities – in the amount of at least UAH 1,000,000; underwriting activities or securities management activities – in the amount of at least UAH 7,000,000.

Participatory interest of another trader in the charter capital of a securities trader may not exceed 10 per cent.

License for underwriting is granted only in case a securities trader has the license for dealer activity.

2. The brokerage shall be understood as the conclusion of contracts governed by the civil law (for instance, commission or agency contracts) in respect of securities and other financial instruments by a securities trader on its own behalf (on behalf of another entity), on instruction and at the expense of another person.

A securities trader may act as a surety or a guarantor of performance of liabilities to third parties under contracts concluded on behalf of a client of such a trader, and receive a fee therefor in the amount specified in the contract between the securities trader and the client.

Securities trade performing brokerage activity may advise its clients on sale-purchase of securities and other financial instruments.

Monies and securities of the clients transferred to securities traders or held by them under brokerage agreements may not be collected for liabilities of the securities trader, not related to its brokerage activity.

3. Dealer activities shall be understood as the conclusion of contracts governed by the civil law in respect of securities or other financial instruments by a securities trader on own behalf and at own expense for the re-sale purposes, except for cases covered by law.

4. Underwriting is the placement (subscription, sale) of securities by a securities trader and/or execution of actions or provision of services related to such sale within issue of securities on instruction, on behalf and at expense of the issuer.

Underwriter may advise issuer on the placement of securities of this issuer.

In accordance with the agreement with the issuer the underwriter may:

Purchase securities from the issuer followed by their sale to investors;

Ensure full or partial sale of securities of the issuer to investors, full or partial buy-out of the securities at fixed price followed by their re-sale;

Sale of maximum possible amount of securities, without the obligation to buy any securities that were not sold.

Underwriters may enter into joint commercial contracts among themselves for the purposes of the organization of the public placement of securities.

5. Securities management activities are the activities exercised by a securities trader on own behalf against fee during a certain period on the basis of a contract on the management of the securities, other financial instruments and monies intended for the investment into securities and other financial instruments, as well as the management of the securities and monies obtained in the course of such management of securities and other financial instruments and monies, in the interests of the trustor or the interests of third parties nominated by the trustor.

Agreement for management of securities, other financial instruments and monies designated for investing into securities and other financial instruments may envisage trust ownership of the trader for the securities, other financial instruments and funds designated for investment into securities and other financial instruments transferred to it, and also trust ownership for funds, securities, other financial instruments obtained by the securities trader from the management of securities and other financial instruments.

Securities trader that carry out activity in the management of securities may consult on the matters related to the servicing of the management trustor.

The securities trader shall have the right to conclude securities management contracts with individuals and legal entities.

The value of a securities management contract with one individual client shall not be less than an amount equivalent to 100 minimum salary amounts.

The essential conditions of a securities management

contract shall be specified by law and on agreement between the parties.

The securities management contract may not be concluded by a securities trader with an asset management company.

The securities trader shall manage the securities in accordance with requirements of the [Civil Code of Ukraine](#), this Law, other laws, and regulatory acts of the National Securities and Stock Market Commission.

6. The commission or agency or securities management contracts shall be concluded with a securities trader in writing. The rights and duties of a securities trader versus its client, the conditions of the conclusion of contracts in respect of securities, the procedure of reporting of the trader to its client, the procedure and conditions of the payment of fee to the trader shall be specified in the contract concluded between them.

The securities trader must perform instructions of clients under agency, commission and securities management contracts on conditions most beneficial for the client. Instructions of clients shall be performed by the securities trader in the sequence of the receipt thereof, unless otherwise provided by the contract or the instructions of clients. In case of the conclusion of contracts on own account by the securities trader together with the conclusion by the securities trader of contracts on the client account, the performance of contracts for clients shall have the priority.

7. The securities trader shall keep account for securities and monies for each client separately and separately from the securities, monies and property owned by the securities trader in accordance with requirements specified by the National Securities and Stock Market Commission in concurrence with the Ministry of Finance of Ukraine and, in cases specified by law, the National Bank of Ukraine. Monies and securities of clients conveyed to the securities traders for the management may not be collected under liabilities of the securities trader not related to its exercise of the trustee functions.

In case it is envisaged by management agreement, the monies of the client shall be credited to a dedicated current account of the securities trader in a bank for the purposes of the exercise of the securities management activities separately from own funds of the securities trader, funds of other clients, and in accordance with conditions of the contracts on management of securities, other

financial instruments and funds designated for investment into securities and other financial instruments. The securities trader shall report to clients on the use of their monies.

The securities trader shall have the right to make use of client monies, if the securities management contract so provides.

The securities management contract may provide for the distribution of the profit derived by the securities trader from the use of monies of the client between the parties.

8. Transaction with securities must be concluded with participation or agency of the securities trader, save for:

Placement of securities by their issuer;

Buy-out and sale by the issue of the securities of its own issue;

Settlement with the use of non-issue securities;

Placement of treasury bonds of Ukraine;

Contribution of securities to the charter capital of legal entities;

Gifting of securities;

Inheritance and legal succession of securities;

Transactions connected with the execution of court decisions;

Transactions within privatization process.

9. transactions with securities executed without participation (agency) of securities trader, save for the cases envisaged by part eight hereof are void.

Transactions between securities trader are deemed conducting of professional securities trading activity for each of them.

10. Securities trader must submit to the publicly available database on securities market of the National Securities and Stock Market Commission the following information on all transactions executed outside of the stock market by the trader or with its participation securities market for its further inclusion into the said database:

Name of the issuer and its identification number in accordance with EDRPOU;

Kind, type, class, forms of existing and issuance for the securities;

International securities identification number;

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| <p>Number of securities under each transaction; Price of the securities; Date of the transactions; Other information specified by the National Securities and Stock Market Commission.</p> <p>The said information does not include the information on the parties to the transaction.</p> <p>Procedure and terms for submission by the securities trader of the said information and also the procedure for its further publication are set by the National Securities and Stock Market Commission.</p> | | |
| <p>Article 18. Institutional Investor Asset Management Activities</p> | | |
| <p>1. The institutional investor asset management activities shall be understood as the professional activity of a member of the stock market being an asset management company exercised thereby against a fee on own behalf or on the basis of an appropriate contract for the management of assets of institutional investors.</p> <p>2. The institutional investor asset management activities shall be regulated by the dedicated legislation.</p> | skipped | skipped |
| <p>Article 19. Depository Activities</p> | | |
| <p>1. The depository activities shall be exercised by the stock market members in accordance with the legislation on the depository system of Ukraine.</p> <p>Article 19¹. Clearing activity</p> | skipped | skipped |
| <p>1. Clearing activity is an activity for determination of liabilities to be executed in accordance with transactions with securities and other financial instruments, drafting of documents (information) for settlements, and also creation of guarantees of execution of liabilities under transactions with securities and other financial instruments.</p> <p>2. The persons providing clearing activity are clearing institutions and Payment center on servicing of agreements on financial markets. The Central Securities Depository and the National Bank of Ukraine may provide clearing activity subject to the requirements set by the law.</p> <p>3. Requirements to the minimal amount of regulating capital of the person providing clearing activity, and also other limitations of its activity are established by the National Securities</p> | skipped | skipped |

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| and Stock Market Commission upon agreement with the National Bank of Ukraine. | | |
| Article 19². Establishment of a clearing institution | | |
| <p>1. Clearing institution is established and functions as a joint-stock company. A person obtains the status of a clearing institution starting from the day of obtaining license for provision of clearing activity and the license of the National Bank of Ukraine for provision of certain banking operations according to the procedure established by the National Bank of Ukraine.</p> <p>2. Charter capital of a clearing institution must be paid in cash.</p> <p>3. For provision of clearing activity a clearing institution must have the due equipment, in particular computer hardware with the respective software, separate communication channels and premises that correspond to the requirements established by the National Securities and Stock Market Commission.</p> <p>4. Clearing institution must enter into the following agreement within three months from the date of obtaining of license for provision of clearing activity:</p> <p>1) agreement on making of settlement in securities following the results of clearing with the Central Securities Depository or the National Bank of Ukraine according to the competence envisaged by the law;</p> <p>2) agreement on financial settlements following the results of clearing with the Payment center on servicing of agreements on financial markets;</p> <p>3) clearing services agreement with at least one stock exchange.</p> <p>Requirements to the agreements mentioned in this part are established by the National Securities and Stock Market Commission.</p> <p>Clearing institution must not provide clearing activity before entering into the said agreements.</p> <p>5. National Securities and Stock Market Commission may establish additional requirements to the clearing institutions that limit risks of professional activity on the stock market.</p> <p>6. Words "clearing institution" and their derivatives may be used only by the legal entities that are established and function in accordance with this Law.</p> | skipped | skipped |
| Article 19³. Provision of clearing activity | | |

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| <p>1. Central Securities Depository, clearing institution or Payment center on servicing of agreements on financial markets provide clearing activity on the basis of a license granted by the National Securities and Stock Market Commission according to the procedure set by it, and may execute other banking services on the basis of a license of the National Bank of Ukraine.</p> <p>Before the start of clearing activity the Central Securities Depository, clearing institution or Payment center on servicing of agreements on financial markets must register with the National Securities and Stock Market Commission and in accordance with the established procedure the Rules for provision of clearing activity that specify the general order of provision of clearing activity.</p> <p>Clearing activity under agreements concluded on certain stock exchange may be provided by only one person having license for provision of clearing activity.</p> <p>2. Clearing activity is an exclusive type of professional activity on the securities market, except for its combining in accordance with the procedure established by law under condition of provision of such types of activity by different structural subdivisions.</p> <p>3. For the provision of the clearing activity the Central Securities Depository, clearing institution or Payment center on servicing of agreements on financial markets must register with the Nation Commission for Securities and Stock Market the following internal documents according to the procedure and terms established by the Commission:</p> <p>1) clearing rules, approved by the National Bank of Ukraine;</p> <p>2) document establishing organization and conducting of internal audit (control);</p> <p>3) document establishing system of management of risks and guarantees with indication of types of risks, methodology of their assessment, measures of risks' mitigation, procedure and conditions for their application.</p> <p>4. The grounds for refusal in registration of internal documents of the person that provides clearing activity and amendments thereto include:</p> <p>1) incompliance of the documents submitted for registration with the requirements of the legislation, including acts</p> | skipped | skipped |
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| <p>of the National Securities and Stock Market Commission;</p> <p>2) submission of incomplete set of documents, lack of information in them or submission of doubtful information;</p> <p>3) incompliance of the charter capital amount with the requirements of the law.</p> | | |
| <p>Article 19⁴. Clearing rules</p> | | |
| <p>1. Rules of clearing must include:</p> <p>1) requirements to the participants of clearing;</p> <p>2) provision of clearing with and / or without participation of the central counterparty;</p> <p>3) procedure and conditions for acceptance of liabilities for clearing as well as the requirements to such liabilities;</p> <p>4) rights and obligations of the person that provides clearing activity and the participants of the clearing;</p> <p>5) procedure of record of rights and obligation under transactions with securities and other financial instruments and their termination;</p> <p>6) procedure for submission by the person that provides clearing activity, participants of clearing reports following the results of clearing and results of settlements;</p> <p>7) procedure for submission by a person that provides clearing activity to the Central Securities Depository and the National Bank of Ukraine in accordance with their competence established by the Law of Ukraine "On Depository System of Ukraine" of information on clients of the Central Securities Depository and/or the National Bank of Ukraine and their deponents regarding transmitting of securities following the results of clearing of liabilities under transaction with securities, conducted on stock exchange following the results of each trading session of the stock exchange and outside of stock exchange, if the settlements are provided in accordance with the principle "delivery of securities against payment" (save for provision of clearing activity by the Central Securities Depository and the National Bank of Ukraine);</p> <p>8) procedure for submission by a person that provides clearing activity to the Payment center on servicing of transactions on stock markets of information for the clients regarding making of cash settlements following the results of clearing of liabilities under transaction with securities, conducted on stock exchange following the results of each trading session of the stock exchange and</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>outside of stock exchange, if the settlements are provided in accordance with the principle "delivery of securities against payment";</p> <p>9) description of measures aimed at mitigation of risks of non-execution or improper execution of liabilities that emerge under transactions with securities and other financial instruments, based on one of the mechanisms for mitigation of risks, envisaged by the second part of this article;</p> <p>10) description of information security system</p> <p>11) other provisions in accordance with this Law and other laws.</p> <p>The National Securities and Stock Market Commission may establish additional requirements to clearing rules.</p> <p>2. Mechanisms for mitigation of risks of non-execution or improper execution of liabilities under the agreement concluded on stock exchange include:</p> <p>Obligatory 100% preliminary deposit and reserving of funds and securities or other financial instruments according to the procedure established by the National Securities and Stock Market Commission upon agreement with the National Bank of Ukraine;</p> <p>Partial (or none) preliminary deposit and reserving of funds and securities or other financial instruments with obligatory creation of risks and guarantees management system that may envisage establishment of guarantee fund at the expense of contributions of clearing participants and other participants of the depository system in accordance with the procedure established by the National Securities and Stock Market Commission upon agreement with the National Bank of Ukraine.</p> <p>Procedure for establishment and usage of guarantee fund in securities and other financial instruments is envisaged by the National Securities and Stock Market Commission, and in money funds – by the National Bank of Ukraine.</p> <p>3. Additional requirements to the clearing rules are established by the National Securities and Stock Market Commission upon agreement with the National Bank of Ukraine.</p> | | |
| <p>Article 19⁵. Organization of clearing</p> | | |
| <p>1. The person that provide clearing activity conducts clearing only of those liabilities that are accepted for clearing in accordance with the procedure and under conditions established by clearing rules.</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>2. Clearing procedure under agreements with securities and control over provision of clearing activity is established by the National Securities and Stock Market Commission.</p> <p>3. Invalidity of the transaction obligations under which are terminated following the results of clearing shall not result in invalidity of transactions executed within the clearing process, and the results of clearing.</p> | | |
| <p>Article 19⁶. Central counterparty</p> | | |
| <p>1. Central counterparty is a legal entity that provides clearing activity, obtains mutual rights and obligations of parties to the transaction with securities, obligations under which are accepted for clearing, and becomes a buyer for each of the sellers and a seller for each of the buyers.</p> <p>Persons executing functions of central counterparty are clearing institutions and the Payment center for servicing of transactions on stock exchange.</p> <p>For execution of obligations accepted for clearing the Central counterparty is entitled to act as a participant of stock trading without license for provision of activity on stock market – securities trading activity.</p> <p>2. Requirements to sufficiency of own funds of the person that provide clearing activity and executes functions of a central counterparty, are established by the National Securities and Stock Market Commission.</p> <p>Words "central counterparty" and their derivatives may be used only by the legal entities that are established and function in accordance with this Law</p> <p>3. the National Securities and Stock Market Commission may establish additional requirements to the person that provides clearing activity and executes functions of central counterparty.</p> | skipped | skipped |
| <p>Article 19⁷. Guarantees of non-interference with the activity of the person that provide clearing activity</p> | | |
| <p>1. Interference of state bodies or their officials with the execution of functions by clearing institutions and the Payment center on servicing of agreements on stock markets is prohibited save for the cases provided by law.</p> | skipped | skipped |
| <p>Article 20. Stock Market Trading Organization Activities</p> | | |
| <p>1. The stock market trade organization activities is the activity of stock market that involves the creation of organizational,</p> | skipped | skipped |

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| <p>technological, information, legal and other conditions for the accumulation and the dissemination of the information on the supply and the demand for the securities and other financial instruments, the holding of regular biddings for securities and other financial instruments, centralized conducting of transactions with securities and other financial instruments in accordance with the rules established by such stock exchange, registered in accordance with the procedure established by law. Stock market trading organization activity may include clearing and settlements under financial instruments, other than securities.</p> <p>2. Stock exchanges must maintain the own capital at the level of at least UAH 15,000,000 in order to exercise their activities; the stock exchanges that perform the clearing and settlements must maintain the own capital at the level of 25,000,000.</p> | | |
| <p>Article 21. Establishment of a Stock Exchange and Rights of Its Members</p> | | |
| <p>1. A stock exchange shall be established and operate in the organizational and legal form of a joint-stock company or limited liability company and exercise its business in accordance with the Civil Code of Ukraine, laws that govern the issues of the establishment, the operation and the termination of legal entities with the specific features identified by this Law.</p> <p>The profit of a stock exchange shall be spent on its development and may not be allocated to its founders (participants).</p> <p>2. A stock exchange shall be established by at least twenty founders being traders in securities licensed for the exercise of the professional activities on the stock market. Participatory interest of one securities trader may not exceed 5 per cent of the charter capital of the stock exchange.</p> <p>3. A stock exchange shall be vested with the legal entity status from the date of the state registration thereof. The state registration of a stock exchange shall be carried out in accordance with the procedure prescribed by the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs".</p> <p>A stock exchange shall have the right to exercise the stock market trade organization activities upon obtainment of a license from the National Securities and Stock Market Commission.</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>The words "stock exchange" and derived words may only be used by legal entities established and operating in accordance with requirements of this Law.</p> <p>4. The activities of a stock exchange as a trade organizer shall be suspended by the National Securities and Stock Market Commission, if the number of its members has dropped lower than 20. If no new members have been admitted within six months, the activities of the stock exchange shall be terminated.</p> <p>5. Solely traders in securities that are licensed to exercise the professional stock market activities and have undertaken to abide by all rules, regulations and standards of the stock exchange may be members of the stock exchange.</p> <p>In case of the annulment of the professional stock market activities license obtained by a securities trader, his membership of the stock exchange shall be suspended until the resumption of the license or the submission of an application for the exclusion of the securities trader from the membership of the stock exchange. Other grounds for the termination or the suspension of the stock exchange membership shall be specified by the stock exchange rules.</p> <p>The membership of the stock exchange shall be terminated in case of the annulment of the professional stock market activities license issued to a securities trader.</p> <p>6. Each stock market member shall have equal rights in respect of organizing the activities of a stock exchange as a trade organizer.</p> | | |
| <p>Article 22. Charter of a Stock Exchange</p> | | |
| <p>1. The charter of a stock exchange shall be approved by the supreme body of the stock exchange.</p> <p>2. The charter of the stock exchange shall specify the name and the location of the stock exchange, the procedure of the management and the formation of its bodies, and the competence thereof, the objective of operations, the grounds and the procedure of the termination of activities of the stock exchange, and the allocation of the stock exchange property in case of the liquidation thereof.</p> | <p>skipped</p> | <p>skipped</p> |
| <p>Article 23. Requirements for a Stock Exchange</p> | | |
| <p>1. A stock exchange must disclose and provide the National Securities and Stock Market Commission with the following information:</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>the list of securities traders allowed to conclude securities sale/purchase contracts at the stock exchange;</p> <p>the list of the securities that have undergone the listing / delisting procedure;</p> <p>the volume of trades in securities (the number of securities, the total value of the concluded contracts, the price of securities of each issuer separately) over the period prescribed by the National Securities and Stock Market Commission.</p> <p>2. The National Securities and Stock Market Commission shall specify the procedure and the forms of the provision of the information specified in part one of this article, and control the disclosure of the information by stock exchanges.</p> <p>3. A stock exchange must submit to the publicly available database of the National Commission for Securities and Trade Market about the stock market for further publication of the following information on all transactions with issue securities:</p> <p>Name of the securities' issuer and its identification number un accordance with EDRPOU;</p> <p>Kind, type, class, form of existence and issue of the securities;</p> <p>International identification number of securities;</p> <p>Amount of securities under each transaction;</p> <p>Price of the securities;</p> <p>Date of the transaction;</p> <p>Other information envisaged by the National Securities and Stock Market Commission.</p> <p>The said information shall not include information on the parties to the transaction.</p> <p>Procedure and terms for submission of information by stock exchanges and also procedure for its further publishing are established by the National Securities and Stock Market Commission.</p> | | |
| <p>Article 24. Organization of trading on stock exchange</p> | | |
| <p>1. A stock exchange shall create organizational conditions for the conclusion of contracts with securities and other financial instruments by holding stock trading and ensures control for their execution with application of the relevant measures.</p> <p>Stock market members and other persons in accordance with the legislation shall have the right to take part in the stock</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>exchange bidding.</p> <p>2. The trade at the stock exchange shall take place in accordance with the rules of the stock exchange approved by the exchange council and registered by the National Securities and Stock Market Commission.</p> <p>3. Before submission of the stock exchange rules for registration with the National Securities and Stock Market Commission the stock exchange must conclude an agreement on clearing and settlements under transactions with securities with the person that provides clearing activity.</p> <p>Requirements to such agreement are established by the National Securities and Stock Market Commission.</p> <p>The stock exchange must not provide the activity on organization of trading of securities on stock market before entering into such agreement.</p> | | |
| <p>Article 25. Stock Exchange Rules</p> | | |
| <p>1. The stock exchange rules shall consist of the procedure of:</p> <ul style="list-style-type: none"> organization and the performance of the exchange bidding; securities listing and delisting; admission of stock exchange members and other parties specified by the legislation for the exchange bidding; quotation of securities and other financial instruments and the publication of their exchange rate; disclosure and the publication of the information about the activities of the stock exchange; settlement of disputes among members of the stock exchange and other entities entitled to participate in the exchange bidding in accordance with the legislation; control over the stock exchange rules compliance of members of the stock exchange and other entities entitled to participate in the exchange bidding in accordance with the legislation; imposition of sanctions for the violation of the stock exchange rules; cooperation with the person that provide clearing activity regarding making of clearing under transactions with securities and other financial instruments; cooperation with the Central Securities Depository | <p>skipped</p> | <p>skipped</p> |

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| <p>regarding the exchange of information about the transactions with securities concluded on the stock exchange in accordance with the competence established by the law following the results of each trading session of the stock exchange;</p> <p>cooperation with the National Bank of Ukraine regarding the exchange of information on the transactions with securities concluded on the stock exchange in accordance with the competence established by the law following the results of each trading session of the stock exchange.</p> <p>2. Rules of stock exchange may also include the procedure for:</p> <p>Clearing and settlements under the agreements with financial instruments (excluding securities) concluded on the stock exchange;</p> <p>Cooperation with depositories of securities regarding ensuring of centralized execution of securities sale-purchase agreements concluded on the stock exchange;</p> <p>Taking of measures for mitigation of risks of non-fulfillment of agreements on sale-purchase of securities and other financial instruments concluded on the stock exchange.</p> | | |
| <p>Article 26. Combination of Certain Types of Professional Stock Market Activities</p> | | |
| <p>1. Combination of specific professional stock market activities shall be disallowed, except for the cases covered by this Law and other acts of the legislation that regulate the procedure of the exercise of specific professional stock market activities.</p> <p>2. Stock exchanges may not exercise other types of professional stock market activities, other than the stock market trade organization activities, unless otherwise provided by law.</p> <p>The trade organizers may exercise the clearing and settlement activities under agreements with financial instruments (other than securities) concluded at such a trade organizer and in accordance with its rules.</p> <p>5. The combination of the institutional investor asset management activities with other professional stock market activities shall be prohibited.</p> | <p>skipped</p> | <p>skipped</p> |
| <p>Article 27. Requirements for Professional Stock Market Members or the persons having majority participatory interest in them</p> | | |

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| <p>1. The licensing conditions for provision of professional activity on the stock market on its different types, including the requirements for the charter and own capital, the procedure of the calculation thereof, the liquidity, the qualification requirements for specialists of a professional stock market members, the necessary conditions of contracts concluded during the exercise of the professional stock market activities, requirements to the premises, technical and software equipment, requirements to the sources of funds which are used for formation of charter capital of the professional participant of stock market, other requirements and indicators that limit the risks of the professional stock market activities shall be specified by this Law, other laws of Ukraine that regulate the exercise of specific stock market activities, and the regulatory acts of the National Securities and Stock Market Commission.</p> <p>2. Condition for obtaining of license and provision of professional activity on stock market is absence among the participants (shareholders) of the legal entity (professional stock market participant) of an individual who has outstanding conviction for crimes against property, in commercial sphere and/or in the sphere of service and holds directly or indirectly a stock of 10 and more percent in the charter capital of this legal entity.</p> <p>The grounds for application of sanctions in accordance with the legislation on securities is determination by the National Securities and Stock Market Commission of the fact that an individual who has outstanding conviction for crimes against property, in commercial sphere and/or in the sphere of service and holds directly or indirectly a stock of 10 and more percent in the charter capital of the professional participants of stock market within 30 days following such determination but not earlier that 120 days following entry into force of a conviction of the said individual for the mentioned crimes.</p> <p>Upon written request the state bodies must within their competence to provide the National Securities and Stock Market Commission with the information whether the individual holding 10 or more percent in a charter capital of a professional stock market participant has outstanding conviction for crimes against property, in commercial sphere and/or in the sphere of service. If the request implies submission of information with limited access, such information is provided to the National Securities and Stock Market Commission in a way that ensures the legal regime of</p> | skipped | skipped |
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access to such information.

3. Professional stock market participants must:

Comply with prudence standards which list, amounts and calculation methodology are set by the National Securities and Stock Market Commission. The list of prudence standards are established for each type of professional activity on stock market;

Provide the National Securities and Stock Market Commission with the calculation of indicators that confirm fulfillment of the established prudence standards for the respective type of professional activity in accordance with the procedure and terms envisaged by the National Securities and Stock Market Commission.

4. Nominees for the managers of stock exchanges and depositories are agreed with the National Securities and Stock Market Commission in the procedure established by it.

Nominee for a manager of a stock exchange and depository must comply with the requirements established by the National Securities and Stock Market Commission, in particular:

To have record of service on stock market for not less than three years;

Not to be a manager of a professional participant of stock market liquidated under court decision or to which a sanction of professional stock market participant's license annulation was applied;

There are no facts that the individual was deprived of certificate for provision of professional activity within the previous two years.

5. A legal person that possesses substantial participatory interest in a professional stock market participant must inform the National Securities and Stock Market Commission about all changes in its shareholding structure, and also submit information on the business reputation of newly-appointed managers within one month following occurrence of the said changes in accordance with the procedure established by the Commission.

An individual that possesses substantial participatory interest in a professional stock market participant must inform the National Securities and Stock Market Commission about all changes in information about its associated persons and also submit information on its business reputation in accordance with the procedure and terms established by the Commission.

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| <p>A legal person or an individual that intends to transfer the substantial participatory interest in a professional participant of stock market to another person or decrease it in such a way that the participatory interest of the person in the charter capital of the professional participant of stock market, or voting rights pertaining to the acquired participatory interests in the professional participant of stock market are less than 10, 25, 50 and 75 percent or transfer control over the professional participant of stock market to another person, must inform about it such professional participant of stock market and the National Securities and Stock Market Commission in accordance with the procedure established by the Commission.</p> | | |
| <p>Article 27¹. Licensing of professional activity on the stock market</p> <p>1. A legal entity obtains status of a professional participant of stock market and the right to provide certain type of professional activity on stock market only after obtaining license for provision of the respective type of professional activity on stock market.</p> <p>Provision of professional activity on stock market without obtaining of such license is prohibited.</p> <p>2. For obtaining of a license for provision of certain type of professional activity on stock market a legal entity that intends to provide the respective activity submits to the National Securities and Stock Market Commission in accordance with the procedure established by the Commission:</p> <ol style="list-style-type: none"> 1) application for provision of the license; 2) copy of an extract from the Unified State register of legal entities and individual entrepreneurs with information on legal entity (unless otherwise provided by law); 3) notarized copy of charter of the legal entity with the stamp of the State registrar about conducting of its state registration (if a legal person is established in accordance with model charter – information on the amount of the charter capital); 4) copies of documents necessary for identification of participants (shareholders) and all persons that shall execute direct or indirect control over the legal person, envisaged by the National Securities and Stock Market Commission; 5) information on the shareholding structure of the legal entity and participants (shareholders) with substantial participatory interest in it in accordance with the requirements of the National Securities and Stock Market Commission; | <p>skipped</p> | <p>skipped</p> |

6) information on the financial position of the legal entity and participants (shareholders) with substantial participatory interest in it in accordance with the form established by the National Securities and Stock Market Commission;

7) information on business reputation of participants (shareholders) with substantial participatory interest, members of executive body and/or the supervisory board and all persons through which indirect control over the legal person shall be executed in accordance with the form established by the National Securities and Stock Market Commission;

8) information on legal persons which participant (shareholder) with substantial participatory interest – individuals is a manager and/or controller in accordance with the form established by the National Securities and Stock Market Commission;

9) information on associated persons of participants (shareholders) with substantial participatory interest – individuals in accordance with the form established by the National Securities and Stock Market Commission;

10) information on the personal membership of the supervisory board (if established), executive body and revision commission of the legal person in accordance with the form established by the National Securities and Stock Market Commission;

11) information on business reputation of a person (persons) that act as the sole executive body (if such persons are appointed as the head and members of the collegial executive body), chief accountant and head of the internal audit (control) service, in accordance with the form established by the National Securities and Stock Market Commission;

12) information on availability of organizational structure and professionals necessary for provision of professional activity on stock market, and also equipment, hardware, software, premises that comply with the requirements established by the National Securities and Stock Market Commission and in accordance with the form envisaged by it;

13) copies of internal regulations of the legal person that provide for the provision of financial services, conducting of internal audit (control) and risks management system.

3. In order to obtain a license for the provision of a certain

type of activity on the stock market a legal person intending to provide such type of professional activity on the stock market and which founder is a foreign legal entity, in addition to the documents indicated in part 2 of this Article, submits to the National Securities and Stock Market Commission:

1) copy of decision of authorized management body (person) of the foreign legal entity on participation in the professional participant of stock market in Ukraine;

2) written permit on participation of a foreign legal person in the professional participant of stock market in Ukraine, issued by the authorized controlling body of the country where the head-office of the foreign person is registered, if the legislation of this state requires obtaining of such permit, or written confirmation of the foreign legal person that the legislation of the respective state does not require obtaining of such permit;

3) extract from commercial, banking, court register or other official document that confirms registration of the foreign legal person in the State where its head-office is registered;

4) copy of audit report of an auditor of foreign country on the financial position of the foreign legal person as of the end of the last full calendar year.

4. In order to obtain a license for the provision of a certain type of activity on the stock market a legal person intending to provide such type of professional activity on the stock market and which founder is a foreign individual, in addition to the documents indicated in part 2 of this Article, submits to the National Securities and Stock Market Commission a written permit for participation of this foreign individual in the professional participant of stock market in Ukraine, issued by authorized controlling body of the country there the individual has permanent residence, if the legislation of this state requires obtaining of such permit, or written confirmation of that the legislation of the respective state does not require obtaining of such permit.

5. Documents submitted by a foreign legal person and individual in accordance with parts 2 and 3 of this article must be notarized in the country of origin and legalized in accordance with the established procedure, unless otherwise established by the international agreements approved by the Verkhovna Rada of Ukraine. The documents in foreign language must be accompanied by notarized Ukrainian translation.

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| <p>6. The National Securities and Stock Market Commission in accordance with the procedure established by it grants license for the provision of certain type of activity on the stock market or refuses in its granting within three months following submission of documents indicated in the second part of this article. Term for the check of information on foreign legal persons or individuals, included into the shareholding structure of the legal person that intends to provide professional activity on the stock market, makes up to six months.</p> <p>The license is granted after submission by the legal person of the copy of payments order confirming payment for the issue of license.</p> <p>If the documents are incomplete or if they are executed not in compliance with the requirements of the National Securities and Stock Market Commission, such documents shall be returned in one-month term.</p> <p>7. Term of the license for provision of certain type of professional activity on the stock market is unlimited.</p> <p>8. Professional participant of the stock market must not transfer the license for provision of certain type of professional activity on stock market to third persons and also to legal persons that were established following termination of such participant, save for accession or merger with another licensee.</p> <p>9. Officials of a professional participant of stock market and persons having substantial participatory interests in such participant, must comply with the requirements set by the law and regulations of the National Securities and Stock Market Commission during the whole period of keeping their status or having substantial participatory interest in the professional participant of stock market.</p> <p>10. Persons guilty of the incompliance with the requirements set by the first part of this article are subject to civil, administrative or criminal liability in accordance with the law.</p> | | |
| <p>Article 27². Grounds for refusal in granting of license for provision of certain type of activity on stock market</p> | | |
| <p>1. The National Securities and Stock Market Commission refuses to grant license on provision of certain type of professional activity on stock market, if:</p> <p>1) the documents submitted for the issue of the license contain doubtful information and/or do not comply with the</p> | <p>skipped</p> | <p>skipped</p> |

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| <p>requirements of the law;</p> <p>2) business reputation of at least one official of the legal persons that intends to provide professional activity on the stock market, and/or the head of the internal audit (control) service and/or participants (shareholders) with substantial participatory interest of such person do not comply with the requirements set by the National Securities and Stock Market Commission;</p> <p>3) shareholding structure of the legal person does not comply with the law and regulations of the National Securities and Stock Market Commission;</p> <p>4) organizational structure, professionals necessary for the provision of the professional activity on the stock market, or equipment, computer hardware, software, premises of such legal person do not comply with the requirements set by the National Securities and Stock Market Commission.</p> | | |
| <p>Section IV. ISSUE OF SECURITIES IN CASE OF THE PUBLIC AND PRIVATE PLACEMENT THEREOF</p> <p>Article 28. Stages of the Issue of Securities in Case of the Public and Private Placement Thereof</p> | | |
| <p>1. The public placement of securities is the alienation thereof on the basis of the publication in mass media or the announcement otherwise of an offering of securities for sale addressed to an indefinite number of individuals not defined in advance. Public placement of securities shall take place in the following stages:</p> <p>1) decision on the public placement of securities made by the body of the issuer authorized to make such decisions;</p> <p>2) conclusion of preliminary agreement with underwriter (if needed);</p> <p>3) conclusion of preliminary agreement with depository for servicing of the issue of the securities or with registrar on holding of the register of the inscribed securities owners (if such agreement were not concluded), except for issue of bearer securities;</p> <p>4) submission to the National Securities and Stock Market Commission of an application and all the documents required for the registration of an issue of securities and the prospectus of the issue thereof;</p> <p>5) registration of the issue of securities and the securities issue prospectus by the National Securities and Stock Market Commission, and issue of temporary certificate on registration of</p> | <p>2003/71/EC</p> <p>Article 13</p> <p>2. This competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be, of its decision regarding the approval of the prospectus within 10 working days of the submission of the draft prospectus.</p> <p>If the competent authority fails to give a decision on the prospectus within the time limits laid down in this paragraph and paragraph 3, this shall not be deemed to constitute approval of the application.</p> <p>3. The time limit referred to in paragraph 2 shall be extended to 20 working days if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a</p> | <p>Public offer*</p> <p>The Commission shall assess the need to revise the definition of the term ‘public offer’ and the need to define the terms ‘primary market’ and ‘secondary market’ and, in this respect, shall fully clarify the links between Directive 2003/71/EC and Directives 2003/6/EC and 2004/109/EC.</p> |

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| <p>the securities issue;</p> <ol style="list-style-type: none"> 6) assignment of an international identification number to the securities; 7) conclusion of agreement with underwriter (if needed); 8) conclusion of a contract with a depository on the service of the securities issue or with a registrar on the maintenance of a register of holders of registered securities (if absent), except of issue of bearer securities; 9) disclosure of information contained in the securities issue prospectus; 10) entering into agreements with the first holders; 11) approval of results of the public placement of securities by the body of the issuer authorized to make such decisions; 12) execution of certificates of securities in case the securities are issued in certificated form; 13) approval of changes in the charter of the public company in connection with the increase in the charter capital of a joint-stock company taking into account the results of the public placement of shares; 14) registration of changes in the charter of the public joint-stock company with the state registration agencies; 15) submission of the public securities placement report to the National Securities and Stock Market Commission; 16) registration of the securities public placement report by the National Securities and Stock Market Commission; 17) obtaining of the securities issue registration certificate; 18) disclosure of information contained in the securities public placement report. <p>2. Private placement of securities shall be understood as the placement of securities by means of their direct offering to a pre-defined group of persons not exceeding 100 (for public joint-stock companies - to shareholders of such a company and to a pre-defined group of persons not exceeding 100). Issue of securities by means of their private placement shall take place in the following stages:</p> <ol style="list-style-type: none"> 1) decision on private placement of securities made by the body of the issuer authorized to make such decisions; 2) conclusion of preliminary agreement with underwriter (if needed); 3) conclusion of preliminary agreement with depository for | <p>regulated market and who has not previously offered securities to the public.</p> <p>2010/73/EC Article 5</p> <p>c. Where the final terms of the offer are neither included in the base prospectus nor in a supplement, the final terms shall be made available to investors, filed with the competent authority of the home Member State and communicated, by the issuer, to the competent authority of the host Member State(s) when each public offer is made as soon as practicable and, if possible, in advance of the beginning of the public offer or admission to trading. The final terms shall contain only information that relates to the securities note and shall not be used to supplement the base prospectus. Article 8(1)(a) shall apply in those cases.</p> | |
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servicing of the issue of the securities or with registrar on holding of the register of the inscribed securities owners (if such agreement were not concluded), except for issue of bearer securities;

4) submission to the National Securities and Stock Market Commission of an application and all the documents required for the registration of an issue of securities and the prospectus of the issue thereof;

5) registration of the issue of securities and the securities issue prospectus by the National Securities and Stock Market Commission, and issue of temporary certificate on registration of the securities issue;

6) assignment of an international identification number to the securities;

7) conclusion of agreement with underwriter (if needed);

8) conclusion of a contract with a depository on the service of the securities issue or with a registrar on the maintenance of a register of holders of registered securities (if absent), except of issue of bearer securities;

9) execution of the pre-emption right by the holders of securities in accordance with the procedure envisaged by the National Securities and Stock Market Commission;

10) entering into agreements with the first holders;

11) approval of results of the private placement of securities by the body of the issuer authorized to make such decisions;

12) execution of certificates of securities in case the securities are issued in certificated form;

13) making of changes in the charter of the joint-stock company in connection with the increase in the charter capital of a joint-stock company taking into account the results of the public placement of shares;

14) registration of changes in the charter of the joint-stock company with the state registration agencies;

15) submission of the private securities placement report to the National Securities and Stock Market Commission;

16) registration of the securities private placement report by the National Securities and Stock Market Commission;

17) obtaining of the securities issue registration certificate.

3. The issuer shall make a decision to be recorded in minutes on each placement of securities. The requirements for the

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| <p>content of the minutes shall be specified by the National Securities and Stock Market Commission. The authorized body of the issuer shall not have the right to modify the decision made to place securities in terms of the extent of rights under securities, the placement conditions, and the number of securities of the same issue, except for cases covered by laws and regulatory acts of the National Securities and Stock Market Commission.</p> <p>It shall be prohibited to restrict access of holders of securities to the original decision to place securities held by the issuer.</p> <p>4. The first placement of shares of a public (open joint-stock) company shall be solely a private placement among the founders.</p> <p>5. Requisites of the temporary certificate on registration of securities issue and certificate registration of securities issue are set by the National Securities and Stock Market Commission.</p> | | |
| <p>Article 29. Registration of the Issue and the Securities Issue Prospectus</p> | | |
| <p>1. An issuer submits to the National Securities and Stock Market Commission an application and documents necessary for registration of issue and securities issue prospectus, not later than within 60 days following making decision on the placement of the securities by the authorized body of the issuer.</p> <p>2. The National Securities and Stock Market Commission:</p> <p>1) after submission of an application and documents necessary for registration of issue and securities issue prospectus, shall simultaneously register the issue and securities issue prospectus or refuses to register within:</p> <p>10 business days – in case of availability of registered basic issue prospectus and inclusion of the issuer's securities to the stock exchange register;</p> <p>20 business days - in case of availability of registered basic issue prospectus and absence of the issuer's securities in the listing of the stock exchange;</p> <p>25 business days - in case of absence of registered basic issue prospectus;</p> <p>2) within the terms envisaged by paragraph 1 of this part returns the documents without consideration to the issuer if the documents are incomplete or do not comply with the requirements of the National Securities and Stock Market Commission regarding</p> | <p>2010/73/EU Article 5</p> <p>b. The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.</p> <p>Article 9</p> <p>b. A registration document, as referred to in Article 5(3), previously filed and approved, shall be valid for a period of up to 12 months. The registration document, updated in accordance with Article 12(2) or Article 16, accompanied by the securities note and the summary note shall be</p> | |

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| <p>their execution.</p> <p>3. The registration of the issue of securities and the securities issue prospectus by the National Securities and Stock Market Commission may not be considered as the guarantee of their value. The National Securities and Stock Market Commission shall only be liable for the completeness of the information contained in documents registered thereby, and the conformity thereof with requirements of the legislation. The liability for the adequacy of the data provided in documents submitted for the registration of the issue of securities and the securities issue prospectus shall be borne by the signatories of these documents.</p> <p>4. The list of documents required for the registration of the issue and the securities issue prospectus, and the procedure of the registration thereof shall be specified by the National Securities and Stock Market Commission.</p> <p>The additional requirements for the registration of issue and the securities issue prospectus of banks shall be specified by the National Securities and Stock Market Commission in concurrence with the National Bank of Ukraine.</p> <p>5. Grounds for refusal in registration of issue and issue prospectus of securities are non-compliance of the submitted documents with the requirements of the law, inaccuracy of information in the documents submitted and / or violation of the procedure for making decision on the placement of the securities established by legislation.</p> <p>If inaccurate information is discovered in the registered base securities issue prospectus, the National Securities and Stock Market Commission forwards to the issuer a writ on the necessity to remove such inaccuracy, registration and publishing of the respective amendments to the said prospectus.</p> | <p>considered to constitute a valid prospectus.</p> <p>Article 12</p> <p>2. In this case, the securities note shall provide information that would normally be provided in the registration document, where there has been a material change or recent development which could affect investors' assessments since the latest updated registration document, unless such information is provided in a supplement in accordance with Article 16. The securities and summary notes shall be subject to a separate approval</p> <p>2003/71/EC</p> <p>Article 12</p> <p>Prospectuses consisting of separate documents</p> <p>1. An issuer which already has a registration document approved by the competent authority shall be required to draw up only the securities note and the summary note when securities are offered to the public or admitted to trading on a regulated market.</p> <p>3. Where an issuer has only filed a registration document without approval, the entire documentation, including updated information, shall be subject to approval.</p> | |
| <p>Article 30. Requirements for the Securities Issue Prospectus</p> | | |
| <p>1. The securities issue prospectus must contain information about the issuer, its financial and business standing, the securities</p> | <p>2003/71/EC and 2010/73/EU</p> | |

subject to the placement.

2. Requirements for the disclosure of the information about the issuer and its financial and business standing shall be put forward by the National Securities and Stock Market Commission.

3. Information on securities include information on:

1) the securities subject to the placement, including:

kind, form of issue and existence, type (for shares), quantity and par value;

scope of rights pertaining to the securities;

conditions of placement (including buy-out and actions of the issuer with the bought-out securities) and redemption (for the securities having term of circulation);

2) the date of the decision on the placement of securities;

3) time frames of the commencement and the completion of entering into agreements with first holders;

4) procedure and forms of the payment of the yield on securities.

4. The securities issue prospectus must contain other details envisaged by this Law and other laws that define the specific features of the placement of certain kinds of securities, and/or the regulatory acts of the National Securities and Stock Market Commission.

5. The securities issue prospectus shall be signed by the chief executive officer of the issuer (the head of the executive body), the auditor, and authenticated with the seal of the issuer. The signatories of the issue prospectus shall confirm the adequacy of the data contained therein by doing so; the auditor shall confirm the trueness of the data checked by him.

If the issuer makes use of underwriting services for the public placement of an issue of securities, the issue prospectus shall be concurred with the underwriter.

Persons guilty of supplying false information in the securities issue prospectus shall be liable in accordance with laws of Ukraine.

6. The securities issue prospectus shall be registered with the National Securities and Stock Market Commission simultaneously with the registration of the issue of securities.

7. At the public placement after the registration of the securities issue prospectus, the issuer shall at least 10 days prior to entering into agreement with first holders of securities, envisaged

by the securities issue prospectus:

Publish the prospectus in the official printed media of the National Securities and Stock Market Commission in the scope established by it;

Submits the prospectus to the publicly available database of the National Securities and Stock Market Commission in full.

Within the terms established by the National Securities and Stock Market Commission, the issuer:

At public issue of securities - places the registered securities issue prospectus on its own web-site and the web-site of the stock exchange on which the placement of the securities shall be conducted;

At private issue of securities - does not publish the registered securities issue prospectus, but deliver it to the persons being the participants of this placement in accordance with the respective decision of the issuer.

8. Amendments to the registered securities issue prospectus are subject to registration by the National Securities and Stock Market Commission in accordance with the procedure set by it.

In case of the introduction of changes into the securities issue prospectus, the issuer must submit them for registration within 20 days of making of the said amendments.

In case of making amendments to the prospectus of issue of securities regarding which a decision was made:

To make public placement – the issuer have them registered and publish the respective information within 30 days of publishing of the issue prospectus, but at least 10 days prior to the commencement of entering into agreements with the first holders;

To make private placement - the issuer have them registered before the start of placement and delivers to the persons that in accordance with the decision on private issue of securities are the participants of such placement.

If it is impossible to undertake the actions envisaged by paragraphs two-five of this article within the prescribed time frame, the changes shall also include the information about the postponement of entering into agreements with the first holders.

The non-conformity of documents with requirements of the legislation, inaccuracy of information or the violation of the procedure of decision making on the introduction of changes

prescribed by the National Securities and Stock Market Commission shall constitute the grounds for the denial of the registration of changes to the securities issue prospectus.

The securities issue prospectus may be amended after the placement of securities in the event covered with part seven of Article 8 of this Law. The information about the said changes entered into the securities issue prospectus must be published within 15 days of the date of registration of changes in question.

Issuer shall not have the right to:

Make amendments to the issue prospectus after entering into agreements with first holders;

Enter into agreements with first holders before registration of amendments to the securities issue prospectus, and in case of public placement – also before publishing of the respective information.

Making amendments to the securities issue prospectus after entering into agreements with first holders is allowed only in the case envisaged by part seven article 8 of this Law. Information on such amendments to the securities issue prospectus must be published within 15 days following registration of these amendments.

9. An issuer may execute the issue prospectus for securities (except for equity securities) that are subject to public placement, in two parts (basic issue prospectus and issue prospectus for the securities of certain issue) that are subject to registration by the National Securities and Stock Market Commission in accordance with the procedure set by the Commission.

Basic issue prospectus – part of the issue prospectus for securities (except for equity securities) that are subject to public placement, containing information on the issuer, as well as other information envisaged by the issuer. The information included into the basic issue prospectus is not included into the issue prospectus for the securities of the respective issue.

An issuer submits to the National Securities and Stock Market Commission an application and documents necessary for registration of:

The basic securities issue prospectus and the first securities issue prospectus – not later than 60 days following making decision on approval of the basic securities issue prospectus and the first securities issue prospectus of the respective issue by the authorized

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| <p>body of the issuer;</p> <p>The following securities issue prospectus of the respective issue – not later than within 60 days following making decision on the placement of securities of this issue by the authorized body of the issuer.</p> <p>Basic securities issue prospectus and the first securities issue prospectus of the respective issue shall be submitted for registration simultaneously.</p> <p>10. The issuer shall be held liable for non-fulfillment of conditions of the securities issue prospectus, registered in the established order.</p> | | |
| <p>Article 31. Record of Registered Issues of Securities</p> | | |
| <p>1. The National Securities and Stock Market Commission shall keep the State Securities Issue Register in accordance with the procedure specified thereby.</p> <p>2. The National Securities and Stock Market Commission shall specify the procedure and ensure the open and free access of securities market members to the information contained in the register.</p> | n/a | Nothing to mention |
| <p>Article 32. Requirements for the Private Placement of Securities</p> | | |
| <p>1. Entering into the agreements with first holders during private placement of securities shall be carried out by the issuer by itself or with the help of underwriter that entered into underwriting agreement with the issuer. Specific features of private placement of securities are established by the law regulating the peculiarities of incorporation, activity and termination of joint-stock companies and legislation on collective investment undertakings.</p> <p>Underwriting agreement must comply with the requirements to the model agreement approved by the National Securities and Stock Market Commission.</p> <p>2. During private placement of securities agreements with the first holders are concluded by the date established in the securities issue prospectus, but not longer than two months following commencement of entering into the agreements.</p> <p>3. During private placement equity securities may not be sold at a price lower than their par value.</p> <p>4. It shall be prohibited to institute the pre-emptive right in</p> | n/a | Nothing to mention |

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| <p>respect of the acquisition of securities by some investors versus others, except for cases envisaged by the legislation.</p> <p>5. The actual quantity of the placed securities shall be indicated in the securities private placement report to be approved by the body of the issuer authorized to make such a decision, and submitted to the National Securities and Stock Market Commission.</p> <p>The body of the issuer authorized to make relevant decisions must approve the securities placement results within 60 days of the completion of the placement of securities referred to in the said securities' issue prospectus and in case of issue of shares – also to make the respective amendments to the Charter.</p> <p>6. Amount of the securities placed by way of private placement of securities may not exceed the amount of securities indicated in the prospectus of their issue, but may be less than the amount of securities indicated in the prospectus of their issue.</p> | | |
| <p>Article 33. Requirements for the Public Placement of Securities</p> | | |
| <p>1. Entering into agreements with the first holders of securities within public placement shall be performed by the issuer on its own or via an underwriter that has concluded an underwriting agreement with the issuer.</p> <p>The underwriting contract must match the requirements of a model contract approved by the National Securities and Stock Market Commission.</p> <p>Public joint-stock company must carry-out public placement of share of additional issue only in stock exchange.</p> <p>2. Entering into agreements with the first holders earlier than in 10 days of the publication of their issue prospectus hereunder shall be prohibited.</p> <p>3. The issuer must complete entering into agreements with the first holders of securities within the time frame envisaged by the decision on the public placement thereof, but within one year of the date of the commencement of entering into agreements with the first holders of securities.</p> <p>Every investor into securities must pay the price of the securities in full before the approval of results of placement of the respective securities issue.</p> <p>4. Equity securities may not be sold at a price lower than their par value during the public placement thereof.</p> | <p>n/a</p> | <p>Nothing to mention</p> |

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| <p>5. It shall be prohibited to institute the pre-emptive right in respect of the acquisition of securities by some investors versus others, except for cases envisaged by the legislation.</p> <p>6. The quantity of the publicly placed securities may not exceed the quantity of securities specified in the securities issue prospectus. The actually placed number of securities may be smaller than the quantity of securities specified in the issue prospectus.</p> <p>7. The actual quantity of the placed securities shall be indicated in the securities public placement report to be approved by the body of the issuer authorized to make such a decision, and submitted to the National Securities and Stock Market Commission.</p> <p>The body of the issuer authorized to make relevant decisions must approve the securities placement results within 60 days of the completion of entering into agreements with first holders of securities referred to in the said securities' issue prospectus, and in case of shares' issue – also to make amendments to the charter.</p> | | |
| <p>Article 34. Placement of securities with participation of underwriter</p> | | |
| <p>1. The requirements for the transactions performed by the underwriter shall be specified by the National Securities and Stock Market Commission.</p> | n/a | Nothing to mention |
| <p>Article 35. Securities Placement Report</p> | | |
| <p>1. The issuer shall submit share placement results report and other documents needed for the registration of the report prescribed by the National Securities and Stock Market Commission to the National Securities and Stock Market Commission within 30 days of the registration of the charter (changes in the charter) with the state registration agencies.</p> <p>The issuer of securities (other than shares) shall submit a securities (other than shares) placement results report and other documents needed for the registration of the report prescribed by the National Securities and Stock Market Commission to the National Securities and Stock Market Commission within 15 days of the approval of results of the placement of securities (other than shares) by the issuer's body authorized to make such decisions.</p> <p>The National Securities and Stock Market Commission</p> | <p>2004/109/EC Article 21 1. The home Member State shall ensure that the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism referred to in paragraph 2. The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information. The home</p> | |

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| <p>shall specify requirements for the disclosure of the information contained in the open (public) securities placement results report.</p> <p>2. Within 15 days of receipt of the necessary documents from the issuer, the National Securities and Stock Market Commission must make a decision to register the report or to deny the registration thereof.</p> <p>3. The violation of requirements of the legislation related to the placement of securities in particular violation of the established procedure of making decisions on approval of placement results, and considering the securities issue as unfair, and also non-conformity of the submitted documents with the requirements of legislation shall constitute the ground for the denial of the registration of a securities public placement report.</p> <p>4. The National Securities and Stock Market Commission shall issue the securities issue registration certificate to the issuer within two weeks of the registration of the securities placement report.</p> <p>5. In case of the placement of bonds, the issuer shall submit a bond redemption report to the National Securities and Stock Market Commission within 15 days of the completion of the redemption of bonds.</p> | <p>Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The home Member State may not impose an obligation to use only media whose operators are established on its territory.</p> <p>2. The home Member State shall ensure that there is at least one officially appointed mechanism for the central storage of regulated information. These mechanisms should comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users and shall be aligned with the filing procedure under Article 19(1).</p> | |
| <p align="center">Article 36. Unfair Issue of Securities</p> | | |
| <p>1. Unfair issue of securities are the acts that violate the issue procedure prescribed by this Law and constitute the basis for the decision to deny the registration of the issue prospectus and the issue of securities, or the suspension of the public placement of securities.</p> <p>2. The following shall be the grounds for declaring a securities issue unfair:</p> <p>violation of requirements of this Law by the issuer, the lack of compliance of documents submitted by the issuer or the information contained therein with requirements of the legislation and/or the list specified by the National Securities and Stock Market Commission:</p> <p>violation of the procedure of making a decision on the placement of securities;</p> <p>entry of the false data into the securities issue prospectus and the documents submitted for the registration of the issue of securities and the securities issue prospectus;</p> <p>systemic or gross violation of investor rights by the issuer.</p> | <p>2004/109/EC Article 28</p> <p>1. Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure, in conformity with their national law, that at least the appropriate administrative measures may be taken or civil and/or administrative penalties imposed in respect of the persons responsible, where the provisions adopted in accordance with this Directive have not been complied with. Member States shall ensure that those measures are effective, proportionate and dissuasive.</p> <p>2. Member States shall provide that the competent authority may disclose to the public every measure taken or penalty imposed for infringement of the provisions adopted</p> | |

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| <p>3. The procedure of making a decision to deny the registration of the issue prospectus and the issue of securities, the suspension of the public placement thereof shall be specified by the National Securities and Stock Market Commission.</p> <p>4. In case of the unfair issue, the National Securities and Stock Market Commission shall have the right to temporarily suspend the placement of securities.</p> <p>5. The suspended public issue of securities shall be resumed by decision of the National Securities and Stock Market Commission only until the expiry of the time frame for entering into agreements with first holders of securities specified in the securities issue prospectus subject to the elimination of violations that have become the grounds for the suspension of the placement.</p> <p>6. If the violations that have caused the suspension of the placement of securities have not been eliminated within 15 days of the relevant decision made by the National Securities and Stock Market Commission or if the documents confirming the elimination of violations have not been sent to the National Securities and Stock Market Commission, the latter shall make a decision to declare the issue of securities invalid.</p> <p>7. If the issue is found invalid or if results of the placement of securities are not approved within time frames prescribed by the legislation by the issuer's body authorized to make such decisions, or if the changes associated with the increase in the charter capital of a joint-stock company taking account of the share placement results are not entered into the charter (not approved) within time frames prescribed by the legislation, the issuer of securities must return the money (the property, the interests in property) received as the payment for the placed securities to investors, while investors must return the securities certificate (certificates), if any, to the issuer within the time frames specified in the issue prospectus, but not exceeding six months in accordance with the procedure prescribed by the National Securities and Stock Market Commission.</p> <p>Issuers and investors shall pay a fine at the rate of the double discount rate of the National Bank of Ukraine for the failure to comply with time frames specified in paragraph one of this part.</p> | <p>in accordance with this Directive, save where such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.</p> | |
| <p>Article 37. Placement of Securities of Foreign Issuers on the Territory of Ukraine and Securities of Ukrainian Issuers Outside Ukraine</p> | | |

1. The specific features of the placement and the circulation of securities of foreign issuers on the territory of Ukraine shall be specified by the National Securities and Stock Market Commission in accordance with the legislation of Ukraine.

2. Ukrainian issuers may place securities outside Ukraine solely on the basis of a permit from the National Securities and Stock Market Commission, except for the foreign government loan bonds of Ukraine.

The permit for the placement of securities of Ukrainian issuers outside Ukraine shall be granted subject to the performance of the following requirements:

registration of the issue of securities;

admission of securities for the exchange bidding at one of the Ukrainian stock exchanges;

conformity of the number of securities placed outside Ukraine with the target ratio prescribed by the National Securities and Stock Market Commission.

2003/71/EC

Article 17

Community scope of approvals of prospectuses

1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.

2. If there are significant new factors, material mistakes or inaccuracies, as referred to in Article 16, arising since the approval of the prospectus, the competent authority of the home Member State shall require the publication of a supplement to be approved as provided for in Article 13(1). The competent authority of the host Member State may draw the attention of the competent authority of the home Member State to the need for any new information.

2010/73/EU

17. The competent authority of the home Member State shall, at the request of the

Suggestion to insert:

2003/71/EC

Article 19

Use of languages

1. Where an offer to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State.

2. Where an offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission, as the case may be. The competent authority of each host Member State may only require that the summary be translated into its official language(s).

For the purpose of the scrutiny by the competent authority of the home Member State, the prospectus shall be drawn up either in a language accepted by this authority or in a language customary in the sphere of international finance, at the

issuer or the person responsible for drawing up the prospectus and within three working days following receipt of that request or, where the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus, notify the competent authority of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive and with a copy of that prospectus. If applicable, that notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus. The issuer or the person responsible for drawing up the prospectus shall also be notified of the certificate of approval at the same time as the competent authority of the host Member State.

2003/71/EC

Article 18

2. The application of the provisions of Article 8(2) and (3) shall be stated in the certificate, as well as its justification.

choice of the issuer, offeror or person asking for admission to trading, as the case may be.

3. Where an offer to the public is made or admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission to trading, as the case may be. The competent authority of each host Member State may only require that the summary referred to in Article 5(2) be translated into its official language(s).

4. Where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least EUR 50000 is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission to

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| | | trading, as the case may be. Member States may choose to require in their national legislation that a summary be drawn up in their official language(s). |
| Article 38. Issue of securities of collective investment undertakings in case of the public and private placement thereof | | |
| 1. The specific features of the issue, the placement, the circulation and the repurchase of collective investment undertakings in case of the public and private placement thereof shall be specified by the legislation. | | National discretion |
| Section V. INFORMATION DISCLOSURE ON THE STOCK MARKET Article 39. Requirements for the information disclosure 1. Disclosure of information on stock market are carried out by the securities issuers by means of: Its publishing in the publicly available database of the National Securities and Stock Market Commission on securities market; Its publishing in one of the official printed media of Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine or the National Securities and Stock Market Commission; Its submission to the National Securities and Stock Market Commission. Issuer of securities must disclose information in accordance with the requirements, in the scope and the terms established by this Law and regulations of the National Securities and Stock Market Commission. Additional requirements to the disclosure of information by the issuer of securities that underwent the listing procedure on a stock exchange, are established by the National Securities and Stock Market Commission. 2. Information about owners of large blocks of shares (10 per cent and more) shall be supplied to the National Securities and Stock Market Commission and the issuer of securities by the person that records the ownership of the shares of the issuer in the depository system of Ukraine within the time frames, according to | 2004/109/EC <i>Article 21</i> Access to regulated information 1. The home Member State shall ensure that the issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, discloses regulated information in a manner ensuring fast access to such information on a non-discriminatory basis and makes it available to the officially appointed mechanism referred to in paragraph 2. The issuer, or the person who has applied for admission to trading on a regulated market without the issuer's consent, may not charge investors any specific cost for providing the information. The home Member State shall require the issuer to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The home Member State may not impose an obligation to use only media whose operators are established on its territory. 2. The home Member State shall ensure that there is at least one officially appointed mechanism for the central storage of regulated | |

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| <p>the procedure and in the format prescribed by the National Securities and Stock Market Commission.</p> <p>The information about owners of large blocks of shares (10 per cent and more) shall be open and disclosed by the National Securities and Stock Market Commission by means of the publication thereof in the public information securities market database of the National Securities and Stock Market Commission.</p> | <p>information. These mechanisms should comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users and shall be aligned with the filing procedure under Article 19(1).</p> <p>3. Where securities are admitted to trading on a regulated market in only one host Member State and not in the home Member State, the host Member State shall ensure disclosure of regulated information in accordance with the requirements referred to in paragraph 1.</p> | |
| <p>Article 40. Regular Information about the Issuer</p> | | |
| <p>1. Regular information about the issuer shall be understood as the annual and quarterly reports on the financial and business performance of the issuer disclosed on stock market including by submission to the National Securities and Stock Market Commission.</p> <p>2. A calendar year shall be the reporting period for the compilation of the annual information about the issuer.</p> <p>The first reporting period of an issuer may be less than 12 months and shall be counted:</p> <p>from the date of the state registration of the company up to and including 31 December of the reporting year in case of joint stock companies;</p> <p>from the securities (other than shares) issue registration date up to and including 31 December of the reporting year in case of issue of securities other than shares.</p> <p>3. The annual information about the issuer must contain the following information:</p> <p>name and location of the issuer, and the amount of its charter capital;</p> <p>management body of the issuer, its officers and founders;</p> <p>business and financial activities of the issuer;</p> <p>securities of the issuer (the kind, the issue form, the type, the number), the placement and the listing of securities;</p> <p>the annual financial report;</p> <p>the auditor's opinion;</p> | <p>2004/109/EC</p> <p>Articles 4 Annual financial reports</p> <p>Article 5 Half-yearly financial reports</p> <p>Article 6 Interim management statements</p> <p>Article 7 Responsibility and liability</p> <p>Article 8 Exemptions</p> | |

list of owners of major share stocks (10 percent and more) with indication of the amount, tyoe and/or class of the shares owned by them.

The issuer shall have the right to disclose other information additionally.

4. The annual information about the issuer shall be open and must be disclosed by the issuer not later than 30 April of the year that follows the reporting year by means of:

Its publishing in the publicly available database of the National Securities and Stock Market Commission on securities market;

Its publishing in one of the official printed media of Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine or the National Securities and Stock Market Commission;

Its submission on the issuer's web-site.

5. Quarters of the current year shall be the reporting period for the compilation of the quarterly information about the issuer.

The quarterly information about the issuer must contain the following information:

name and location of the issuer, and the amount of its charter capital;

management body of the issuer, its officers and founders;

business and financial activities of the issuer;

securities of the issuer (the kind, the issue form, the type, the number);

quarterly financial reports;

the participation of the issuer in the establishment of other enterprises, institutions and organizations.

The issuer shall have the right to provide other information additionally.

6. Time frames, procedure and forms of submission of the regular (annual and quarterly) information and the additional information that about the issuer shall be specified by the National Securities and Stock Market Commission. Public joint stock companies shall additionally disclose the information about their activities on the basis of the international accounting standards in accordance with the procedure prescribed by the National Securities and Stock Market Commission.

The National Securities and Stock Market Commission shall put forward additional requirements for the disclosure of the

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| <p>regular information about the issuer and take measures in respect of the disclosure thereof.</p> <p>7. Specifics of the submission and publication of the regular information by collective investment undertakings shall be specified by the legislation.</p> | | |
| <p>Article 41. Irregular information on the issuer</p> | | |
| <p>1. Irregular Information shall is the information that includes:</p> <ul style="list-style-type: none"> making a decision to place securities in an amount that exceeds 25 per cent of the charter capital; making a decision on buy-out of own shares, except for the shares of corporate investment funds of interval and open type; facts of the listing and delisting of securities on the stock exchange; obtainment of a loan or a credit in an amount that exceeds 25 per cent of the issuer's assets; changes in the complement of officers of the issuer; changes among shareholders that own 10 and more per cent of the voting shares; decisions of the issuer to establish or terminate branches or representative offices; decisions of the supreme body of the issuer to reduce the charter capital; institution of the issuer bankruptcy case, the issue of a resolution on the sanation thereof; a decision of the supreme body of the issuer or court on the termination or the bankruptcy of the issuer. <p>2. The time frames, the procedure and the forms of submission of the irregular information and the additional information shall be specified by the National Securities and Stock Market Commission.</p> <p>3. The irregular information shall be open and disclosed by means of:</p> <ul style="list-style-type: none"> its publishing in the publicly available database of the National Securities and Stock Market Commission on securities market; its publishing in one of the official printed media of Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine or the National Securities and Stock Market Commission; | <p>n/a</p> | <p>Nothing to mention</p> |

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| <p>its submission on the issuer's web-site.</p> <p>4. The National Securities and Stock Market Commission shall put forward additional requirements for the disclosure of the issuer-specific information and take measures in respect of the disclosure thereof.</p> | | |
| <p>Article 42. Procedure of Disclosure of the Information contained in the system of depository record of securities</p> | | |
| <p>1. The Information contained in the system of depository record of securities shall be disclosed in cases and in accordance with the procedure established by the Law "On Depository System of Ukraine".</p> | n/a | Nothing to mention |
| <p>Article 43. Disclosure of the Information about Professional Stock Market Members</p> <p>1. The National Securities and Stock Market Commission shall cause the information about the professional stock market members (the number, the issue date and the validity period of the licence, the scope of powers under the licence, the chief executive officer and the authorised officer operating on its behalf) to be published.</p> | n/a | Nothing to mention |
| <p>Article 44. Insider Information</p> | | |
| <p>1. Insider information is the non-published information about the issuer, its securities and derivatives circulating on the stock exchange or transactions therewith, if the disclosure of this information can affect the value of such securities and derivatives substantially, if this information must be disclosed in accordance with requirements specified by this Law.</p> <p>2. The information about the valuation of securities and/or the assessment of the financial and business standing of the issuer shall not be considered insider information, if it has been obtained solely on the basis of the disclosed information or the information from other public sources not prohibited by the legislation.</p> <p>3. The information shall not be deemed to be insider information upon the disclosure thereof in accordance with the law.</p> | 2003/6/EC | *Inside information |
| <p>Article 45. Prohibition of Use of the Insider Information</p> | | |
| <p>1. A person in possession of the insider information shall be prohibited from:</p> <p>executing transactions focused on the acquisition or the disposal of securities and derivatives, to which the insider</p> | <p>2003/6/EC Article 2</p> <p>1. Member States shall prohibit any person referred to in the second</p> | |

information is related, until the disclosure of such information to own benefit or to the benefit of other parties;

providing the insider information or granting access thereto to other parties, except for the disclosure of the information within the scope of the performance of professional, labour or service duties, and in other cases specified by the legislation;

giving to any person recommendations in respect of the acquisition or the disposal of securities and derivatives, in whose respect it has the insider information until the said information is disclosed.

2. A stock exchange must notify the National Securities and Stock Market Commission of transactions with securities and/or derivatives occurring at the said stock exchange in case of the suspected actual or possible use of the insider information in the course of such transactions.

4. The liability for the illegal use of the insider information shall be instituted by law.

subparagraph who possesses inside information from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

The first subparagraph shall apply to any person who possesses that information:

(a) by virtue of his membership of the administrative, management or supervisory bodies of the issuer; or

(b) by virtue of his holding in the capital of the issuer; or

(c) by virtue of his having access to the information through the exercise of his employment, profession or duties; or

(d) by virtue of his criminal activities.

2. Where the person referred to in paragraph 1 is a legal person, the prohibition laid down in that paragraph shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

3. This Article shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before the person concerned possessed inside information.

Article 3

Member States shall prohibit any person subject to the prohibition laid down in Article 2 from:

(a) disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;

(b) recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Article 4

Member States shall ensure that Articles 2 and 3 also apply to any person, other than the persons referred to in those Articles, who possesses inside information while that person knows, or ought to have known, that it is inside information.

Article 6

1. Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuers.

Without prejudice to any measures taken to comply with the provisions of the first subparagraph, Member States shall ensure that issuers, for an appropriate period, post on their Internet sites all inside information that they are required to disclose publicly.

2. An issuer may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his

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| | <p>legitimate interests provided that such omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information. Member States may require that an issuer shall without delay inform the competent authority of the decision to delay the public disclosure of inside information.</p> <p>3. Member States shall require that, whenever an issuer, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, as referred to in Article 3(a), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure and promptly in the case of a non-intentional disclosure.</p> | |
| <p>Article 46. Advertising of securities and stock market</p> | | |
| <p>1. Advertising of securities and stock market is regulated by the Law of Ukraine "On Advertising" with regard to the provisions of this Law and the Law of Ukraine "On the State Regulation of Securities Market of Ukraine".</p> | <p>2003/71/EC Article 15</p> <p>Advertisements</p> <p>1. Any type of advertisements relating either to an offer to the public of securities or to an admission to trading on a regulated market shall observe the principles contained in paragraphs 2 to 5. Paragraphs 2 to 4 shall apply only to cases where the issuer, the offeror or the person applying for admission to trading is covered by the obligation to draw up a prospectus.</p> <p>2. Advertisements shall state that a prospectus has been or will be published</p> | |

and indicate where investors are or will be able to obtain it.

3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate, or misleading. This information shall also be consistent with the information contained in the prospectus, if already published, or with the information required to be in the prospectus, if the prospectus is published afterwards.

4. In any case, all information concerning the offer to the public or the admission to trading on a regulated market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

5. When according to this Directive no prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where a prospectus is required to be published, such information shall be included in the prospectus or in a supplement to the prospectus in accordance with Article 16(1).

6. The competent authority of the home Member State shall have the power to exercise control over the compliance of advertising activity, relating to a public

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| | offer of securities or an admission to trading on a regulated market, with the principles referred to in paragraphs 2 to 5. | |
| Section VI. SECURITIES MARKET REGULATION Article 47. Securities Market Regulation | | |
| <p>1. The stock market shall be regulated by the state and self-regulated organizations.</p> <p>2. The state regulation of the securities market shall be performed by the National Securities and Stock Market Commission, and other state authorities within the scope of their powers defined by law.</p> | n/a | |
| Article 48. Associations of professional stock market participants | | |
| <p>Associations of professional stock market participants may unite the participants that carry-out different types of professional activity in the stock market and must be registered in accordance with the procedure established by the National Securities and Stock Market Commission.</p> <p>The ground for making decision on registration of the association of the professional participants of stock market shall be its compliance with the following requirements:</p> <p>The association must include at least 35 percent of the professional stock market participants of each type of professional activity, envisaged by this Law which it unites;</p> <p>Availability of rules and standards of professional activity on stock market obligatory for execution by all members of the association;</p> <p>Status of non-profit organization;</p> <p>Ownership of assets in amount of not less than UAH 600,000 for ensuring of the charter activity.</p> <p>Association of professional stock market participants must comply with the requirements established by this article during the whole period of its activity.</p> <p>The grounds for denial in registration of the professional stock market participants may include:</p> <p>Absence of documents envisaged by legislation, necessary for registration of the association;</p> <p>Non-compliance of the submitted documents and</p> | skipped | skipped |

information with the requirements of the law;

Non-fulfillment of requirements of this part.

After removal of the violation / violations that made the grounds for denial by the National Securities and Stock Market Commission in registration of the association, such association may re-submit the documents envisaged by legislation for its registration as the association of professional stock market participants.

Annulment of registration of association of professional stock market participants is carried out in accordance with the resolution of the National Securities and Stock Market Commission in the following cases:

On the basis of the respective application of the association of professional stock market participants;

Non-fulfillment by the association of professional stock market participants of the decisions of the National Securities and Stock Market Commission, orders of the authorized official of the Commission;

Discovering by the National Securities and Stock Market Commission of the fact of non-compliance of the association of professional stock market participants with the requirements established by this part.

2. Association of professional stock market participants obtains status of self-regulating organization (the SRO) under certain type of professional activity on stock market as of the day of granting of this status by the National Securities and Stock Market Commission. The procedure for granting to the association of professional stock market participants with the status of SRO and deprivation of SRO status are established by the National Securities and Stock Market Commission with account for the requirements of this Law.

One association of professional stock market participants may obtain the SRO status under a number of types of professional activity on the stock market subject to compliance with the third part of this article.

Obtaining by an association of a SRO status, entry into it of the professional stock market participants, approval of rules, regulations and other documents of the SRO and making amendments to them are not considered as the concurred actions of commercial companies.

After obtaining by an association of professional stock market participants of SRO status under certain type of professional activity on the stock market, the professional participants of the stock market – members of other professional associations registered by the National Securities and Stock Market Commission under this type of professional activity, must in three-month term become members of such SRO and remain its members during the whole term of the SRO status availability.

3. The following documents must be submitted to the National Securities and Stock Market Commission and the following requirements must be met by an association for obtaining of the SRO status:

Unite more than 75% of the professional stock market participants under one type of the professional activity defined by this Law;

Approve internal documents of the SRO (internal rules of the SRO, Rules (standards) of professional activity on stock market, other internal documents of the SRO) for realization of the functions defined by the Charter of the association;

Head and deputy heads of the executive body of the SRO, heads of the structural divisions of the SRO may not be in labor relations with the members of the SRO and be in direct or indirect control relations with the members of SRO, have a pending criminal record for acquisitive or official crimes, and must have record of services on stock market for not less than five years.

Requirements to the premises of the SRO, hardware and software, qualification requirements to the heads of the SRO, requirements to the amount of assets of the SRO are established by the regulations of the National Securities and Stock Market Commission.

SRO must comply with the requirements established by this article, during the whole term of validity of the certificate, envisaged by part four of this article.

4. Following the result of consideration of the documents submitted by the association, the National Securities and Stock Market Commission may make a decision to provide the association of professional stock market participants with the SRO status and issue the respective certificate (the SRO certificate), which term is set by the decision of the National Securities and Stock Market Commission and may not be less than five years, or

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| <p>refuses to provide the association with the SRO status.</p> <p>The grounds for the refusal in granting of the SRO status include:</p> <p>Absence of documents envisaged by legislation for registration of the association as the SRO;</p> <p>Non-compliance of the submitted documents and information with the legislative requirements;</p> <p>Non-fulfillment of requirements of the third part of this article.</p> <p>After removal of violation / violations being the grounds for refusal by the National Securities and Stock Market Commission to provide association with SRO status, such association may re-submit documents, envisaged by law, for obtaining of the SRO status.</p> <p>5. Deprivation of the SRO status is carried out upon decision of the National Securities and Stock Market Commission in the following cases:</p> <p>On the basis of the SRO's application on cancellation of the SRO certificate by the Commission;</p> <p>Non-fulfillment by the SRO of the Commission's decisions, orders of the authorized persons of the Commission;</p> <p>Discovery by the Commission of the fact of non-compliance of the SRO with the requirements set by this article.</p> | | |
| <p>Article 49. Authorities of association of professional stock market participants and self-regulating organization of professional stock market participants</p> | | |
| <p>1. Associations of professional stock market participants, including the ones that obtained the SRO status, have the following authorities:</p> <p>1) introduction of professional ethics norms into the practical activity of the participants of the association;</p> <p>2) development and approval of guidelines regarding provision of the respective type of professional activity on stock market;</p> <p>3) introduction of efficient mechanisms for settlement of disputes related to the professional activity of the association's participants;</p> <p>4) monitor of compliance with the Charter and internal documents of the association by its participants.</p> | <p>skipped</p> | <p>skipped</p> |

2. In addition to the authorities envisaged by the first part of this article, SROs have the following additional authorities:

1) development and approval of Rules (standards) for provision of the respective type of professional activity on stock market obligatory for the members of the SRO, excluding those Rules (standards) directly established by law;

2) development of arrangements, aimed at prevention of violation of legislation and internal documents of the SRO by the members of the SRO, including at termination of their professional activity by them;

3) application of disciplinary measure for the members of SRO in case of discovery of violation of the SRO's Charter and internal documents.

3. Associations of professional stock market participants (including SRO) may execute other authorities envisaged by law and the charter of this association, if the authorities envisaged by it do not contradict to the legislative requirements and the SRO may also additionally execute the authorities envisaged by the respective resolution of the National Securities and Stock Market Commission on delegation of authorities on regulation of stock market, approved in accordance with part five of this article.

4. SRO are liable for non-fulfillment or improper fulfillment of authorities vested with it in accordance with the procedure established by law.

5. The National Securities and Stock Market Commission may delegate to the SRO the authorities on regulation of stock market, envisaged by the laws of Ukraine, in accordance with the procedure set by it and upon application of this SRO.

The National Securities and Stock Market Commission makes decision to delegate or refuse in delegation of the authorities to the SRO within three-month term following the receipt of the application.

The decision to delegate authorities to SRO shall include:

Name of the SRO, to which the authorities are delegated;

The authorities being delegated;

The term for which the authorities are delegated that may not be more than the validity term of the SRO certificate;

State control over the fulfillment of the delegated authorities.

The decision delegation of authorities to SRO is subject to

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| the state registration with the Ministry of Justice of Ukraine as regulatory act and publication in accordance with legislation. | | |
| Section VII. FINAL PROVISIONS | | |
| <p>1. This Law shall become effective in 30 days of its publication, except for:</p> <p style="padding-left: 2em;">part three of Article 8, which shall become effective in 2 years of the publication of this Law;</p> <p style="padding-left: 2em;">paragraph two of sub-item four of item three of Section VII "Final Provisions", which shall become effective in 2 years of the publication of this Law;</p> <p style="padding-left: 2em;">part one of Article 48, which shall become effective in 3 years of the publication of this Law.</p> <p>2. In connection with this Law's becoming effective, the following acts shall become null and void:</p> <p style="padding-left: 2em;">the Law of Ukraine "On Securities and Stock Exchange" (Vidomosti Verkhovnoyi Rady Ukrayiny, 1991, issue 38, page 508; 1992, issue 47, page 645; 1995, issue 14, page 90, page 93; 1996, issue 40, page 185; 1997, issue 45, page 285; 1999, issue 26, page 213, issue 31, page 252; 2003, issue 30, page 247, issue 38, page 313; 2004, issue 13, page 181, issue 19, page 271; 2005, issue 42, page 465; with changes introduced under Law of Ukraine #3201-IV of December 15, 2005;</p> <p style="padding-left: 2em;">Resolution of the Supreme Council (Parliament) of the Ukrainian Soviet Socialist Republic of 18 June 1991 "On Procedure of Effecting the Law of the Ukrainian RSR "On Securities and Stock Exchange" (Vidomosti Verkhovnoyi Rady Ukrayiny, 1991, issue 38, page 509).</p> <p>3. Changes shall be introduced in the following legislative acts of Ukraine:</p> <p style="padding-left: 2em;">1) the Criminal Code of Ukraine (Vidomosti Verkhovnoyi Rady Ukrayiny, 2001, issue 25-26, page 131) shall be amended by adding Article 232-1 of the following contents:</p> <p style="padding-left: 4em;">"Article 232-1. Divulgence or Utilisation of Non-disclosed Information about an Issuer Or Its Securities</p> <p style="padding-left: 4em;">The deliberate divulgence or the utilisation otherwise of the information about an issuer, its securities or legal instruments in their respect (the insider information) that has not been disclosed or published otherwise by a person who is aware of the said information in connection with the professional or service</p> | skipped | skipped |

activities, if it has resulted in the substantial material damage to interests of the state or interests of legal entities or individuals, -

shall be punished with the restriction of liberties for a period up to three years or the imprisonment for the same period with the waiver of the right to occupy certain positions or exercise certain activities for a period up to three years";

3) in the [Commercial Code of Ukraine](#) (Vidomosti Verkhovnoyi Rady Ukrayiny, 2003, issue 18-22, page 144 with changes introduced under Law of Ukraine #3201-IV of December 15, 2005 :

the words "savings certificates" in the second sentence of part two of Article 163 shall be replaced with the words "savings certificates (certificates of deposit)";

parts four, five and seven of Article 164 shall be set forth in the following wording:

"4. Business entities, whose exclusive business is the asset management of mutual funds, shall have the right to issue investment certificates.

5. Bank offices that accept deposits of monies from legal entities and individuals shall issue them written certificates that certify the right of depositors to obtain the deposit principal and the interest after the expiry of the specified term (savings certificates (certificates of deposit))";

"7. Business entities shall have the right to issue promissory notes into the circulation in accordance with the procedure prescribed by law to certify the absolute monetary liability of a drawer or its order to a third party to pay a specific sum to the promissory note holder (drawee) after the onset of the payment deadline";

part two of Article 356 shall be deleted;

part one of Article 360 shall be set forth in the following wording:

"1. The stock exchange shall be established to support the operation of the securities market. The procedure of the establishment and the operation of a stock exchange shall be defined by law";

4) in the [Civil Code of Ukraine](#) (Vidomosti Verkhovnoyi Rady Ukrayiny, 2003, issue 40-44, page 356):

part two of Article 158 shall be deleted;

in part one of Article 194 the words "issued" and "issue"

shall be replaced with the words "placed" and "placement" respectively;

in item 3 of part one of Article 195 and part two of Article 197, the word "issue" shall be replaced with the word "placement";

in part three of Article 195, the words "issue" shall be replaced with the word "exist";

in part one of Article 198:

in the first sentence, the word "issued" shall be replaced with the word "placed";

the second sentence after the word "holder" shall be amended by adding the word "order";

5) in the Law of Ukraine ["On State Regulation of the Securities Market in Ukraine"](#) (Vidomosti Verkhovnoyi Rady Ukrayiny, 1996, issue 51, page 292; 1998, issue 10, page 36; 1999, issue 38, page 339; 2001, issue 21, page 103; 2002, issue 16, page 114, issue 17, page 117, issue 29, page 194; 2004, issue 13, page 181; 2005, issue 42, page 465, page 466, issue 48, page 481; with changes introduced under Laws of Ukraine #3201-IV of December 15, 2005 and [#3273-IV of December 22, 2005](#):

paragraphs three, four, six to eight of Article 1 shall be deleted;

the name and parts one and two of Article 4 shall be set forth in the following wording:

"Article 4. Licensable Activities on the Securities Market

The State Commission for Securities and Stock Market shall issue licences for the following activities on the securities market in accordance with the procedure instituted thereby:

1) broker business understood as the conclusion of contracts governed by the civil law (for instance, commission or agency contracts) in respect of securities by a securities trader on own behalf (on behalf of another entity), on instruction and at the expense of another entity;

2) dealer business understood as the conclusion of contracts governed by the civil law in respect of securities by a securities trader on own behalf and at own expense for the re-sale purposes, except for cases covered by law;

3) underwriting understood as the floatation (subscription, sale) of securities by a securities trader on instruction, on behalf and at expense of the issuer;

4) securities management activities understood as the

activities exercised by a securities trader on own behalf against fee during a certain period on the basis of a contract on the management of the securities and monies intended for the investment into securities that are entrusted to him, as well as the management of the securities and monies obtained in the course of such management and owned by the trustor, in the interests of the trustor or the interests of third parties nominated by the trustor;

5) asset management understood as the professional activity of a member of the stock market being an asset management company exercised thereby against a fee on own behalf or on the basis of an appropriate contract for the management of assets owned by institutional investors;

6) "mortgage cover management activities understood as the activities exercised against a fee by a bank or another financial institution under the relevant mortgage cover management contract;

7) depository business of a securities depository shall be understood as the activities that involve the provision of the securities custody services, the service of instruments involving the securities on accounts of the securities custodians, as well as the transactions of an issuer involving the securities issued thereby;

8) depository business of a securities custodian understood as the activities that involve the provision of the securities custody services, the service of instruments involving the securities on accounts of the holders of securities;

9) maintenance of a registry of holders of registered securities understood as the collection, recording, processing, storage and provision of data comprising a system of a register of holders of registered securities in respect of the registered securities, issuers and holders thereof;

10) stock market trade organisation understood as the activity of a professional member of the stock market (trade organiser) that involves the creation of organisational, technological, information, legal and other conditions for the accumulation and the dissemination of the information on the supply and the demand, the holding of regular biddings for financial instruments at the instituted rules, the centralised conclusion and performance of contracts in respect of financial instruments, including the performance of the related clearing and settlements, and the settlement of disputes between members of the trade organiser;

11) settlement and clearing understood as the activity that involves the determination of the mutual liabilities under contracts in respect of securities and the settlements thereunder.

The State Commission for Securities and Stock Market may issue a single-sheet licence for several lines of business in case of the exercise of several activities covered with part one of this article by professional members of the securities market in accordance with the procedure set thereby";

in part two of Article 7:

item 13 shall be set forth in the following wording:

"13) control the compliance with the legislation and appoint state representatives at stock exchanges, in depositories and trade information systems";

new item 14-1 of the following contents shall be added:

"14-1) specify the specimen and issue a certificate of the registration of an association of professional stock market members as a self-regulated organisation";

Article 17 shall be deleted;

6) in the Law of Ukraine ["On Advertising"](#) (Vidomosti Verkhovnoyi Rady Ukrayiny, 2004, issue 8, page 62):

part four of Article 25 shall be amended by adding a paragraph of the following contents:

"to use the information about the yield of securities or the value of the profit obtained by the issuer in the past without mentioning that the profit in question does not guarantee the future revenues";

part one of Article 26 shall be amended by adding new paragraphs of the following contents:

"the Ministry of Finance of Ukraine in respect of the advertising for the government securities;

the State Commission for Securities and Stock Market in respect of the advertising on the stock market";

7) paragraph two of part one of Article 27 of the Law of Ukraine of December 22, 2005 ["On Mortgage Bonds"](#) after the words "circulation of mortgage bonds" shall be amended by adding the words "mortgage cover and the activities of the mortgage cover manager";

8) sub-item "y" of item 3 of Article 3 of Decree of the Cabinet of Ministers of Ukraine [#7-93 of January 21, 1993](#) "On State Duty" (Vidomosti Verkhovnoyi Rady Ukrayiny, 1993, issue

13, page 113; 1995, issue 30, page 229; 2004, issue 2, page 6; with changes introduced under Law of Ukraine [#3273-IV of December 22, 2005](#) after the words "as well as for the authentication of contracts" shall be amended by adding the word "cession".

4. Members of the stock market must bring their activities into compliance with this Law within three years of the effective date of this Law.

Members of the stock market licensed to exercise professional stock market activities shall operate in accordance with the obtained licences for three years after the effective date of this Law. Members of the stock market licensed to exercise the securities market trading organisation activities shall exercise the stock market trading organisation activities as trade organisers.

The exercise of the relevant professional activity after the expiry of the validity period of the licence shall be allowed on condition of the obtainment of a new licence in accordance with this Law.

5. The Cabinet of Ministers of Ukraine and the National Bank of Ukraine shall prepare the draft Law of Ukraine on the amendment of the Law of Ukraine "On Payment Systems and Money Transfers in Ukraine" in respect of the opening of a client account by a securities trader for the purposes of the exercise of the securities management activities, and submit the same to the Supreme Council (Parliament) of Ukraine for review within three months of the publication of this Law.

6. This Law shall not apply to issues of securities, on which the decisions have been taken before the effective date of this Law.

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
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| On Depository System of Ukraine | | |
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| Preamble | | |
| <p>This Law defines the legal principles of the operation of the depository system of Ukraine, specifies the procedure of the registration and confirmation of interests in equity securities, and rights attached thereto in the securities depository accounting system, as well as the procedure of the settlement of transactions in equity securities.</p> | | |
| Article 1. Definition of Terms | | |
| <p>1. The terms used herein shall have the following meanings:</p> <p>1) "securities account owner" shall be understood as an entity, for which a securities account has been opened by a professional member of the depository system of Ukraine and/or the National Bank of Ukraine;</p> <p>2) "global certificate" shall be understood as a document containing information about issue of securities, which is executed by the issuer after the completion of the securities issue, stored by the Central Securities Depository (hereinafter also referred to as the "Central Depository") or, in cases specified by this Law, by the National Bank of Ukraine; it constitutes the ground for the storage of, and accounting for, the relevant securities and for accounting for liabilities of the issuer under the relevant securities tranche;</p> <p>3) "cash settlement" shall be understood as the transfer of funds undertaken in accordance with the procedure prescribed by law;</p> <p>4) "correspondent depository" shall be understood as a depository from a foreign state or an international depository and clearing institution being the customer of the Central Securities Depository on the basis of the established correspondent relations in respect of securities;</p> <p>5) "depository activity" shall be understood as activities of professional members of the depository system of Ukraine and the National Bank of Ukraine in respect of the provision of services related to the securities storage and accounting, the accounting for, and the service of, the acquisition, termination and transfer of rights</p> | | |

to securities and rights attached to securities, and restrictions of rights to securities on securities accounts of depository institutions, issuers, correspondent depositories, entities engaging into clearing activities, the Clearing House for Contracts Traded on Financial Markets (hereinafter referred to as the "Clearing House"), depositors, as well as the provision of other services, which may be provided by professional members of the depository system of Ukraine in accordance with this Law;

6) "depository system of Ukraine" shall be understood as the totality of depository system participants and relations among them in respect of keeping accounts for securities, rights to securities and rights attached to securities, and restrictions thereof imposed within the securities depository accounting system, for instance, as a result of the settlement of transactions in securities;

7) "depositor" shall be understood as the owner of securities, co-owners of securities, a notary, to whose deposit the securities have been lodged, for whom the securities account is opened by a depository institution on the basis of an appropriate securities account service contract, as well as a depository institution opening itself a securities account on the basis of an order of the chief executive officer of the said depository institution. The National Bank of Ukraine may be a depositor in cases specified in this Law;

8) "crediting of securities" shall be understood as an increase in the number of securities of a specific issue of securities account of the owner of such an account accompanied by the entry of the specified quantity of depository assets under the issue in question at a professional member of the depository system or the National Bank of Ukraine;

9) "issuer's liabilities under securities of own issue" shall be understood as the duty of the issuer to take certain action to the benefit of a holder of rights in securities of the tranche in question, whose nature and extent are specified by the current legislation and/or a decision of the issuer, or to refrain from certain actions;

10) "substantial interest in the Central Depository" shall be understood as the direct and/or indirect ownership by a single entity (other than the state and the National Bank of Ukraine), either on its own or together with related parties, of 1 or more per cent of the charter capital of the Central Securities Depository;

11) "corporate transactions of the issuer" shall be understood as transactions of an issuer in respect of the issue, the buy-out, the splitting, the consolidation, the conversion, the redemption, the annulment, the disbursement of the income on securities, as well as those related to the termination of the issuer, the alteration of the value of the charter capital of the issuer, as well as other transactions as per list determined by the National Securities and Stock Market Commission (hereinafter referred to as the "Commission");

12) "transfer of securities (rights in securities and/or rights attached to securities)" shall be understood as the flow of a certain quantity of securities (rights in securities and/or rights attached to securities) reflecting the transfer of securities (rights in securities and/or rights attached to securities) of a particular tranche with a professional member of the depository system or the National Bank of Ukraine from one securities account to another securities account, provided that the volume of the depository asset under the tranche in question is not modified, or the performance of transactions associated with the imposition and withdrawal of restrictions upon rights in securities and/or rights attached to securities;

13) "rights in securities" shall be understood as proprietary interests in securities (the ownership, other proprietary interests defined by law);

14) "rights attached to securities" shall be understood as the rights arising from the issuer's commitments under securities placed thereby (the right to take part in the general shareholder meeting, the right to receive income, other rights specified by law and/or by decision of the issuer);

15) "professional member of the depository system of Ukraine" shall be understood as the Central Securities Depository, depository institutions;

16) "register of holders of registered securities" shall be understood as a list of owners of registered securities compiled in accordance with requirements of the legislation by the Central Securities Depository or, in cases specified by this Law, the National Bank of Ukraine as of a particular date with the indication of the quantity of registered securities held by the said owners by way of ownership, the par value and the type of such securities and other information prescribed by the Commission;

17) "settlement of transactions in securities" shall be understood as the settlement of mutual liabilities under transactions in securities by way of the transfer of funds and/or the transfer of securities and/or the transfer/debit/credit of rights in securities and rights attached to securities, and/or the termination of liabilities as a result of the netting;

18) "delivery versus payment settlement" shall be understood as a mechanism of the settlement of transactions in securities, under which the transfer of securities and/or rights in securities and rights attached to securities occurs immediately after the appropriate transfer of funds;

19) "debiting of securities (rights in securities and/or rights attached to securities)" shall be understood as a reduction in the number of securities (rights in securities and/or rights attached to securities) of a particular tranche on a securities account of a holder of such an account accompanied by the removal (withdrawal) of the specified quantity of depository assets related to the said tranche at a professional member of the depository system or the National Bank of Ukraine;

20) "settlement in securities" shall be understood as the transfer of securities and/or the transfer/debit/credit of rights in securities and rights attached to securities occurring in accordance with the procedure prescribed by the law;

21) "provisional global certificate" shall be understood as a document containing information about a tranche of securities offered for placement, which is executed by the issuer for the period of the issue of securities, kept by the Central Securities Depository or, in cases specified by law, by the National Bank of Ukraine, and constitutes the basis for the entry of securities into records and the accounting for liabilities of the issuer under securities of the appropriate tranche;

22) "members of the depository system of Ukraine" shall be understood as the National Bank of Ukraine, professional members of the depository system of Ukraine, correspondent depositories, stock exchanges, clearing institutions, the Clearing House, issuers, traders in securities, asset management companies, depositors".

The terms "control" and "related parties" shall have the meaning defined in the Law of Ukraine "On Financial Services and

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| <p>State Regulation of Financial Service Markets".</p> <p>The terms "clearing", "netting" and "central counterparty" shall have the meaning defined in the Law of Ukraine "On Securities and Stock Market".</p> | | |
| <p>Article 2. Legislation on the Depository System of Ukraine</p> | | |
| <p>1. The legislation on the depository system of Ukraine shall consist of the Civil Code of Ukraine, this Law, the Law of Ukraine "On Securities and Stock Market", other laws of Ukraine and regulatory acts of the Commission and the National Bank of Ukraine.</p> <p>2. If an international treaty of Ukraine accepted as binding by the Verhovna Rada (Parliament) of Ukraine institutes rules other than those hereof, then the rules of the international treaty of Ukraine shall be applied.</p> | | |
| <p>Article 3. Types of Depository Activities and Combinations Thereof</p> | | |
| <p>1. The following depository activities may be exercised in Ukraine:</p> <ol style="list-style-type: none"> 1) the depository activities of the Central Securities Depository; 2) the depository activities of the National Bank of Ukraine; 3) the depository activities of a depository institution; 4) the activities of the safekeeping of assets of joint investment institutions; 5) the activities of the safekeeping of assets of pension funds. <p>2. Depository activities of a depository institution may be compiled with activities of the safekeeping of assets of joint investment institutions and the safekeeping of assets of pension funds.</p> <p>The activities covered with items 3 to 5 of part one of this article may not be exercised by the Central Securities Depository.</p> <p>The activities covered with items 3 to 5 of part one of this</p> | | |

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| <p>article may be exercised by the National Bank of Ukraine in cases specified by the legislation.</p> <p>The depository activities of a depository institution may be combined with securities trading activities and/or banking activities.</p> <p>The depository activities of the Central Securities Depository may be combined with clearing activities in cases specified by the Commission.</p> <p>The depository activities of the National Bank of Ukraine may be combined with clearing activities.</p> <p>Combining depository activities (other than depository activities of the National Bank of Ukraine) with activities, other than specified by this Law, shall be prohibited.</p> <p>Combining depository activities shall be possible on condition of the exercise thereof by separate structural units of a depository institution in accordance with the procedure prescribed by the Commission.</p> | | |
| <p align="center">Article 4. Securities Depository Accounting System</p> | | |
| <p>1. The securities depository accounting system shall be defined as the totality of information, records on equity securities (the kind with the indication of the type, par value and quantity, and circulation restrictions, etc.) on securities accounts of holders of such accounts, the records about issuers, holders of securities that hold rights attached to securities and rights in securities, the restrictions of rights in securities, the parties authorized by them, the trustees, the pledgees, other parties holding certain rights in securities that contain data making it possible to identify the equity securities and the said parties, a register of codes of securities (international identification numbers of securities), as well as other information specified by the legislation (hereinafter referred to as the "depository accounting system").</p> <p>The requirements for the list of documents submitted by the issuer to the Central Securities Depository or, in cases specified hereby, to the National Bank of Ukraine, as well as the procedure of the execution and the keeping of the record of global certificates, provisional global certificates, and the details thereof shall be specified by the Commission or, in cases specified hereby, the National Bank of</p> | | |

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| <p>Ukraine.</p> <p>2. The acquisition and termination of rights in securities and rights attached to securities shall take place by means of recording the relevant fact in the depository accounting system. The restrictions of rights in securities shall be registered in the depository accounting system. The restrictions of rights attached to securities may be registered in the depository accounting system in cases and in accordance with the procedure specified by the Commission.</p> <p>The requirements for the information entered into the depository accounting system shall be specified by the Central Securities Depository in concurrence with the Commission.</p> | | |
| <p>Article 5. Securities Accounts</p> | | |
| <p>1. A depositor's securities account shall be opened by the depository institution on the basis of a securities account service contract for the owner of securities, co-owners of securities or a notary, to whose deposit the securities have been lodged, as well as the depository institution itself (on the basis of the order of the chief executive officer of the depository institution in question), or the National Bank of Ukraine in accordance with the legislation.</p> <p>A securities account service contract shall be concluded between the depositor and the depository institution; under the said contract, the depository institution shall keep record of securities held by the owner, co-owners of securities or the appropriate creditor in case of crediting a notary's deposit with securities, as well as the record of rights of the said parties in securities accounted for on a specific securities account, and restrictions of such rights on the securities account in accordance with the procedure prescribed by the Commission.</p> <p>The depository institution shall keep record of securities owned thereby, as well as record of rights in such securities and restrictions of such rights on its own securities account in accordance with the procedure prescribed by the Commission (the National Bank of Ukraine shall do the same in accordance with the procedure specified thereby in concurrence with the Commission).</p> <p>A depositor or an appropriate creditor, in case of the crediting a notary's deposit with securities, shall hold the total of all rights in securities and rights attached to securities accounted for on</p> | | |

the depositor's securities account.

The quantity of rights in securities and rights attached to securities on a securities account of a depositor must be an integer number and may not be negative.

The securities owner and securities co-owners may transfer their own powers in respect of opening a securities account to another party authorized to act on its (their) behalf on the basis of a transaction defined by the legislation.

A depository institution shall assign the securities owner code to the owner of securities in the course of the opening of a depositor's securities accounts in accordance with the procedure prescribed by the Central Securities Depository in concurrence with the Commission.

2. The securities account of a depository institution used to hold and keep record of securities shall be opened for the depository institution by the Central Securities Depository or, in cases specified by this Law, the National Bank of Ukraine on the basis of a depository contract.

The securities, in which the rights and the rights attached to securities are held by depositors of a depository institution or by an appropriate creditor, in case of the crediting a notary's deposit with securities, shall be kept and accounted for on the securities account of the depository institution on the basis of a depository contract in accordance with the procedure prescribed by the Commission or, in cases specified by this Law, the National Bank of Ukraine.

The quantity of securities on a securities account of a depository institution must be an integer number and may not be negative.

A depository contract shall be concluded between a depository institution and the Central Securities Depository or between a depository institution and the National Bank of Ukraine; under the said contract, the Central Securities Depository and/or the National Bank of Ukraine shall keep, and account for, securities, in which rights and rights attached to securities are held by depositors of such a depository institution or an appropriate creditor, in case of the crediting a notary's deposit with securities, and the depository institution itself or the National Bank of Ukraine in respect of

securities held by such a depository institution, on the securities account of the depository institution in line with the competence specified by this Law.

3. The issuer's securities account shall be opened for the issuer by the Central Securities Depository or, in cases specified by this Law, by the National Bank of Ukraine on the basis of a securities tranche service contract.

The securities of own issue of the issuer and restrictions of rights in securities shall be kept, and accounted for, on the issuer's securities accounts on the basis of a securities tranche service contract in accordance with the procedure specified by the Commission or, in cases specified by this Law, the National Bank of Ukraine.

The quantity of securities on a securities account of an issuer must be an integer number and may not be negative.

A securities tranche service contract shall be concluded between an issuer and the Central Securities Depository, or between an issuer and the National Bank of Ukraine, under which the Central Securities Depository or the National Bank of Ukraine shall service the corporate transactions of the issuer in line with the competence specified by this Law.

4. A securities account shall be opened for a correspondent depository by the Central Securities Depository or the National Bank of Ukraine on the basis of a correspondent relations contract.

The securities, in which rights and the rights attached to securities are held by customers (depositors) of the correspondent depository, shall be accounted for on the securities account of the correspondent depository on the basis of the correspondent relations contract in accordance with the procedure prescribed by the Commission.

The quantity of securities on a securities account of a correspondent depository must be an integer number and may not be negative.

A correspondent relations contract shall be concluded between a correspondent depository and the Central Securities Depository or the National Bank of Ukraine; under the said contract, the Central Securities Depository or the National Bank of Ukraine shall account of securities, in which rights and the rights attached to

securities are held by customers (depositors) of the correspondent depository, on the securities account of the correspondent depository in accordance with the procedure prescribed by the Commission.

A correspondent relations contract may also specify the procedure of the transfer of funds between the Central Securities Depository or the National Bank of Ukraine, and the correspondent depository in case of the performance of corporate transactions of the issuer and in other cases specified by the legislation.

5. A securities account for the National Bank of Ukraine shall be opened by the Central Securities Depository on the basis of a depository contract on account opening.

The specific features of the accounting for securities on the account of the National Bank of Ukraine with the Central Securities Depository shall be specified by the Commission in concurrence with the National Bank of Ukraine.

6. A securities account of a clearing institution and the Clearing House shall be opened for the said entity by the Central Securities Depository and/or the National Bank of Ukraine on the basis of a clearing institution or Clearing House service contract.

A clearing institution service contract and a Clearing House service contract shall be concluded between the relevant entities and the Central Securities Depository; under the said contract, the Central Securities Depository shall keep record of securities used by the entity in question for the creation of the risk management system and the provision of guarantees of the performance of undertakings under contracts related to securities in line with the competence specified by this Law on securities accounts of a clearing institution and the Clearing House in accordance with the procedure prescribed by the Commission.

A Clearing House service contract shall be concluded between the Clearing House and the National Bank of Ukraine; under the said contract, the National Bank of Ukraine shall keep record of securities used by the Clearing House for the creation of the risk management system and the provision of guarantees of the performance of undertakings under contracts related to securities in line with the competence specified by this Law on the securities account of the Clearing House in accordance with the procedure prescribed by the National Bank of Ukraine in concurrence with the

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| <p>Commission.</p> <p>7. The requirements for contracts specified in preceding parts of this article, including rights and duties of parties to a contract, shall be specified by the Commission, unless the National Bank of Ukraine is a party to the contract.</p> <p>If the National Bank of Ukraine is a party to contracts referred to in preceding parts of this article, the requirements for such contracts, including rights and duties of parties to a contract, shall be specified by the National Bank of Ukraine in concurrence with the Commission.</p> <p>The procedure of opening, maintaining and closing accounts of depository institutions, issuers, correspondent depositories and entities exercising clearing activities, and depositors shall be specified by the Commission or, in cases specified by this Law, the National Bank of Ukraine in concurrence with the Commission.</p> | | |
| <p align="center">Article 6. Securities Depository Accounting</p> | | |
| <p>1. The securities depository accounting shall be understood as the accounting for securities, rights in securities and restrictions thereof on securities account (hereinafter referred to as the "depository accounting").</p> <p>The depository accounting in the securities depository accounting system shall be carried out in numeric terms.</p> <p>In this case, the rights in securities of a specific owner shall be accounted for solely by depository institutions, the National Bank of Ukraine in cases specified by this Law, and correspondent depositories or their customers, while the securities and rights attached to securities shall be exclusively accounted for by the Central Securities Depository or the National Bank of Ukraine.</p> <p>The liabilities of the issuer under securities of own issue of the issuer shall be accounted for by the Central Securities Depository or, in cases specified by this Law, the National Bank of Ukraine in respect of each tranche of securities on the basis of the deposition of the global certificate and/or the provisional global certificate.</p> <p>2. Changes shall only be introduced into the depository accounting system in respect of securities of a specific owner by the depository institutions (or, in cases specified by the legislation, the</p> | | |

National Bank of Ukraine or correspondent depositories) in accordance with the procedure specified by the Commission on the basis of:

the information submitted by the Central Securities Depository in case of the performance of a transaction in securities at the stock exchange in respect of securities to be accounted for by the Central Securities Depository in line with the competence specified by this Law;

the information submitted by the National Bank of Ukraine in case of the performance of a transaction in securities at the stock exchange in respect of securities to be accounted for by the National Bank of Ukraine in line with the competence specified by this Law;

the instruction submitted by each depositor being a party to a transaction in case of the performance by depositors of the same depository institution of a transaction in securities outside stock exchanges without complying with the delivery versus payment settlement principle;

the instruction submitted by the depositor and the Central Securities Depository or the National Bank of Ukraine in case of the performance by depositors of different depository institutions of a transaction in securities outside stock exchanges without complying with the delivery versus payment settlement principle;

the instructions and other documents (in cases specified by the Commission) to be submitted by the depositor in case of the institution or removal of the restriction of rights in securities and rights attached to securities in respect of rights of the said depositor;

documents specified by the Commission in case of the inheritance, legacy or in other cases specified by the Commission;

the decision of court or another state authority authorized by law or an officer thereof.

The information about all transactions on securities accounts of depositors of each depository institution shall be posted in the Central Securities Depository in accordance with the procedure, within time frames and in amounts prescribed by the Central Securities Depository in concurrence with the Commission.

3. The introduction of changes into the depository

accounting system in respect of the settlement of transactions in securities carried out at stock exchanges or outside stock exchanges, in case of the delivery versus payment settlement shall be carried out by the Central Securities Depository or the National Bank of Ukraine (in line with their competence defined by this Law) with the subsequent posting of such changes (if necessary) on securities accounts by depository institutions and/or correspondent depositories in accordance with the procedure prescribed by the Commission on the basis of the information supplied by the Clearing House (the information supplied by the stock exchange in case of the exercise of clearing activities by the Central Securities Depository).

The Central Securities Depository or the National Bank of Ukraine must confirm the obtainment of the said information in accordance with the procedure and within time frames specified by the Commission.

4. The introduction of changes into the depository accounting system in respect of the entire securities tranche accounted for by the Central Securities Depository in line with the competence specified by this Law shall be carried out solely by the Central Securities Depository in accordance with the procedure prescribed by the Commission on the basis of:

the information supplied by the securities issuer in case of the performance of corporate transactions of the issuer, except for the performance of transactions related to the securities placement at the stock exchange. In this case, the Central Securities Depository must confirm the obtainment of the said information from the stock exchange in accordance with the procedure and within time frames specified by the Commission;

the decision of court or another state authority authorized by law or an officer thereof.

5. The introduction of changes into the depository accounting system in respect of the entire securities tranche accounted for by the National Bank of Ukraine in line with the competence specified by this Law shall be carried out solely by the National Bank of Ukraine in accordance with the procedure specified thereby in concurrence with the Commission on the basis of:

the information supplied by the securities issuer in case of the performance of corporate transactions of the issuer, except for

the performance of transactions related to the securities placement at the stock exchange;

the decision of court or another state authority authorised by law or an officer thereof.

6. In case of the institution or removal of restrictions on rights in securities in respect of securities of a specific owner, the owner of such securities must supply the relevant information and documents confirming the same to the depository institution, in which it holds the securities account.

In case of the institution or removal of restrictions on rights in securities in respect of securities of a specific owner, court or a state authority authorized by law or an officer thereof shall be obliged to submit the relevant decision to the depository institution, in which the account of the said owner is held.

In case of the institution or removal of restrictions on rights in securities in respect of the entire securities tranche, court or a state authority authorized by law or an officer thereof shall be obliged to submit the relevant decision to the Central Securities Depository or the National Bank of Ukraine in accordance with their competence specified by this Law.

7. The procedure of the submission of the instruction and other documents prescribed by parts two and six of this article in respect of securities, the requirements for the contents thereof (except for the requirements for court decision), and the procedure of the registration thereof in the depository accounting system shall be specified by the Commission or, in respect of securities accounted for by the National Bank of Ukraine in line with the competence specified by this Law, shall be specified by the National Bank of Ukraine in concurrence with the Commission; in respect of those prescribed by parts three and four, they shall be specified by the Commission; in respect of those prescribed by part five, they shall be specified by the National Bank of Ukraine in concurrence with the Commission.

The documents in question constituting the basis for the introduction of changes into the depository accounting system shall be kept for five years of receipt thereof, but at least until the end date of existence of the relevant account.

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| <p>8. The depository institution shall be obliged to provide notice of acceptance of an instruction for performance or issue a motivated response on the refusal to accept not later than on the business day following the day of receipt of the instruction and other documents from the depositor. In case of the acceptance of the instruction for performance, the depository institution must introduce changes into the depository accounting system in accordance with requirements of the instruction.</p> <p>In case of receipt of the information by a depository institution from the Central Securities Depository or the National Bank of Ukraine as a result of the settlement of transactions in securities concluded at the stock exchange and outside the stock exchange in case of the delivery versus payment settlement by depositors of the depository institution or in their interest, the depository institution shall post changes to the relevant securities accounts of depositors before the end of the current operations day, during which the information in question has been sent by the Central Securities Depository or the National Bank of Ukraine.</p> | | |
| <p>Article 7. Introduction of Changes into the Depository Accounting System in Respect of the Garnishment of Securities or Imposition of Another Restriction of Rights in Securities of a Specific Owner Imposed by Decision of Court or Authorized State Authority</p> | | |
| <p>1. The garnishment of securities or another restriction on rights in securities of a specific owner (hereinafter referred to as the "specific owner restriction") shall be imposed (instituted) and cancelled (reversed) in accordance with the procedure prescribed by this article on the basis of a decision of court or a state authority authorized by law, or an officer thereof.</p> <p>In case of the institution or removal of a specific owner restriction, court or a state authority authorized by law or an officer thereof shall be obliged to submit the relevant decision to the depository institution, where the securities account of the said owner is held, and to the Central Securities Depository or the National Bank of Ukraine, which account for such securities in accordance with their competence specified by this Law.</p> <p>2. A depository institution shall introduce changes into the depository accounting system in respect of the institution of a</p> | | |

restriction in respect of securities of a specific owner before the end of the business day of receipt of the relevant decision, except for the case covered with part three of this article.

3. In case of the restriction of rights in securities imposed by instruction of the owner of such securities for the sale of the said securities at the stock exchanges, the depository institution shall postpone the input of changes into the depository accounting system in respect of the institution of the restriction of securities of a specific owner until the next business day.

The depository institution shall submit information about receipt thereby of the relevant decision of court or a state authority authorized by law or an officer thereof on the institution of a specific owner restriction to the Central Securities Depository or the National Bank of Ukraine respectively within the business day of receipt of the said decision.

4. The Central Securities Depository or the National Bank of Ukraine in line with their competence in respect of the accounting for securities as defined by this Law shall do the following on the basis of the information obtained from the entity exercising clearing activities or from the stock exchange about transactions in securities carried out there (in case of the exercise of clearing activities by the Central Securities Depository or the National Bank of Ukraine):

impose, starting from the next day, the restriction upon securities, in whose respect the Central Securities Depository or the National Bank of Ukraine has received information from the depository institution about the receipt thereby of the relevant decision of court or a state authority authorized by law or an officer thereof on the institution of a specific owner restriction — in case of the lack of the data on transactions in securities carried out at the platform of the entity exercising the clearing activities or at the stock exchange in the information obtained from such an entity or the stock exchange (in case of the exercise of clearing activities by the Central Securities Depository or the National Bank of Ukraine). In this case, the Central Securities Depository or the National Bank of Ukraine shall inform the depository institution that such actions have been taken;

inform the depository institution within the same business day of the availability of the data on transactions in securities carried out at the platform of the entity exercising clearing activities or the

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| <p>stock exchange in the information obtained from such an entity or stock exchange (in case of the exercise of clearing activities by the Central Securities Depository or the National Bank of Ukraine), if the relevant decision of court or a state authority authorized by law or an officer thereof on the institution of the specific owner restriction has been received by the depository institution, provided that such information is available.</p> <p>5. The depository institution shall do the following on the same business day upon obtainment of the information called for by part four of this article:</p> <p>institute the specific owner restriction on its securities account — in case of receipt of the information referred to in paragraph two of part four of this article;</p> <p>institute specific owner restriction over the balance of securities, rights in which are accounted for on the owner's securities accounts as a result of the performance of a transaction or leave the relevant decision of court or a state authority authorized by law or an officer thereof on the imposition of the specific owner restriction non-performed, if the said balance equals zero, on the basis of the information referred to in paragraph three of part four of this article.</p> <p>6. The depository institution shall notify court or a state authority authorized by law or an officer thereof of actions taken as a result of receipt of the relevant decision to institute the specific owner restriction within the next business day of receipt of the decision.</p> | | |
| <p>Article 8. Confirmation of Rights in Securities and Rights Attached to Securities</p> | | |
| <p>1. An accounting record on the securities account of a depositor with a depository institution shall be the confirmation of rights in securities and rights attached to securities existing in the non-documentary form, as well as restrictions of rights in securities as of a certain time.</p> <p>A statement of the securities account of the depositor issued by the depository institution on demand of the depositor or in other cases prescribed by the legislation and the securities account service contract shall serve as the documentary evidence of the existence of rights in securities and rights attached to securities of a depositor (or the relevant creditor in case of the lodgement of securities on a</p> | | |

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| <p>notary's deposit) as of a certain time.</p> <p>2. A statement of the securities account shall not be a security; the conveyance thereof from one entity to another entity shall not constitute a transaction in securities and shall not result in the conveyance of rights in securities and rights attached to securities.</p> <p>3. Requirements for a statement of the securities account shall be specified by the Commission.</p> | | |
| <p style="text-align: center;">SECTION II. PARTICIPANTS OF THE DEPOSITORY SYSTEM OF UKRAINE</p> <p style="text-align: center;">Article 9. Central Securities Depository</p> | | |
| <p>1. The Central Securities Depository shall cause the securities depository accounting system to be set up and to operate.</p> <p>The Central Securities Depository shall keep depository accounting for all equity securities, except for those accounted for by the National Bank of Ukraine in accordance with the competence as defined by this Law.</p> <p>Only one Central Securities Depository may exist in Ukraine.</p> <p>The words "Central Securities Depository" or "Central Depository" and derivatives therefrom may only be used by a legal entity vested with the status of a Central Securities Depository in accordance with the procedure prescribed by this Law.</p> <p>2. The Central Securities Depository shall be a legal entity operating in the form of a public joint stock company in accordance with the Law of Ukraine "On Joint Stock Companies" subject to specific features specified by this Law. A joint stock company shall be vested with the status of the Central Securities Depository starting from the date of the registration of the Rules of the Central Securities Depository by the Commission in accordance with the established procedure.</p> <p>3. The state, the National Bank of Ukraine, members of the stock market, central depositories of other countries, international depository and clearing institutions, as well as international financial institutions, of which Ukraine is a member, may be shareholders of the Central Securities Depository.</p> | | |

If the interest held by a shareholder together with the related parties in the charter capital of the Central Securities Depository exceeds the value specified in part four of this article, the party in question may not make use of the voting rights attached to shares, whose quantity exceeds the value specified in part four of this article, directly or indirectly, in full or in part.

In case of the detection of such a fact by the Commission, the Commission shall appoint a trustee vested with the right to take part in voting with shares, whose quantity exceeds the value specified in part four of this article, within two weeks of the detection thereof.

The trustee shall be appointed in accordance with the procedure specified by the Commission, until the interest of the shareholder together with the related parties is brought into conformity with part four of this article.

While voting, the trustee shall be obliged to act in the interests of the qualified and balanced governance of the Central Securities Depository.

Decisions of the general shareholder meeting of the Central Securities Depository made with the violation of requirements of this part shall be devoid of legal effect.

4. In the charter capital of the Central Securities Depository, the interest:

of a single shareholder together with related parties must not exceed 5 per cent;

of a central depository of another country, an international depository and clearing institution or an international financial institution, of which Ukraine is a member, must not exceed 25 per cent;

of the state, taken together with the National Bank of Ukraine, must amount to at least 25 per cent plus one share. The body in charge of managing the interest of the state in the charter capital of the Central Securities Depository shall be specified by the Cabinet of Ministers of Ukraine.

5. The Central Securities Depository shall not be liable under liabilities of shareholders and customers. The Central Securities Depository and its bodies may not be subjected to any sanctions

restricting their rights in case of the commission of offences by shareholders or customers.

Shareholders shall not be liable under liabilities of the Central Securities Depository. The shareholders may not be subjected to any sanctions restricting their rights in case of the commission of offences by the Central Securities Depository or other shareholders.

6. In order to ensure the performance of functions vested therein, the Central Securities Depository in concurrence with the Commission may act as a founder and participant (shareholder) of legal entities. The Central Securities Depository shall be prohibited from acting as a founder and participant (shareholder) of professional stock market members and legal entities, whose organizational and legal form calls for the unlimited pecuniary liability of the founder (participant).

The procedure of the calculation of the capital adequacy ratio for the Central Securities Depository and the minimum level of the regulatory capital of the Central Securities Depository, as well as other restrictions of its activities shall be specified by the Commission.

7. The Central Securities Depository must register the Rules of the Central Securities Depository with the Commission before the commencement of the exercise of the depository activities to specify the generally applicable procedure of the provision by the Central Securities Depository of services associated with the exercise of depository activities, the posting thereby of transactions in the depository accounting system, the exercise of control by the Central Securities Depository over depository institutions, and to provide other information as prescribed by the Commission. The Rules of the Central Securities Depository must also specify the procedure of the entry into a depository contract between the depository and depository institutions.

The Rules of the Central Securities Depository and changes introduced into the Rules of the Central Securities Depository shall be registered with the Commission in accordance with the procedure prescribed thereby.

The minimum level of the charter capital of the Central Securities Depository must amount to at least UAH 100 million.

In order to be vested with the Central Securities Depository

status, a legal entity must be in possession of the appropriate equipment, including the computer hardware with the appropriate software, dedicated communication channels, and the premises that meet the requirements of the Commission.

The software and hardware of the Central Securities Depository must match the nature and scales of transactions carried out thereby, and ensure the uninterrupted operation thereof. The Central Securities Depository must be in possession of the main and standby sets of software and hardware facilities. At that, the technical facilities must be owned by the Central Securities Depository.

8. The following shall fall within the exclusive competence of the Central Securities Depository:

1) crediting securities (other than securities falling within the competence of the National Bank of Ukraine) into the depository accounting system, the accounting therefor, the safekeeping thereof, and the debiting of securities in connection with the redemption and/or annulment thereof;

2) the accounting for liabilities of the issuer under securities of own issue (other than in respect of securities falling within the competence of the National Bank of Ukraine) in respect of each tranche of securities on the basis of the deposition of the global certificate and/or the provisional global certificate;

3) the storage of global certificates and provisional global certificates (except for global certificates and provisional global certificates for securities tranches falling within the competence of the National Bank of Ukraine);

4) the numbering (encoding) of securities in accordance with international standards, the maintenance of the register of codes of securities (international identification numbers of securities);

5) the compilation of registers of holders of registered securities (except for securities falling within the competence of the National Bank of Ukraine);

6) the storage of the information about persons nominated for the provision of the register of holders of registered securities to the issuer;

7) the obtainment of income and other disbursements under

transactions of issuers (including those placed and circulating outside of Ukraine) on the account of the Central Securities Depository held with the Clearing House for the subsequent transfer to recipients;

8) the opening and maintenance of securities accounts of issuers, the National Bank of Ukraine, depository institutions, correspondent depositories, clearing institutions and the Clearing House;

9) the maintenance of the securities account of a depository institution, which has terminated the exercise of depository activities or whose license therefor has been annulled because of transgressions on the securities market or on another ground specified by the Commission, as well as the custody keeping of documents, databases, copies of databases and archives of databases of a depository institution, the information about the depositors thereof, which have failed to close their securities accounts in accordance with the established procedure, and the securities accounted for on their accounts, as well as the provision of the information about the status of such accounts in accordance with the legislation;

10) the institution of universal unified rules (standards) for the presentation and transfer of the information on the accounting for, and the circulation of, securities, the servicing of corporate actions of issuers, and other information to be entered into the depository accounting system;

11) the implementation of international standards on the exercise of depository activities;

12) the exercise of control over customers in terms of the exercise of depository activities by them in accordance with the procedure and within the scope specified by this Law.

9. The Central Securities Depository may provide services related to organizing and holding the general shareholder meeting to an issuer.

The Central Securities Depository may carry out specific banking transactions on the basis of a license for the exercise of specific banking transactions obtained in accordance with the procedure prescribed by the National Bank of Ukraine.

The Central Securities Depository may exercise other

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| <p>activities not prohibited by law.</p> <p>10. The maximum and minimum rates of fees for the services of the Central Securities Depository may be set by the Central Securities Depository in concurrence with the Commission and the Antimonopoly Committee of Ukraine.</p> <p>11. The Central Securities Depository must publish its performance results and the ownership structure in accordance with the procedure and within the time frames prescribed by the Commission. The Central Securities Depository shall report its performance results annually at the meeting of the Commission in accordance with the procedure prescribed thereby, and supply information about correspondence contracts concluded with correspondent depositories.</p> <p>12. The Central Securities Depository must procure annual audit of its activities in accordance with international auditing standards in line with requirements of the Commission.</p> <p>13. The Central Securities Depository shall open a pecuniary account with the Clearing House in order to ensure the disbursement of the income on securities in case of the redemption of debt securities, including the securities placed and circulating outside of Ukraine, or in case of the performance of other corporate transactions by the issuer. The funds in question may not be collected on the basis of own liabilities of the Central Securities Depository as a business entity.</p> <p>14. The Central Securities Depository may open accounts with foreigners financial institutions on the basis of a general foreign currency license in order to support the settlement of accounts in respect of securities accounted for on an account of the Central Securities Depository with international depository and clearing institutions or to support the settlement of accounts in respect of securities accounted for on securities accounts of foreign depository and clearing institutions with the Central Securities Depository. In such cases, the Central Securities Depository shall act as the foreign exchange control agent in accordance with the legislation of Ukraine.</p> | | |
| <p>Article 10. Guarantees of Non-interference with Activities of the Central Securities Depository</p> | | |
| <p>1. The interference of state authorities or their officers with</p> | | |

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| <p>the performance of functions and the exercise of powers by the Central Securities Depository shall be prohibited, except for cases specified in this Law.</p> <p>2. The seizure (obtainment) of the material information carriers associated with the exercise of the securities depository accounting and transactions with securities by the Central Securities Depository shall be prohibited.</p> | | |
| <p>Article 11. State Registration of the Charter (Amendments to the Charter) of the Central Securities Depository</p> | | |
| <p>1. The state registration of the charter (amendments to the charter) of the Central Securities Depository shall take place in accordance with the procedure prescribed by law upon the endorsement thereof by the Commission.</p> <p>2. In order to have the charter (amendments to the charter) endorsed, the Central Securities Depository shall submit documents, whose list and contents are prescribed by the Commission, to the Commission.</p> <p>3. The Commission shall endorse the charter (amendments to the charter) in accordance with the procedure prescribed thereby, or refuse the endorsement within one month of receipt of the relevant documents.</p> <p>If documents have not been submitted in full or executed with the violation of requirements of the Commission, they shall be returned within one month without consideration.</p> <p>If it is necessary to verify information about foreign individuals or legal entities, on which the information is included into the ownership structure of the Central Securities Depository, the period of review of the documents may be extended to two months.</p> <p>4. The Commission shall have the right:</p> <p>to obtain information required for making a decision on the endorsement of the charter (amendments to the charter) of the Central Securities Depository in accordance with the legislation from state authorities and other parties;</p> <p>to require the applicant to make good deficiencies in the submitted documents during the period of review (without the</p> | | |

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| <p>extension thereof).</p> <p>5. The provisions of this article shall also apply to the endorsement of the charter of an entity seeking the status of the Central Securities Depository.</p> | | |
| <p>Article 12. Bodies of the Central Securities Depository</p> | | |
| <p>1. The general shareholder meeting, the supervisory council, the management board and the examining commission shall be the bodies of the Central Securities Depository.</p> <p>The charter of the Central Securities Depository may provide for the establishment of the Depository System Participants Council in order to consider and protect interests of participants of the depository system.</p> <p>Members of the supervisory council of the Central Securities Depository shall be elected by the general shareholder meeting by way of cumulative voting.</p> <p>The examining commission of the Central Securities Depository shall be elected by the general meeting from shareholders or participants thereof in accordance with the procedure prescribed by law.</p> <p>The chairman and members of the management board of the Central Securities Depository shall be appointed by the general meeting of the Central Securities Depository.</p> <p>The procedure of the establishment and the operation of the Depository System Participants Council of the Central Securities Depository shall be prescribed by the charter of the Depository System Participants Council to be approved by the general meeting of the Central Securities Depository.</p> <p>2. The competence of the general shareholder meeting, the supervisory council and the management board of the Central Securities Depository shall be specified by this Law, the Law of Ukraine "On Joint Stock Companies" and the charter of the Central Securities Depository.</p> <p>The Rules of the Central Securities Depository and the changes therein shall be approved by the supervisory council of the Central Securities Depository, and must be registered by the</p> | | |

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| <p>Commission in accordance with the procedure prescribed thereby.</p> <p>The internal documents concerning relations between the Central Securities Depository and customers thereof shall be submitted to the Commission on its demand. The Commission may require the Central Securities Depository to introduce changes or to reverse such internal documents.</p> <p>3. Representatives of self-regulated organisations of professional stock market members, the Clearing House, clearing institutions and stock exchanges may be invited to meetings of the supervisory council and the general meeting of the Central Securities Depository with the deliberative vote.</p> | | |
| <p>Article 13. National Bank of Ukraine as a Participant of the Depository System of Ukraine</p> | | |
| <p>1. The exercise of the depository accounting for government securities and local bonds shall fall within the exclusive competence of the National Bank of Ukraine. The specific features of the exercise of the depository and clearing activities with government securities and local bonds by the National Bank of Ukraine shall be specified by the Commission in concurrence with the National Bank of Ukraine.</p> <p>2. The National Bank of Ukraine shall exercise the following powers in order to support the depository accounting for domestic bonds of Ukraine, special-purpose bonds of Ukraine, treasury notes of Ukraine and local bonds:</p> <p>1) crediting securities into the depository accounting system, the accounting therefor, the safekeeping thereof, and the debiting of securities in connection with the redemption and/or annulment thereof;</p> <p>2) the accounting for liabilities of the issuer under securities of own issue in respect of each tranche of securities on the basis of the deposition of the global certificate and/or the provisional global certificate;</p> <p>3) the custody of global and provisional global certificates;</p> <p>4) the compilation of registers of holders of registered securities;</p> <p>5) the storage of the information about persons nominated</p> | | |

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| <p>for the provision of the register of holders of registered securities to the issuer;</p> <p>6) the obtainment of income and other disbursements under transactions of issuers (including those placed and circulating outside of Ukraine) on the account of the National Bank of Ukraine for the subsequent transfer to recipients;</p> <p>7) the opening and maintenance of securities accounts of issuers, depository institutions, correspondent depositories, clearing institutions and the Clearing House.</p> <p>3. In order to support the exercise of activities envisaged by the Law of Ukraine "On the National Bank of Ukraine", the Central Securities Depository shall open a securities account for the National Bank of Ukraine. The specific features of the operation of this account and the transactions thereon shall be specified by the Commission in concurrence with the National Bank of Ukraine.</p> <p>4. The National Bank of Ukraine shall submit information on its exercise of depository activities within time frames and in accordance with the procedure agreed upon between the National Bank of Ukraine and the Commission.</p> | | |
| <p>Article 14. Depository Institutions</p> | | |
| <p>1. A depository institution shall be defined as a legal entity established and operating in the form of a joint stock company or a limited liability company, which has obtained a license for the exercise of depository activities of a depository institution in accordance with the established procedure.</p> <p>The depository activities of a depository institution shall be an exclusive business, except for the combination thereof with other lines of business in the case covered by Article 3 of this Law.</p> <p>A depository institution shall have the right to provide services to an issuer of securities in accordance with this Law and the Law of Ukraine "On Joint Stock Companies" on the basis of a contract on the provision of a register of holders of registered securities.</p> <p>A depository institution shall have the right to provide the issuer with additional services during the holding of a general meeting (regular or extraordinary) of a joint stock company, for instance, by</p> | | |

performing functions of a registration commission or a counting commission, preparing information materials characterizing the market of securities for the issuer, and providing the issuer therewith, the provision of advice on accounting for, and/or the circulation of, securities, as well as the services related to the management of the issuer's account with the Central Securities Depository or other services not prohibited by the legislation in respect of securities issued by the issuer.

A depository institution shall have the right to provide a depositor with additional services, for instance, in respect of the exercise of rights attached to securities.

2. In order to obtain a license for the exercise of depository activities of a depository institution, a legal entity must have the charter capital of at least UAH 7 million paid in cash.

The interest of another depository institution or a securities trader or an institutional investor in the charter capital of a depository institution must not exceed 5 per cent.

Requirements for the minimum value of the regulatory capital of a depository institution, as well as other restrictions on activities of a depository institution shall be specified by the Commission or, in case of a depository institution being a bank, by the Commission in concurrence with the National Bank of Ukraine.

3. In order to exercise depository activities, a depository institution must be in possession of the appropriate equipment, including the computer hardware with the appropriate software, dedicated communication channels and premises in accordance with requirements of the Commission.

4. A depository institution must open a securities account with the Central Securities Depository within one month of the obtainment of the license for the exercise of depository activities. The failure to open such a securities account shall constitute the ground for the license annulment.

5. The Commission may impose additional requirements for depository institutions to limit risks of the professional stock market activities.

6. The depository activities shall be exercised by a depository institution on the basis of a license to be issued by the Commission in

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| <p>accordance with the procedure prescribed by the legislation.</p> <p>A self-regulated organization of depository institutions shall have the right to obtain reports compiled by such depository institutions in accordance with the procedure prescribed by the Commission for the purposes of control, generalization, and analysis thereof, and the transfer to the Commission.</p> <p>7. The seizure (obtainment) of the material information carriers associated with the exercise of the securities depository accounting and transactions with securities by depository institutions shall be prohibited.</p> | | |
| <p>Article 15. Financial Market Contract Clearing House</p> | | |
| <p>1. The Clearing House shall ensure the performance of the cash settlement of transactions in securities concluded at stock exchanges and over the counter (outside the stock exchange) in case of the settlement of accounts on the basis of the delivery versus payment.</p> <p>Only one Clearing House may exist in Ukraine.</p> <p>The words "Financial Market Contract Clearing House " and derivatives therefrom may only be used by the legal entity vested with the relevant status.</p> <p>2. The Clearing House shall be understood as a bank operating in the form of a public joint stock company in accordance with the Law of Ukraine "On Banks and Banking" subject to specific features specified by the legislation. A bank shall be vested with the status of a Clearing House upon the date of the registration of Rules of the Clearing House with the National Bank of Ukraine in accordance with the established procedure.</p> <p>3. The National Bank of Ukraine, professional stock market members, as well as international depository and clearing institutions may be the shareholders of the Clearing House.</p> <p>The interest of the National Bank of Ukraine in the charter capital of the Clearing House must amount to at least 25 per cent plus one share.</p> <p>5. The performance of the cash settlement of transactions in securities concluded at stock exchanges and over the counter (outside</p> | | |

the stock exchange) in case of the settlement of accounts on the basis of the delivery versus payment shall be the exclusive competence of the Clearing House.

The Clearing House shall open and maintain monetary accounts of stock market members.

The Clearing House shall ensure the disbursement of the income on securities, the par value in case of the redemption of securities, and in case of the performance of other corporate transactions by the issuer, including those related to securities placed and circulating outside of Ukraine.

6. The Clearing House may exercise professional stock market activities being clearing activities in accordance with the procedure specified by the legislation.

7. The National Bank of Ukraine may support the liquidity of the Clearing House in accordance with the procedure specified by the National Bank of Ukraine.

10. In order to perform settlement transactions, the Clearing House shall open an account with the National Bank of Ukraine, as well as open and maintain accounts for customers for the settlement of transactions in securities and other financial instruments.

11. Residents of Ukraine (legal entities, separated units thereof and individuals) and non-residents of Ukraine (legal entities, representative offices of legal entities in Ukraine, and individuals) may be customers of the Clearing House.

12. The regime of the operation of accounts held by customers of the Clearing House shall be determined by the Clearing House itself in concurrence with the National Bank of Ukraine. The conditions of the opening of accounts and the specific features of the operation thereof shall be specified in the contract to be concluded between the Clearing House and the customer holding the account.

**SECTION III. ACTIVITIES IN THE DEPOSITORY
SYSTEM OF UKRAINE**

**Article 16. Depository Activities of the Central Securities
Depository**

1. The Central Securities Depository shall exercise the activities related to the depository accounting for, and servicing of, the circulation of securities placed in Ukraine and abroad and

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| <p>corporate transactions of the issuer on securities accounts of customers in accordance with the securities accounting competence specified by this Law in accordance with the procedure prescribed by the Commission in line with the received depository assets.</p> <p>Customers of the Central Securities Depository shall include issuers, the National Bank of Ukraine, depository institutions, correspondent depositories, clearing institutions and the Clearing House.</p> <p>The depository assets for the Central Securities Depository shall be global securities certificates and provisional global securities certificates, certificates of immobilized securities issued to a bearer, as well as records on securities accounts of the Central Securities Depository with depositories of other countries and international depository and clearing institutions.</p> <p>The depository assets of the Central Securities Depository may not be collected on the basis of own liabilities of the Central Securities Depository as a business entity.</p> <p>The Central Securities Depository may settle transactions in securities in accordance with the procedure specified by Article 20 of this Law.</p> <p>2. The Central Securities Depository shall be prohibited from disposing of securities it accounts for or from taking any other actions with such securities, except for actions taken on the basis of contracts concluded thereby in accordance with Article 5 of this Law.</p> <p>The entry into contracts envisaged by Article 5 of this Law shall not result in the conveyance of rights in securities and rights attached to securities to the Central Securities Depository.</p> <p>3. The Central Securities Depository shall ensure the ongoing backup copying and storage of the depository accounting system in accordance with the procedure and within time frames prescribed by the Commission.</p> | | |
| <p>Article 17. Depository Activities of the National Bank of Ukraine</p> | | |
| <p>1. Based on the received depository assets, The National Bank of Ukraine shall exercise activities involving the depository accounting for, and service of, the circulation of domestic and foreign bonds of Ukraine, special-purpose domestic bonds, treasury notes of</p> | | |

Ukraine, and local bonds, as well as debt securities that certify the loan relations of local self-government bodies that have been placed outside of Ukraine, and the service of corporate transactions of the issuer on securities accounts of customers in accordance with the procedure specified by the National Bank of Ukraine in concurrence with the Commission.

Customers of the National Bank of Ukraine shall include issuers, depository institutions, correspondent depositories, clearing institutions and the Clearing House.

For the National Bank of Ukraine, the depository assets shall be global and provisional securities certificates, which are accounted for by the National Bank of Ukraine in line with the competence specified hereby, as well as records on securities accounts of the National Bank of Ukraine with depositories of other countries, international depository and clearing institution and the Central Securities Depository.

The depository assets of the National Bank of Ukraine may not be collected on the basis of liabilities of the National Bank of Ukraine.

The National Bank of Ukraine may settle transactions in securities in accordance with the procedure specified by Article 20 of this Law.

2. The National Bank of Ukraine shall be prohibited from disposing of securities it accounts for in line with the competence under this Law or from taking any other actions with such securities, except for actions taken on the basis of contracts concluded thereby in accordance with Article 5 of this Law.

The entry into contracts envisaged by Article 5 of this Law shall not result in the conveyance of rights in securities and rights attached to securities to the government securities depositories of the National Bank of Ukraine.

3. The National Bank of Ukraine shall ensure the ongoing backup copying and storage of the depository accounting system in accordance with the procedure and within time frames prescribed by the National Bank of Ukraine in concurrence with the Commission.

Article 18. Depository Activities of a Depository Institution

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| <p>1. In accordance with the procedure prescribed by the commission and on the basis of depository assets received from the Central Securities Depository and/or the National Bank of Ukraine, a depository institution shall exercise activities related to the depository accounting for, and service of, the circulation of securities and corporate transactions of the issuer on securities accounts of depositors, and on its own securities account used to account for securities, the rights in securities, and the restrictions of rights in securities held by the said depository institution.</p> <p>2. Securities credited by the Central Securities Depository and/or the National Bank of Ukraine to the securities account of a depository institution shall be the depository assets for the depository institution.</p> <p>The depository assets of a depository institution may not be collected on the basis of own liabilities of the depository institution as a business entity.</p> <p>A depository institution must ensure the maintenance of the depository balance.</p> <p>3. A depository institution shall be prohibited from administering securities of the depositor or from taking any other actions with securities, except for actions committed by instruction of a depositor in cases covered by the securities account opening contract.</p> <p>The conclusion of a depositor securities account maintenance contract shall not result in the transfer of rights in securities and rights attached to securities to the depository institution.</p> | | |
| <p>Article 19. Activities of the Safekeeping of Assets of Joint Investment Institutions and Activities of the Safekeeping of Assets of Pension Funds</p> | | |
| <p>1. The activities of the safekeeping of assets of joint investment institutions and activities of the safekeeping of assets of pension funds shall be exercised by the depository institution in accordance with the procedure and in cases specified by the legislation.</p> <p>2. The procedure and specific features of the control by the</p> | | |

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| <p>depository institution over the conformity of transactions in assets of a joint investment institution with the rules of procedure, the securities issue prospectus of a joint investment institution, the charter of a corporate joint investment funds and the legislation, as well as over the compliance with requirements of the legislation, the rules of procedure of a joint investment institution and the charter of a corporate joint investment funds by an asset management company while calculating the value of net assets of a joint investment institution, the placement and the buy-out of securities of a joint investment institution, the use of profits received on assets of a joint investment institution shall be specified by the Commission.</p> <p>3. The activities of the safekeeping of assets of pension funds in respect of a corporate non-state pension funds established by the National Bank of Ukraine shall be exercised by the National Bank of Ukraine in accordance with the procedure prescribed by the legislation.</p> | | |
| <p>Article 20. Settlement of Transactions in Securities</p> | | |
| <p>1. The settlement of transactions in securities, which are accounted for in line with the competence specified by this Law by the Central Securities Depository or the National Bank of Ukraine, and have been concluded at stock exchanges and over the counter on the basis of the delivery versus payment settlement principle shall be carried out by means of:</p> <p>the transfer of funds by the Clearing House in accordance with the procedure specified by the National Bank of Ukraine in concurrence with the Commission;</p> <p>the transfer of securities by the Central Securities Depository or the National Bank of Ukraine to accounts of customers in accordance with the procedure specified by the Commission;</p> <p>the transfer / debiting / crediting of rights in securities by depository institutions to accounts of depositors in accordance with the procedure specified by the Commission;</p> <p>the transfer / debiting / crediting of rights in securities by correspondent depositories to accounts of their customers (depositors) in accordance with the legislation of another country.</p> <p>The exclusive list of grounds for the refusal of the transfer of</p> | | |

securities and/or rights in securities shall be specified by the Commission. The exclusive list of grounds for the refusal of the transfer of funds shall be specified by the National Bank of Ukraine in concurrence with the Commission.

The settlement of transactions in securities, which are accounted for in accordance with the competence specified hereunder by the Central Securities Depository and have been concluded at the stock exchange and over the counter on the basis of the delivery versus payment principle, shall be deemed completed solely upon the obtainment of the information by the Central Securities Depository from depository institutions on their having transferred the rights in securities held on securities accounts of depositors on the basis of the information obtained from the Central Securities Depository as a result of the settlement of transactions in securities.

The Central Securities Depository shall notify the Clearing House and/or the clearing institution of the fact of the completion of the settlement of transactions in securities, which are accounted for in line with the competence specified hereunder by the Central Securities Depository, in accordance with the procedure and within the time frames specified by the Commission.

The specific features of the settlement of transactions in securities, which are accounted for in line with the competence specified by this Law by the National Bank of Ukraine, and have been concluded at stock exchanges and over the counter on the basis of the delivery versus payment principle shall be specified by the National Bank of Ukraine in concurrence with the Commission.

The settlement of transactions in securities concluded at stock exchanges shall be based upon the delivery versus payment principle not later than on the third business day of the date of the relevant transaction, except for cases specified by the Commission.

2. In order to ensure the performance of transactions in securities, which are accounted for in accordance with the competence specified hereunder by the Central Securities Depository and have been made at the stock exchange, the Central Securities Depository shall be obliged to enter into a contract on the settlement in securities as a result of the clearing with clearing institutions and/or the Clearing House within three months of the date of receipt of the relevant offer.

The requirements for the said contract shall be specified by the Commission.

3. In order to ensure the performance of transactions in securities, which are accounted for in accordance with the competence specified hereunder by the National Bank of Ukraine and have been made at the stock exchange and over the counter on the basis of the delivery versus payment principle, the National Bank of Ukraine shall be obliged to enter into a contract on the settlement in securities as a result of the clearing with the Clearing House within three months of the date of receipt of the relevant offer.

4. The Clearing House and the Central Securities Depository or the National Bank of Ukraine shall ensure the compliance with the delivery versus payment principle and guarantee the settlement of transactions under contracts in respect of securities concluded at the stock exchange and over the counter on the basis of the delivery versus payment principle.

5. The Central Securities Depository may ensure the redemption of debt securities by the issuer on the basis of a contract concluded with the issuer, as well as the disbursement of the income on securities in line with the securities accounting competence specified hereunder by means of crediting the funds transferred by the issuer to the pecuniary account held by the Central Securities Depository with the Clearing House for the subsequent transfer of funds from the said account to accounts of recipients. The funds in question shall not be treated as the property or income of the Central Securities Depository, the Clearing House and correspondent depositories.

The Central Securities Depository shall ensure the redemption of debt securities circulating outside of Ukraine by the issuer, as well as the disbursement of the income on such securities in line with the securities accounting competence specified hereunder by means of crediting the funds transferred from accounts of the Central Securities Depository held with foreign financial institutions to the pecuniary account held by the Central Securities Depository with the Clearing House for the subsequent transfer of funds from the said account to accounts of recipients. The funds in question shall not be treated as the property or income of the Central Securities Depository, the Clearing House and correspondent depositories.

The funds received from issuers under securities in line with

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| <p>the competence specified hereunder shall be credited in accordance with the procedure and within time frames prescribed by the Commission.</p> <p>6. The transactions in securities performed outside the stock markets may be carried out in compliance or not in compliance with the delivery versus payment principle.</p> <p>The transactions in securities performed outside the stock markets not in compliance with the delivery versus payment principle shall be settled in accordance with the procedure envisaged by the relevant contract in accordance with the legislation.</p> <p>The specific procedure and conditions of the settlement of a transaction in securities performed outside the stock markets shall be determined by conditions of the said transaction.</p> <p>7. The procedure of the transfer of securities in the course of the settlement of transactions in securities shall be specified by the Commission, while the procedure of the transfer of funds shall be specified by the National Bank of Ukraine in concurrence with the Commission.</p> <p>8. It shall be prohibited to garnish accounts of the Clearing House, clearing institutions and accounts opened by the Clearing House or clearing institutions for performing / supporting the settlement of transactions in securities.</p> | | |
| <p>Article 21. Interaction among Participants of the Depository System of Ukraine in Respect of the Issue of Securities</p> | | |
| <p>1. An issuer of securities shall be obliged to submit a provisional global certificate, a securities issue prospectus and the information about the entity nominated for the provision of the register of holders of registered securities to the issuer (hereinafter referred to as the "nominee") selected in accordance with Article 22 hereof to the Central Securities Depository or the National Bank of Ukraine in accordance with their securities accounting competence specified hereunder in accordance with the procedure and within the time frames specified by the Commission.</p> <p>The information about the nominee referred to in part one of this article shall not be supplied in case of the additional issue of shares.</p> | | |

2. In case of the securities issue, the Central Securities Depository or the National Bank of Ukraine shall credit all securities of the said issue to the issuer's securities account within one business day of the deposition of the provisional global certificate and the provision of the information referred to in part one of this article.

3. In case of receipt of an instruction from the securities issuer or the underwriter for the transfer of the placed securities from the account of the issuer to the securities account of the depository institution, with which the account of the depositor being the first holder is held, as well as receipt from such a depository institution of an instruction for the transfer of the relevant number of securities to its account, the Central Securities Depository or the National Bank of Ukraine shall undertake the transfer in question within one business day.

In this case, the depository institution, with which the account of the depositor being the first holder is held, shall issue the instruction in question to the Central Securities Depository or the National Bank of Ukraine within one business day solely on receipt from the depositor being the first holder of an instruction for crediting its account with the appropriate quantity of rights in securities, as well as the documents confirming the acquisition of the relevant quantity of securities by the first holder from the issuer.

4. The depository institution shall credit the securities account of the depositor being the first holder with rights in the relevant quantity of securities within one business day of the date of transfer of the relevant quantity of securities to the securities account of the said institution by the Central Securities Depository or the National Bank of Ukraine with the subsequent restriction of the circulation of the said securities until the obtainment of the global certificate executed as a result of the registration of the securities placement results report by the Central Securities Depository or the National Bank of Ukraine.

Having received information from the Central Securities Depository or the National Bank of Ukraine about the removal of restrictions upon the circulation of securities of the relevant tranche, the depository institution shall lift restrictions upon the circulation of securities, rights in which are accounted for on accounts of depositors being the first holders.

5. The specific features of the accounting for securities in the

course of the issue thereof until the registration of the placement results report in respect of such securities by the Commission, for instance, in case of the placement thereof at the stock exchange, shall be specified by the Commission.

6. In case of the securities placement at the stock exchange, the information about depositors being the first holder shall be submitted by the stock exchange to the Central Securities Depository or the National Bank of Ukraine in accordance with the procedure prescribed by the Commission.

In case of the availability of the data being the evidence of the performance of transactions at the stock exchange involving the disposal by the first holders of securities restricted in circulation for the period until the obtainment of the global certificate executed as a result of the securities placement results report by the Central Securities Depository or the National Bank of Ukraine as a part of the information submitted by the stock exchange to the Central Securities Depository or the National Bank of Ukraine, the Central Securities Depository or the National Bank of Ukraine shall not enter changes into the depository accounting system on the basis of the information in question, and shall return the received information for making good the violations to the stock exchange, whereof the Central Securities Depository or the National Bank of Ukraine shall notify the Commission.

The stock exchanges shall be liable in accordance with the procedure prescribed by law for the completeness and trueness of the information supplied to the Central Securities Depository or the National Bank of Ukraine.

7. The specific features of the execution and deposition of a global certificate and a provisional global certificate of securities tranches issued by joint investment institutions, as well as those of the accounting for such securities shall be specified by the Commission.

8. The procedure of the interaction among participants of the depository system in respect of the issue of securities, whose depository accounting is carried out by the National Bank of Ukraine in accordance with this Law, shall be specified by the National Bank of Ukraine in accordance with the legislation.

Article 22. Compilation of the Register of Holders of Registered

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| <p>1. The disposal of rights in equity securities in cases specified by the legislation shall take place on the basis of the register of holders of registered securities.</p> <p>2. The register of holders of registered securities shall be compiled by the Central Securities Depository or, in the case specified by this Law, by the National Bank of Ukraine.</p> <p>3. The procedure of the compilation of the register of holders of registered securities, including the procedure of the interaction of depository institutions with the Central Securities Depository or the National Bank of Ukraine in respect of the compilation of the register, shall be defined by this Law and regulatory acts of the Commission, and by the National Bank of Ukraine.</p> <p>4. The issuer of registered securities shall be obliged to conclude a contract for the provision of the register of holders of registered securities (hereinafter referred to as the "register provision contract") with the entity nominated thereby. The nominee can be a depository institution, the Central Securities Depository or the National Bank of Ukraine.</p> <p>The issuer shall not be required to enter into the register provision contract with the Central Securities Depository or the National Bank of Ukraine, if the Central Securities Depository or the National Bank of Ukraine has been chosen as the nominee, and the register provision conditions and procedure are specified in the securities tranche service contract.</p> <p>The requirements for a register provision contract shall be approved by the Commission.</p> <p>5. The register of holders of registered securities shall be compiled in case of the receipt of an instruction from the issuer, and in other cases specified by the Commission.</p> <p>The issuer or another entity eligible for the obtainment of the register of holders of registered securities shall issue an instruction to the nominee for the provision of the register of holders of registered securities and specify the date, as of which the register is required (hereinafter referred to as the "date of record") in cases specified by</p> | | |

the Commission.

The register of holders of registered securities for the purposes of holding a general meeting of a joint stock company shall be compiled as of 0.00 am three business days before the date of the meeting in accordance with the procedure specified by the Commission.

6. If the depository institution is the nominee, which has received the instruction for the provision of the register of holders of registered securities, it shall issue an instruction to the Central Securities Depository for the compilation of the register of holders of registered securities of the relevant issuer.

The Central Securities Depository shall compile the register of holders of registered securities, which are accounted for by the Central Securities Depository in accordance with the competence specified hereunder, and submit the same to the depository institution, with which the issuer has entered into the register provision contract. Having received the register of holders of registered securities, the depository institution shall provide the issuer with the register of holders of registered securities under the contract in accordance with the procedure prescribed by the said contract taking account of requirements set out by the Commission.

In case of the submission of the register of holders of registered securities as a paper document, it shall be authenticated with the seal and the signature of the authorized officer of the depository institution.

The depository institution may not modify the register of holders of registered securities, which are accounted for by the Central Securities Depository in accordance with the competence specified hereunder, that has been compiled by the Central Securities Depository.

7. If the Central Securities Depository or, in the case specified by this Law, the National Bank of Ukraine, is the nominee, which has received the instruction for the provision of the register of holders of registered securities, it shall compile such a register and hand it over to the issuer in accordance with the procedure prescribed by the contract taking account of requirements set out by the Commission.

In case of the submission of the register of holders of registered securities as a paper document, it shall be authenticated with the seal and the signature of the authorized officer of the Central Securities Depository or, in the case specified by this Law, the National Bank of Ukraine.

8. In case of the submission of the register of holders of registered securities as an electronic document by the Central Securities Depository or, in the case specified by this Law, the National Bank of Ukraine, the paper form of the said register shall be authenticated with the seal and the signature of the authorised officer of the issuer.

9. The Central Securities Depository or, in the case specified by this Law, the National Bank of Ukraine, shall draw up the register of holders of registered securities on the basis of the information received from depository institutions, the offices of the National Bank of Ukraine, and correspondent depositories determined by them in accordance with records on securities accounts of their depositors (customers) as of 0.00 am of the date of record in accordance with the procedure prescribed by the Commission, as well as the records on securities accounts of the issuer, the clearing institution and the Clearing House as of 0.00 am of the date of record in accordance with the procedure prescribed by the Commission.

10. The procedure of the replacement of the nominee shall be specified by the Rules of the Central Securities Depository or, in the case specified by this Law, the National Bank of Ukraine.

The powers shall be deemed to have been handed over from one nominee to another from the date of submission of the relevant information to the Central Securities Depository or, in the case specified by this Law, the National Bank of Ukraine.

The Central Securities Depository shall provide generalized information about nominees on written request of the Commission.

11. The National Bank of Ukraine may prescribe a special procedure of the compilation and transfer of the register of holders of registered securities, whose depository accounting is maintained by the National Bank of Ukraine in accordance with this Law.

12. The Central Securities Depository and the National Bank of Ukraine shall cause measures to be taken to prevent divulgation of

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| <p>the information contained in registers of holders of registered securities. Parties guilty of divulging the said information shall be liable by law.</p> | | |
| <p>Article 23. Lodgment of Securities to the Notary's Deposit</p> | | |
| <p>1. An obligor, in order to meet liabilities to a creditor, may lodge securities to a notary's deposit in cases specified by the legislation.</p> <p>In case of the lodgment of securities to the notary's deposit, the rights in securities and the rights attached to securities shall be vested in the creditor in the liability. The notary must notify the creditor in accordance with the procedure prescribed by law of the lodgment of securities to the notary's deposit.</p> <p>The securities lodged to the notary's deposit may be encumbered in cases specified by law.</p> <p>2. The securities existing in the electronic form shall be lodged to the notary's deposit by crediting a dedicated account held by the notary with the depository institution flagged as the "notary's deposit" with securities held by the creditor.</p> <p>3. The securities lodged to the notary's deposit shall be disregarded for the purposes of voting and the determination of the quorum at the general shareholder (participant) meeting of the issuer of such securities. The dividends and other revenues from securities lodged to the notary's deposit shall be transferred to the notary and owned by the creditor.</p> | | |
| <p>SECTION IV. DISCLOSURE AND PROTECTION OF THE INFORMATION CONTAINED IN THE DEPOSITORY ACCOUNTING SYSTEM</p> <p>Article 24. Information Contained in the Depository Accounting System</p> | | |
| <p>1. The information contained in the depository accounting system shall be subject to restricted-access procedures, protected by law, and may not be divulged, except for cases referred to in Article 25 of this Law.</p> <p>2. The following entity shall be the owner of the information</p> | | |

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| <p>contained in the depository accounting system:</p> <p>the depositor of the depository institution in case of the information held on its account opened by the depository institution;</p> <p>the issuer in case of the information contained on its securities account opened by the Central Securities Depository or the National Bank of Ukraine, and in case of the information from the register of holders of registered securities of such an issuer;</p> <p>the depository institution in case of the information contained on its account opened by the Central Securities Depository and/or the National Bank of Ukraine;</p> <p>the correspondent depository in case of the information contained on its account opened by the Central Securities Depository;</p> <p>the Central Securities Depository in case of the information contained on its account opened by a depository from another country or an international depository and clearing institution being a non-resident in Ukraine;</p> <p>the National Bank of Ukraine in case of the information contained on its account opened by the Central Securities Depository and the account opened by a depository from another country or an international depository and clearing institution being a non-resident in Ukraine;</p> <p>clearing institutions and the Clearing House in case of the information contained on their accounts opened with the Central Securities Depository and/or the National Bank of Ukraine.</p> <p>3. The information contained in the depository accounting system shall be provided to the owner of the information or its representative in accordance with terms and conditions of contract, or to other parties in cases specified by law.</p> | | |
| <p>Article 25. Access to the Information Contained in the Depository Accounting System</p> | | |
| <p>1. The information contained in the depository accounting system shall be provided by depository institutions on the written demand of:</p> <p>1) court;</p> | | |

2) public prosecution agencies of Ukraine, agencies of the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the tax militia in respect of the performance of transactions on accounts of a specific legal entity or individual over a certain period solely within the scope of a criminal or operative espial case;

3) agencies of the Antimonopoly Committee of Ukraine in respect of the information about owners of securities, transactions on accounts of holders of securities, as well as transactions on accounts of issuers of securities during the review of applications and cases of the violation of the economic competition protection legislation, and in other cases specified by the legislation;

4) the agencies of the State Tax Service of Ukraine in respect of the taxation of transactions posted to accounts of the specific legal entity or individual over the specific period;

5) the specifically authorized executive agency in charge of the financial monitoring in respect of the additional information about a financial transaction that has become an object of the financial monitoring;

6) agencies of the State Enforcement Service of Ukraine in the course of the performance of the enforcement proceedings thereby in respect of a securities account of the specific legal entity or individual, and the transactions on the entity's securities account over the specific time interval;

7) the Commission in respect of the information about holders of securities, their accounts, and the relevant transactions with securities of such holders;

8) the National Bank of Ukraine in respect of the information about holders of securities issued by banks, as well as in accordance with the Law of Ukraine "On the National Bank of Ukraine" in respect of the information about government securities;

9) the national commission in charge of the state regulation in the field of markets of financial services within the scope of its powers specified in the Law of Ukraine "On Financial Services and State Regulation of Financial Service Markets" in respect of the information about holders of securities issued by the relevant financial institutions;

10) notarial offices (notaries) or diplomatic missions and

consular institutions of Ukraine in foreign states in respect of the information about securities accounts of the deceased holders.

2. A written demand by entities referred to in items 2 to 10 of part one of this article for the provision of the information about legal entities and individuals shall:

1) be executed on the letterhead of the said entity in the prescribed format;

2) be submitted with the signature of the head (deputy head) of the said entity or its territorial body authenticated with the national-emblem seal;

3) specify the grounds for the obtainment of the information provided for by this Law, and contain references to provisions of the law, under which the entity or the territorial body thereof is entitled to the obtainment of the said information.

3. A depository institution shall be prohibited from providing any information about depositors of another depository institution, except for the provision of the register of holders of registered securities under Article 22 and in other cases specified by the legislation.

4. The procedure and time frames for the provision of the information referred to in part one of this article by depository institution shall be specified by the Commission subject to the requirements of law.

5. The Central Securities Depository and the National Bank of Ukraine shall disclose information contained in the depository accounting system on the quantity of securities of a particular tranche of the specific issuer on the account of the specific customer of the Central Securities Depository or the National Bank of Ukraine as of the specified date, on transactions with securities of a particular tranche of the specific issuer on accounts of customers of the Central Securities Depository or the National Bank of Ukraine over a certain period, and the information on a list of customers of the Central Securities Depository or the National Bank of Ukraine, whose accounts contained securities particular tranche of the specific issuer as of the specified date in the following cases:

1) by court decision;

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| <p>2) on written demand of a state authority received subject to requirements of part two of this article within the scope of its powers and on the basis of the law.</p> <p>6. The parties guilty of violating the disclosure and utilization procedure applicable to the information contained in the depository accounting system shall be liable by law.</p> <p>7. The Central Securities Depository shall disclose information from the register of codes of securities (international identification numbers of securities) on its web site on the Internet in accordance with the procedure specified by the supervisory council of the Central Securities Depository.</p> <p>The following information shall be disclosed:</p> <ol style="list-style-type: none"> 1) the assigned codes of securities (international identification numbers of securities); 2) registered codes of issuers of the securities; 3) names of issuers of securities; 4) rights attached to securities as specified by the issuer on the deposition of the global (provisional global) certificate; 5) other information specified by the Commission. | | |
| <p>Article 26. Non-disclosure of the Information Contained in the Depository Accounting System by Professional Members of the Depository System of Ukraine</p> | | |
| <ol style="list-style-type: none"> 1. The professional members of the depository system of Ukraine shall ensure the non-disclosure of the information contained in the depository accounting system by means of: <ol style="list-style-type: none"> 1) restricting the range of persons having access to the said information; 2) organizing the special document management procedures in the depository accounting system; 3) applying hardware and software for the prevention of the unauthorized access to carriers of such information. 2. Employees of a professional member of the depository | | |

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| <p>system of Ukraine shall sign a written undertaking not to disclose information contained in the depository accounting system at the time of their appointment.</p> | | |
| <p>Article 27. Electronic Document Exchange and Storage of Electronic Documents in the Depository System of Ukraine</p> | | |
| <p>1. The electronic document exchange and the electronic digital signature in accordance with the legislation shall be used among members of the depository system of Ukraine within the depository system of Ukraine in cases specified by the Commission.</p> <p>2. The use of the electronic document exchange must ensure the protection of the information contained in the depository accounting system for the purposes of the prevention of illegitimate acts with such information.</p> <p>3. The procedure of the circulation, storage and destruction of electronic documents used by the professional members of the depository system of Ukraine shall be specified by the Commission.</p> | | |
| <p>SECTION V. STATE REGULATION, SUPERVISION AND CONTROL IN THE DEPOSITORY SYSTEM OF UKRAINE</p> <p>Article 28. State Regulation in the Depository System of Ukraine</p> | | |
| <p>1. The state regulation in the depository system of Ukraine shall be exercised by the Commission, as well as by the National Bank of Ukraine and other state authorities within the scope of their powers defined by law.</p> <p>2. The Commission shall carry out the state regulation in the depository accounting system in accordance with the Law of Ukraine "On State Regulation of the Securities Market in Ukraine", this Law, and other acts of legislation.</p> <p>For the purposes of the state regulation of the depository system of Ukraine, the Commission shall:</p> <ul style="list-style-type: none"> specify requirements for activities of members of the depository system of Ukraine and relations among them; specify principles of the structuring of the depository accounting system; | | |

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| <p>specify requirements for the procedure of the opening and maintenance of securities accounts, and the procedure of performing transactions and the types thereof carried out by the Central Securities Depository, the National Bank of Ukraine and depository institutions on securities accounts;</p> <p>specify the procedure, time frames and forms of the reporting of activities by professional members of the depository system of Ukraine to the Commission;</p> <p>specify requirements for the form, contents and disclosure procedure of the information by professional members of the depository system of Ukraine in respect of their activities;</p> <p>specify requirements for the contents of internal documents of professional members of the depository system of Ukraine;</p> <p>specify requirements for the procedure of crediting securities into the depository accounting system in case of the issue and the procedure of debiting securities in connection with the redemption and/or annulment thereof;</p> <p>issue other regulatory acts within the scope of its powers.</p> | | |
| <p>Article 29. Licensing of Professional Members of the Depository System of Ukraine</p> | | |
| <p>1. The Commission shall issue a specific license shall be issued for the exercise of each depository activity, except for the depository activities of the Central Securities Depository and the depository activities of the National Bank of Ukraine.</p> <p>2. In case of the exercise of the depository activities of a depository institution by the National Bank of Ukraine, the said activities shall be exercised by the National Bank of Ukraine without the obtainment of the licence therefor in accordance with the procedure specified by Commission in concurrence with the National Bank of Ukraine.</p> <p>In case of the exercise of depository activities of a depository institution by the Clearing House and clearing institutions, the activities in question shall be exercised by the Clearing House and clearing institutions without obtaining a licence therefor in accordance with the procedure specified by the Commission.</p> | | |

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| <p>Article 30. Exercise of Control by the Central Securities Depository</p> | | |
| <p>1. The Central Securities Depository shall exercise the following control powers in order to cause the securities depository accounting system to be set up and to operate:</p> <p>1) specify the form, contents, time frames and procedure of the provision of the information by depository institutions and other customers about their activities to the Central Securities Depository;</p> <p>2) exercise control over the compliance of depository institutions with the ratio between their depository assets and rights in securities credited to securities accounts of depositors (the depository balance);</p> <p>3) suspend the performance of transactions by a depository institution with a particular tranche of securities, in whose respect the violation of the depository balance by the depository institution has been detected;</p> <p>4) issue an instruction to make good violations of the depository balance to the depository institution.</p> | | |
| <p>Article 31. Liability for the Violation of Requirements of This Law</p> | | |
| <p>1. Parties guilty of violating requirements hereof shall be liable by law.</p> | | |

Ukrainian Corporate Governance Principles

NATIONAL COMMISSION FOR SECURITIES AND STOCK MARKET
DECISION

July 22, 2014 N 955

Introduction

1. The essence of corporate governance

A company's success is determined, to a large extent, by its access to investment capital. In order to win investor confidence or to raise capital, the company must maintain good governance practices, including shareholder protection, a sound system of management and control, and transparency and openness in its activities.

Corporate governance is the system of relations among the company, its shareholders and other stakeholders. It is one of the key elements of companies' growth which increases investor confidence. Corporate governance defines the framework of the company's tasks, means for these tasks, the company's monitoring policy. An effective system of corporate governance increases the cost of capital, companies are encouraged to more effective use of resources that provides the basis for further growth.

In a larger sense, corporate governance is defined as a system for directing and controlling the activities of corporations. Corporate governance defines how investors oversee the activities of management, and how management is liable to investors for the company's performance. Good corporate governance allows investors to be certain that their investment is used prudently by management to increase the company's financial and business activity and, therefore, to create shareholder value.

Good corporate governance is not limited to relations between investors and management. It involves the protection of and cooperation with stakeholders who have a legitimate interest in the company's performance, such as employees, consumers, creditors, the government, the public, and so forth. One reason for this is that a company cannot exist outside the society in which it operates, and its ultimate success depends on the individual input of each stakeholder.

Therefore, the essence of corporate governance may be described as a system of relations between the company's owners, management, and stakeholders aimed at ensuring the sustainable performance of the company and a balance of influences and interests of the parties to corporate relations.

2. The importance of corporate governance

Corporate governance is important for joint stock companies because of its role in increasing their competitiveness and economic efficiency through:

- the protection of shareholder interests;
- a balance of influences and interests of parties to corporate relations;
- increased financial transparency; and,
- the implementation of good management and control practices.

Corporate governance is important for the state at large because of its effect on the country's social and economic development, as well as its role in:

- facilitating investment, and building investor confidence;
- increasing the efficiency of capital utilization and private sector performance; and,
- taking into account the interests of a broad range of stakeholders, in keeping with the

goal of working for the benefit of society as a whole and maximizing national wealth.

3. Global trends in the development of corporate governance. Generally accepted principles of corporate governance

While no universal model of corporate governance exists in the world, there are generally accepted principles, or standards, of good corporate governance that may be applied within a wide range of legal, economic, and political contexts.

International standards of corporate governance appeared primarily as a result of heightened public interest in corporate governance generated by the globalization of financial markets and the liberalization of capital flows. An attempt was made to lay down universally acceptable, transparent and understandable ground rules for financial markets. International standards of corporate governance came about as a broad response to scandals in the world's financial community and a desire to stabilize financial markets.

Today, a large number of countries are making a concerted effort to improve corporate governance at the national level. One way to achieve this goal is through the introduction of national principles (codes) of corporate governance. Such documents came into existence as a result of:

First, a realization that national legislation alone cannot resolve all the problems of corporate governance, and that these must be addressed through the introduction of standards of ethics and a code of practice for corporate governance.

Second, the understanding that corporate governance is an important component of national development and an essential condition for surviving in a competitive global environment. Many countries now consider corporate governance to be an integral part of economic reform, a prerequisite for the development of private business, a method of increasing capacity to compete on international markets, and a means of improving overall economic performance.

4. The purpose of the Principles of Corporate Governance of Ukraine

The purpose of the Principles of Corporate Governance of Ukraine is to lay down the principles and recommendations, based on international best practices of corporate governance and tailored to Ukraine's needs and experience that are necessary for the development of good corporate governance in Ukraine.

This is a systematic collection of the fundamental principles and recommendations for conducting the effective and transparent management of a company, through which the company will improve its ability to attract investment and to compete with others.

5. The scope of the Principles of Corporate Governance of Ukraine

Principles of Corporate Governance is a manual that provides answers for the question how Ukrainian enterprises should overcome the "crisis of confidence" from domestic and foreign investors and attract financial resources on the domestic and international markets. Corporate Governance is important for all companies, but it is of key relevance for companies in dire need of financial resources.

In addition, the Corporate Governance Principles not only provide an answer to the question of how to mobilize capital, but also how to exercise proper control over its effective use. The answer to this question is a key objective of corporate governance and is caused by a problem that has arisen as a result of differentiation of ownership and control and the need to give due attention to the protection of investors at a time when some persons own the company, while the others manage it.

Taking into account the aforementioned, the Principles of corporate governance are addressed, primarily, to the Ukrainian companies which need investment and are willing to attract it through the highest standards of corporate governance. Potentially – it is a public joint stock company whose shares are traded on a regulated stock market (stock exchange). However, the Principles contain universal principles and recommendations for effective management of the company. That is why its provisions may be used both by joint stock companies and other types of companies, in part which complies with current legislation regulating their activities, including professional stock market participants and non-bank financial groups, investors, companies and other parties that play certain role in the formation of good corporate governance.

The adoption of corporate governance principles encourages banks and other financial institutions, rating agencies to be more loyal when assessing the creditworthiness of the company and improves the attitude of stakeholders when considering prospects for potential partnerships.

6. The status and mechanisms for enforcing the Principles of Corporate Governance of Ukraine

The Principles of Corporate Governance are recommendations only and designed to be optional. The primary incentive for companies to follow them is economic rationale and the demand for good corporate governance by capital markets when raising financing.

Companies should take a flexible and creative approach to introducing their own systems of corporate governance, using the provisions of this document as a basis and tailoring them to their specific needs. Once in place, companies should constantly evaluate and improve their corporate governance systems.

Companies should follow the Principles of Corporate Governance in practice by:

- voluntarily applying the principles and recommendations for good corporate governance and on a day-to-day basis;
- including provisions of the Principles into company by-laws; and,
- disclosing information on the observance of the Principles in an annual report, or explaining the reasons for not following the recommendations provided in the Principles.

The Principles are a living document and will be reviewed and revised with regard to the development of corporate legislation and to the improvement of the practice and generally accepted principles of corporate governance

II. Principles of Corporate Governance

1. Goal of the Company

The company's goal is to maximize shareholder value as measured by the increasing market value of shares and the dividends paid to shareholders.

2. Shareholder Rights

The company should ensure the protection of the rights and legitimate interests of shareholders, regardless of whether the shareholder is a resident of Ukraine, the number of shares he/she owns, and other factors.

2.1. The company should ensure both the ability to exercise rights and the protection of the rights and legitimate interests of shareholders, including:

2.1.1. The right to participate in the corporate governance of the company by attending and voting at the general shareholders' meeting. To provide shareholders with an opportunity to exercise this right effectively, the company should facilitate the shareholder's right to:

a) participate in decisions on fundamental corporate matters, such as making changes to the charter, electing members of the supervisory board and audit commission, approving additional share issues, repurchasing any outstanding shares by the company, undertaking large transactions, reorganizing the company and other activities which may result in major corporate changes;

b) be informed about the upcoming general meeting in a timely manner by means of a notice indicating the date, time and venue of the meeting, and to receive complete information about the agenda of the meeting, which shall specify the method through which shareholders can become familiar with documents related to the agenda. The time and venue of the general meeting and the registration procedure should facilitate the participation of shareholders in the general meeting. The procedures at the general meeting should not make voting overly complicated and expensive.

c) examine documents concerning the agenda of the general shareholders' meeting in a timely manner and by any convenient means, and to obtain, where needed, additional information on items included in the agenda from company officers;

d) make motions and request that motions made by shareholders with the appropriate number of votes be included in the agenda;

e) attend the general shareholders' meeting in person or through a freely appointed nominee. Votes cast at the general shareholders' meeting by shareholders and shareholder's nominees shall have an equal legal force;

f) participate in the discussion of and vote on motions included in the agenda, including through the method of absentee voting. The procedure used for voting at the general shareholders' meeting should ensure the transparency and accuracy of the vote count.

2.1.2 The right to share in the company's profits in an amount proportionate to the number of shares owned by the shareholder.

2.1.3 The right to receive complete and accurate information about the financial state of the company and the results of its economic activity, important facts which affect or may affect the value of corporate securities and/or earnings on them, the issuance of corporate securities, etc.

2.1.4 The right to dispose of shares freely.

2.1.5 The right to a secure and effective mechanism for the registration and confirmation of share ownership:

- a) the procedure for registering titles to shares should provide for a quick, effective, and easy method of registering and confirming share ownership;
- b) the company should make every effort to prevent officers of governing bodies and other shareholders from interfering with the process of registering share certificates; and,
- c) when choosing a depository institution, the company should take this decision on the basis of its independence, professionalism, and trustworthiness.

2.1.6. The right to request the redemption of shares by the company at a fair price for those shareholders who did not vote for or voted against certain decisions of the general shareholders' meeting which restrict their rights.

2.1. The company should ensure equitable treatment of all shareholders owning same-class shares:

- a) every common share issued by the company gives its owner the same scope of rights. Ukraine has adopted the one-share-one-vote principle;
- b) in the event that the general shareholders' meeting adopts a resolution which restricts the rights of preferred shareholders, they should have the right to vote on motions included in such a resolution; a shareholder who did not vote for or voted against the resolution should be entitled to the redemption of his/her shares at a fair price;
- c) the same amount of dividends should be paid per each share of the same class issued by the company. It is not permitted to give privileges, in terms of receiving dividends, to different groups of shareholders within the same class; and,
- d) all shareholders should have equal rights and opportunities in terms of access to information.

2.3. The company should encourage institutional investors to take part in the company's management and to effective realization of their corporate rights.

2.4. The Company promotes and maintain communication between the shareholders themselves on issues related to realization of their fundamental rights.

2.5. The system of corporate governance provides the same fair treatment to all shareholders, including minority and foreign shareholders. All shareholders have the opportunity to resort to effective remedies in case of violations of their rights. Company eliminates barriers to international voting.

2.6. In the event of an additional share issuance, the company should secure the equal preemptive right of every shareholder to purchase additionally issued shares in an amount proportionate to his or her share in the charter capital.

2.7. The company should design and introduce an appropriate internal mechanism to prevent the misuse of insider information by company officers and other insiders for personal gain.

2.8. The Company develops and implements effective mechanisms for protection of minority shareholders against unfair actions of controlling shareholders committed them personally or by third parties in their interests.

2.9. The system of corporate governance is complemented by the system of effective measures concerning bankruptcy and effective enforcement of creditor rights.

3. The Supervisory Board and the Executive Board

Good corporate governance requires providing, within the corporate structure of the company, for an active independent supervisory board and an efficient executive board (management), a rational distribution of responsibilities among the two governing bodies, and a proper system of accountability and control. The system of corporate governance should provide adequate conditions for a timely exchange of information and an efficient interaction between the supervisory board and the executive board. Bodies and officers of the company should perform their duties with due diligence and care in the best interests of the company and shareholders.

3.1. Supervisory board

3.1.1 The supervisory board conducts the overall management of the company, controls activities of the executive board, and protects the interests of shareholders. Good governance requires that the supervisory board reports to the company's general shareholders' meeting.

3.1.2. If the decisions may have a different impact on different groups of shareholders, the supervisory board shall equally and fairly treat all shareholders. The Supervisory Board shall be guided by the best ethical standards and take into account the interests of stakeholders.

3.1.3 The charter of the company should clearly define the responsibilities of the supervisory board, including powers that are exclusive to the supervisory board. The main functions of the supervisory board include:

- a) ensuring the exercise and protection of shareholder rights;
- b) approving the company's strategy, annual budget and business plans, and overseeing their implementation;
- c) ensuring the formality and transparency during the nomination and election of members of the executive board, approving the terms of contracts with the chairman and members of the executive board, and determining the amount of their compensation and forms of oversight of the executive board's activity;
- d) overseeing the financial and business activity of the company, including making available complete and accurate information about the company to the public;
- e) overseeing the detection, prevention, and resolution of conflicts of interest among company officers, such as the use of company property for personal needs and entering into agreements with related parties;
- f) monitoring the effectiveness of the company's management and, if necessary, making

appropriate amendments;

g) ensuring the integrity of the accounting and financial statements of the company, including the independent audit, as well as the necessary control systems, including risk management, financial and operational control over compliance with legislation and standards.

3.1.4. Regular meetings of the supervisory board should be held as often as necessary to ensure the proper discharge of its duties. In any case, meetings of the supervisory board should be held at least once every three months.

3.1.5. The Supervisory Board if necessary decides on agreements concerning the professional consulting services (legal, accounting, etc.) provided to the supervisory board; the Supervisory Board assume in its cost plan the availability of adequate resources to pay for such services.

3.1.6. The Supervisory Board provides the annual evaluation of its activities as a whole and each member individually. For this purpose, it is recommended to create a special committee, most of which members are independent.

3.1.7. In the end of the year, the supervisory board reports to the general meeting on its activities and the general condition of the company.

3.1.8. Members of the supervisory board should be elected and dismissed by the general shareholders' meeting:

a) the procedure for forming the supervisory board should provide all shareholders, including minority shareholders, with an opportunity to nominate candidates for the supervisory board;

b) candidates for the supervisory board should be nominated ahead of the general shareholders' meeting; shareholders should be provided with complete information about each candidate in advance, in order to be able to make a circumspect and informed decision; and,

c) it is recommended that legal entities which are shareholders elect individuals to the supervisory board.

3.1.9. Members of the supervisory board should have the knowledge, qualifications and experience appropriate for accomplishing the company's mission and pursuing its strategy. Members of the supervisory board should have sufficient time to perform their mandate.

3.1.10. Members of the supervisory board should have access to complete and accurate information in order to make informed decisions.

3.1.11. Members of the supervisory board perform their duties in person and may not delegate their powers to other persons, except for the member of the supervisory board - a legal entity - shareholder.

3.1.12. To ensure the independence of the supervisory board, due care should be taken to ensure that at least one quarter of its members are independent. A supervisory board member is independent if he/she has no serious business, family, or other connections with the company, members of the executive board, or a large shareholder of the company, and is not a representative of the state.

3.1.13. Depending on the composition and duties of the supervisory board, supervisory board committees should be formed.

- a) to increase the efficiency of the supervisory board, committees should be formed for preliminary consideration, analysis, and drafting of decisions on matters that are exclusive to the supervisory board.
- b) to prevent conflicts of interest among officers of company bodies, the supervisory board should form an audit committee and a committee for nominations and compensation, most of whose members should be independent.

3.1.14. When creating the committees a supervisory board clearly defines and discloses the information about their objectives, organization and working procedures.

3.1.15. Members of the supervisory board should be entitled to adequate compensation and should be provided with an incentive to perform their duties for the benefit of the company. Information about the amount and form of compensation extended to individual or all members of the supervisory board in aggregate, the number of shares they own, etc. should be made public in the annual report.

3.1.16. The position of corporate secretary should be introduced, with an objective to provide efficient organizational and information support to the governing bodies of the company, and to keep shareholders and stakeholders informed about the company's status.

3.2. The Executive Board

3.2.1 The executive board manages the day-to-day activities of the company and reports to the supervisory board and the general shareholders' meeting.

3.2.2 The executive board develops and coordinates with the supervisory board a draft annual budget and a draft company strategy, independently prepares and approves the workplans and operating objectives of the company, and ensures their implementation.

3.2.3 The executive board should ensure the conformity of the company's activity to the provisions of applicable legislation, and the resolutions of the general meeting and the supervisory board. At least once a year the executive body shall report to shareholders on its activities at the general shareholder meeting.

3.2.4 Companies are recommended to form a collegial executive board. The chief executive officer (CEO) is elected and dismissed by the supervisory board.

3.2.5. Members of the executive board should have the knowledge, skills, and experience necessary for the proper performance of their duties.

3.2.6 The amount and form of compensation for members of the executive board are determined by the supervisory board (on a motion by the committee for nomination and compensation). The amount of compensation for members of the executive board should be linked to the company's performance based on the long-term interests of the company and shareholders. Information about the total amount and form of compensation of members of the executive board and the number of shares they own should be disclosed in the annual report.

3.2.7 At the request of the supervisory board, but at least once every three months, the executive board should provide the supervisory board, in writing, with a report on financial and economic status of the company and the extent to which set goals and targets were achieved. In addition, the executive board should provide members of the supervisory board, at their request, with the timely, complete, and accurate information necessary for the supervisory board to discharge its duties properly. Based on year-end results, the executive board should

report to the general shareholders' meeting on its activities and the overall state of the company.

3.2.8 The supervisory board regularly evaluates the performance of the executive board as a whole and its members separately.

3.3. Loyalty and Liability

3.3.1 Officers of the governing bodies of the company should act with due diligence and care in the best interests of the company.

3.3.2 Company officers should disclose information about a conflict of interest which may exist or arise in connection with any transaction (decision). The charter and by-laws of the company should set forth an appropriate procedure for making transactions in which company officers may have a conflict of interest. This procedure should provide for the following:

- a) a person who has a conflict of interest in relation to a particular transaction made by the company should inform the supervisory board of the conflict of interest in a timely manner;
- b) the transaction should be approved by the majority of members of the supervisory board;
- c) the person who has a conflict of interest may not take part in the discussion of or voting on such a transaction; and,
- d) transactions in which company officers have conflicts of interest should be made on fair terms and at fair market prices.

3.3.3. Company officers should not use opportunities of the company for personal gain.

3.3.4 During their term in office, company officers cannot establish or participate in (as owner or co-owner) companies which compete with the company, and cannot otherwise compete with the company by any other means. Members of the executive board should not combine the performance of their mandate for the company with any other business activity, except with the approval of the supervisory board.

3.3.5 The company's policy regarding loans to company officers should be clearly set out in company by-laws. A decision to provide a loan to an officer of the company is subject to approval by the supervisory board. Information about such loans should be disclosed to company shareholders.

3.3.6 Company officers should compensate the company for damage caused to the company as a result of their failure to perform or improper performance of their duty to act with due diligence in the best interests of the company; civil law and labor contracts between the company and the company officers should include necessary provisions about company officers' liability.

4. Information Disclosure and Transparency

The company should disclose full and accurate information on all matters of importance concerning the company in a timely fashion and by convenient means, with an aim to provide users of such information, including shareholders, creditors, potential investors, etc., with an opportunity to make informed decisions.

4.1. Information disclosed by the company should be relevant and complete.

4.1.1. Relevant information which should be regularly disclosed by the company includes information about:

- a) business objectives and strategy;
- b) financial and operational results;
- c) the ownership and control structure of the company and the structure of a group to which the company belongs, and relationships within the group;
- d) decisions on deals with interest;
- e) persons providing the company with advisory and other services, which could lead to a conflict of interest;
- f) officers of the company's governing bodies and the amount of their compensation and shares to be owned;

- e) major risk factors influencing the company's operations;
- f) observance of corporate governance principles;
- g) issues regarding employees and other stakeholders.

4.1.2 In addition to regular information, the company should immediately disclose special information about major events and changes which may affect the company, the value of its securities and/or earnings on them.

4.2. The company should disclose true information to create a fair picture of its actual financial situation and performance.

4.3. The company should disclose information in a timely fashion.

4.4. The company should provide equal access to publicly available information, regardless of its amount, content, format and the time of disclosure, for all users of such information.

4.5. To disclose information, the company should use convenient communication means which ensure equal, timely, and inexpensive access to information.

4.6. The company should have a clearly formulated communications policy for disclosing information about the company by making it available to all those interested in receiving such information in an amount sufficient for making an informed decision. The company's communications policy should be set with regard to the company's needs for the protection of confidential and secret information.

5. Overseeing the Financial and Business Activity of the Company

To protect the rights and legitimate interests of shareholders, the company should provide for comprehensive, independent, impartial, and professional oversight of its financial and business activity.

5.1. The company should provide for the oversight of its financial and business activity by an independent external auditor (audit firm) and by means of internal control.

5.1.1 The company's internal control system should provide for the strategic, operating, and on-going oversight of its financial and business activity.

a) The supervisory board (audit committee of the supervisory board) should ensure the operation of a proper control system and the strategic oversight of the financial and business activity of the company;

b) The audit commission should exercise the operating oversight of the financial and business activity of the company through regular and extraordinary inspections;

c) The internal audit service¹ should exercise the on-going control of the financial and business activity of the company.

5.1.2. The company should arrange for annual audits by an external auditor appointed by the supervisory board or the general shareholders' meeting. The audits should be conducted in accordance with international auditing standards.

5.1.3 Before making the decision to commit the transaction with interest, company could involve an external auditor, or other person that possesses necessary qualifications (person doing an appraisal activity, independent expert, etc.) to assess the compliance of conditions of the transaction with normal market conditions.

5.2. Persons overseeing the financial and business activity of the company should be independent from the executive board of the company, large shareholders, or other persons who may have a personal interest in the results of oversight.

5.3. The company should ensure the impartial and professional oversight of its financial and business activity.

5.4. Persons overseeing the financial and business activity of the company should report to the supervisory board and/or shareholders about the results of such inspections. An external auditor should attend the general shareholders' meeting, with an aim to answer shareholders' questions about financial reports and the auditor's opinion.

6. Stakeholders

The company should respect the rights and take into account the legitimate interests of stakeholders (persons having a legitimate interest in the activity of the company, e.g. employees, creditors, consumers, local community where the company is located, as well as relevant government agencies and local self-government) and encourage active co-operation with them to add value, create jobs, and ensure the financial stability of the company.

6.1. The company should ensure the observance of the rights and interests of stakeholders

¹ For the purposes of this document, the standing body of the company responsible for monitoring its financial and business activities is conditionally defined as an internal audit service. Companies are allowed to use different terms to refer to such a body (e.g. controlling service, control and audit service, etc.).

6.2. The company should provide stakeholders with access to information about the company necessary for effective cooperation.

6.3. The company should encourage employees to become actively involved in the process of corporate governance and motivate them to work efficiently for the benefit of the company, in particular by electing representatives of the employees to the Supervisory Board. Employees or their representative bodies are recommended to communicate to the general meeting and/or the supervisory board on any concerns about illegal and/or unethical actions of the management and/or certain officials of the management board. It should not lead to discrimination and/or disciplinary prosecutions of those employees or their representative bodies.

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
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| Law of Ukraine on accounting and financial reporting (further “the Law”) | Directive 2013/34/EU | |
| Article 1. Definitions | | |
| <p>For the purposes of this Law the following terms shall be interpreted as stated below:</p> <ul style="list-style-type: none"> - assets are the resources, controlled by an enterprise as a result of past events, the use of that, as expected, will result in the receipt of economic values in the future; - accounting [bookkeeping]: a process in the course of which information on the performance of a given enterprise is collected, processed, registered, accumulated, summed up, stored, and transferred to internal and external users to make decisions; - internal business (management) accounting: a system of processing and preparation of data relating to the activities of a given enterprise and meant for internal users in the course of management thereof; - business transaction: an act or event causing changes in the structure of assets and liabilities, and/or a given enterprise's own capital; - liability: a given enterprise's liability [indebtedness] resulting from past events, the redemption of which in the future is expected to reduce that enterprise's resources embodying economic gains; - economic gain [advantage/benefit]: a given enterprise's potential ability to receive monetary resources by using its assets; - consolidated financial report: a financial report reflecting the financial situation, performance, and the movement of monetary resources of a given legal entity and its subsidiaries [affiliates] as a single economic unit; - National Accounting Regulations (Standards): a regulatory document adopted by the Central executive body to form the state financial policy, determining the principles and methods of accounting and financial reporting which do not contradict the international standards; - accounting policy: a set of principles, methods, and procedures used by enterprises in composing and submitting | <p>Article 2</p> <p>The Directive gives definition of “public-interest entities” which is absent from the Ukrainian legislation.</p> <p>The public interest entities are the entities: Entities governed by the law of a Member State and whose transferable securities are admitted to trading on a regulated market of any Member State credit institutions insurance undertakings designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;</p> | <p>The importance of defining the “public interest entities” in the legislation of Ukraine is related to existence of special requirements to such entities under the EU regulatory framework. Such requirements shall be reflected in national legislation and, therefore, the entities to which they are applicable shall be defined.</p> <p>The necessity of adoption of the mentioned definition is prescribed in Ukrainian regulatory acts: The Law of Ukraine “On State Program of Adaptation of the legislation of Ukraine to the legislation of European Union” dated 18.03.2004; Concept of adaptation of Ukrainian legislation to legislation of European Union dated 16.08.1999</p> |

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| <p>financial reports;</p> <ul style="list-style-type: none"> - basic document: a document containing information on a given business operation and attesting to its completion; - financial report: an accounting report containing information on a given enterprise's financial status, performance, and movement of monetary resources over the accounting period; - users of financial reports (hereinafter referred to as users): individuals or legal persons requiring information on a given enterprise so they can make [correct] decisions with regard thereto; - International Financial Reporting Standards (hereinafter referred to as the "international standards") shall be understood as documents adopted by the International Accounting Standards Board and specifying the procedure of the compilation of financial statements. | | |
| Article 2. Scope | | |
| <p>1. This Law shall apply to all legal entities formed in accordance with the laws of Ukraine, regardless of the organizational legal form and type of ownership, also to representations of foreign business entities (hereinafter referred to as enterprises) obligated to keep books and records and submit reports under the laws of the Ukraine.</p> <p>2. Business entities exempted from the mandatory profit-and-loss financial reporting under the law shall not keep such books and records, and nor shall they submit reports.</p> <p>3. Business entities legally allowed to use simplified profit-and-loss financial reporting procedures shall keep books and records and submit reports in keeping with such legally established simplified accounting procedures.</p> | <p>Article 1</p> <p>The Requirements of the Directive applies only to definite types of companies which are listed in Annex I and II to the Directive. In the light of differences in national legislation on companies each Member state states the organization forms of companies to which the Directive will be applicable in the territory of the respective Member State. Generally, such companies are the companies with limited liability of the members (public and private joint-stock companies, limited liability companies).</p> <p>Besides, the Directive is also applicable to the companies where all of the direct or indirect members of the undertaking having otherwise unlimited liability in fact have limited liability by reason of those members being undertakings which are:</p> <ul style="list-style-type: none"> (i) of the types listed in Annex I; or (ii) not governed by the law of a Member State but which have a legal form comparable to those listed in Annex I. | <p>The requirements of the Directive does not apply to the companies whose members have unlimited liability. Therefore, in the course of transposition of the requirements of Directive 2013/34/EU to Ukrainian legislation it shall be directly stated that such requirements are applicable only to the companies with limited liability of the members.</p> <p>As of now such companies are public and private joint-stock companies, limited liability companies.</p> <p>Besides, the Directive states the categories of enterprises for the purposes of further differentiation of financial reporting requirements. The same categorization shall be stated in the Law or the reference to the Commercial code of Ukraine shall be made. For details please refer to Annex 1 to the present document.</p> |
| | Article 14 | In Ukraine simplified financial reporting for |

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| | <p>1. Member States may permit small undertakings to draw up abridged balance sheets showing only those items in Annexes III and IV preceded by letters and roman numerals, disclosing separately: [..]</p> <p>2. Member States may permit small and medium-sized undertakings to draw up abridged profit and loss accounts within the following limits [..]</p> <p>Article 36</p> <p>2. Member States may permit micro-undertakings:</p> <p>(a) to draw up only an abridged balance sheet showing separately at least those items preceded by letters in Annexes III or IV, where applicable. In cases where point (a) of paragraph 1 of this Article applies, items E under 'Assets' and D under 'Liabilities' in Annex III or items E and K in Annex IV shall be excluded from the balance sheet;</p> <p>(b) to draw up only an abridged profit and loss account showing separately at least the following items, where applicable:</p> <p>(i) net turnover, (ii) other income, (iii) cost of raw materials and consumables, (iv) staff costs, (v) value adjustments, (vi) other charges, (vii) tax, (viii) profit or loss.</p> | <p>the entities of micro and small enterprises, representative offices of non-residents etc. is regulated by national accounting standard (П(С)БО 25). Generally, the current form of abridged balance sheet for Ukrainian small and micro enterprises requires more detailed information re financial position of the entity than the Directive does.</p> <p>Vice versa the Ukrainian national accounting standards do not require as detailed P&L for small undertakings as the Directive does.</p> <p>Additionally, the abridged form of P&L is not stated for medium-sized undertakings in Ukraine.</p> <p>Detailed comparative information please find in Annexes2 and 3.</p> <p>Recommendation (to be implemented at the level of national standard, not the Law):</p> <p>1. To amend national accounting standard (П(С)БО 25) in order to comply with the Directive by eliminating additional items from the balance sheet for small enterprises. For micro-enterprises the requirements to the balance sheet may be reconsidered in order to encompass only items stated in part 2 of Article 36 of the Directive.</p> <p>2. To amend profit and loss accounts for small and medium-sized enterprises (the Directive requires more detailed information on profit and loss than Ukrainian national standard).</p> <p>3. For micro-enterprises Article 36 of the Directive allows P&L containing only 8 items. П(С)БО 25 should be amended to simplify the form of P&L for micro-</p> |
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| | | enterprises. 4. To allow using the abridged P&L for medium-sized enterprises (if admissible) |
| Article 3. Purpose of Accounting and Financial reporting | | |
| <p>1. Financial reporting and accounting shall be carried out in order to provide users with complete, authentic, and unbiased information on enterprises' financial status, performance, and movement of monetary resources, so they can make [correct] decisions with regard thereto.</p> <p>2. Bookkeeping shall be a compulsory type of accounting at any given enterprise. Financial, tax, statistical, and other types of accounting using the measuring rod of money shall be based on bookkeeping data.</p> <p>3. Enterprises, eligible for the simplified accounting for income and expenses and not registered as value-added tax payers, may consolidate information in accounting registers without applying the double-entry system.</p> | | Nothing to mention |
| Article 4. Basic Accounting and Financial reporting Principles | | |
| <p>Bookkeeping and financial reporting [accounting] shall rely on the following basic principles:</p> <ul style="list-style-type: none"> - prudence, meaning usage of valuation methods designed to prevent the understatement of liabilities and disbursements and overstatement of assets and revenues of a given enterprise; - complete coverage, meaning that each financial report must contain all information relating to the actual and potential consequences of business transactions and occurrences capable of affecting the decisions being taken on the basis thereof; - autonomy, whereby every enterprise is regarded as a legal entity separately from its proprietor(s) and the personal property of the proprietor(s) must not be reflected in the financial reports of this enterprise; - consistency, meaning continuous, year-in-year-out application of the accounting policy adopted by a given enterprise. Changes in this policy are possible only in cases stipulated by the National Accounting Regulations (Standards), motivated, and disclosed in a financial report; - continuity, meaning that the assessment of a given | <p>Recital 17</p> <p>The principle of materiality should govern recognition, measurement, presentation, disclosure and consolidation in financial statements. According to the principle of materiality, information that is considered immaterial may, for instance, be aggregated in the financial statements. However, while a single item might be considered to be immaterial, immaterial items of a similar nature might be considered material when taken as a whole. Member States should be allowed to limit the mandatory application of the principle of materiality to presentation and disclosure. The principle of materiality should not affect any national obligation to keep complete records showing business transactions and financial position.</p> <p>Part 16 Article2</p> <p>'material' means the status of information where</p> | Principle of materiality shall be added to the Article 4 of the Law |

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| <p>enterprise's assets and liabilities is carried out proceeding from the assumption that this enterprise will stay in business;</p> <ul style="list-style-type: none"> - accrual and correlation of profits and losses, meaning that in order to determine the financial result of the accounting period it is necessary to compare the revenues and expenses involved in receiving these revenues over the accounting period. All these profits and losses must be reflected in the books and financial reports at the time of occurrence, regardless of the date of receipt or payment of monetary resources; - prevalence of essence over form, meaning that transactions are accounted in accordance with their essence, rather than legal form; - historical (actual) cost price, whereby priority is attached to the valuation of the assets of a given enterprise, proceeding from the expenses involved in their production or acquisition; - uniform monetary terms, [1] meaning the measuring and summing up of all business transactions of a given enterprise in its financial report, using a uniform monetary unit; - periodicity, meaning the possibility of dividing a given enterprise's performance into certain periods for the purposes of a financial report. | <p>its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking. The materiality of individual items shall be assessed in the context of other similar items.</p> | |
| <p>Article 5. Currency used in Accounting and Financial reporting</p> | | |
| <p>Enterprises shall carry out their accounting and financial reporting using the national currency of Ukraine.</p> | | <p>Nothing to mention</p> |
| <p>Article 6. State Regulation of Accounting and Financial reporting in Ukraine</p> | | |
| <p>1. State regulation of accounting and financial reporting in Ukraine shall be exercised in order to:</p> <ul style="list-style-type: none"> - develop uniform accounting and financial reporting rules binding on all enterprises, guaranteeing and protecting users' rights; - improve [the existing] accounting and financial reporting procedures. <p>2. Regulation of accounting and financial reporting procedures shall be carried out by the Central executive body to form the state financial policy, entitled to adopt the National Accounting Regulations (Standards) and other regulatory documents relating to accounting and financial reporting.</p> | | <p>Nothing to mention</p> |

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| <p>3. The procedure of accounting and compilation of financial statements in banks shall be specified by the National Bank of Ukraine in accordance with this Law and international financial reporting standards.</p> <p>5. The procedure of keeping accounts for financial and business activities under a product sharing agreement, including the foreign currency, as well as the list, forms, contents, the financial reporting period, the financial statements compilation and submission procedure under a product sharing agreement shall be specified in the said agreement in accordance with the Law of Ukraine "On Product Sharing Agreements" .</p> <p>6. The ministries and other central executive authorities, acting within their respective competence and allowing for the peculiarities of their industries, shall develop procedural recommendations relying on and relating to the National Accounting Regulations (Standards).</p> | | |
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Article 8. Accounting Arrangements at Enterprises

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| <p>1. Accounting at enterprises shall be continuous, from the date of registration till the date of liquidation.</p> <p>2. Accounting arrangements at enterprises shall be determined by their proprietors or competent bodies (officials), in keeping with the law and documents of association.</p> <p>3. The owner(s) or a specially designated body (official) running a given enterprise as per legislation and documents of association shall be responsible for the <u>accounting arrangements, reflection of all business transactions in the basic documents, storage of processed documents, ledgers, and [accounting] reports over set period, but not less than three years.</u></p> <p>4. A given enterprise shall independently adopt the type of accounting arrangements, namely:</p> <ul style="list-style-type: none"> - employment of the accountant or accounting department headed by the chief accountant; - assistance by an accounting expert registered as a practicing entrepreneur but without the legal entity status; - contractual accounting services rendered by a centralized accounts department or audit firm; - the independent maintenance of accounts and the compilation of reports directly by the owner or the chief executive | <p>Recital 40</p> <p>The Members of the administrative, management and supervisory bodies of an undertaking should, as a minimum requirement, be collectively responsible to the undertaking for drawing up and publishing annual financial statements and management reports. The same approach should also apply to members of the administrative, management and supervisory bodies of undertakings drawing up consolidated financial statements.</p> <p>According to Article 33 the collective responsibility of the administrative, management and supervisory bodies is stated for ensuring that the annual (consolidated) financial statements, the (consolidated) management report and the (consolidated) corporate governance statement are drawn up and published according to the requirements of the Directive, and where applicable, with the international accounting standards.</p> | <p>The respective provisions on liability of corporative bodies shall be added to the Article 8:</p> <p>“The members of administrative, management and supervisory bodies are collectively liable for drawing up, submission and publishing of the (consolidated) financial report composed according to national accounting standards and international accounting standards and (consolidated) management report (if applicable)”.</p> |
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officer of the enterprise. This accounting organization form may not be applied at enterprises, whose reports must be published, and in budget-funded institutions.

Tasks and functional duties of accounting departments, powers of the head of the accounting department in budget-funded institutions shall be specified by the Cabinet of Ministers of Ukraine.

5. An enterprises shall independently:

- determine the accounting policy of the enterprise in concurrence with the owner (owners) or a body (officer) authorized thereby in accordance with the constituting documents;

- adopt a type of bookkeeping as a system of registration, accounting, registration procedures and summing up accounting data, adhering to the uniform principles established by this Law and allowing for the peculiarity of a given line of business and accounting data processing technology;

- work out a system and form of management accounting, financial reporting, and control over business transactions, determining the right of employees to sign accounting documents;

- adopt document circulation rules, accounting data processing technology, and an additional systems of book inventory records;

- perforce allocate on separate balance branches, representations, offices, and other detached organization departments, subsequently to include their performance indices in the [parent] enterprise's [company's] financial report;

- determine the appropriateness of the application of international standards (unless the mandatory application of international standards is prescribed by the legislation).

6. The manager shall be under the obligation to provide adequate conditions for correct accounting and secure strict compliance with the accountant's requirements in terms of execution and submission of basic documents on the part of all organization departments and employees involved in or with accounting and financial reporting.

7. The chief accountant or official acting in his/her stead (hereinafter referred to as the accountant) shall:

- secure a given enterprise's adherence to set uniform accounting procedures, particularly in terms of execution and

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| <p>presentation, within set time-limits, of financial reports;</p> <ul style="list-style-type: none"> - organize control over the entrance of all business transactions into the books and records; - participate in the execution of documents reflecting shortages and attendant reimbursements, acts of theft or damage to the enterprise's assets; - secure inspections of accounting and financial reporting at the branches, representations, offices, and other detached organization departments of the [parent] enterprise [company]. <p>8. In case of liquidation, a liquidation committee shall be formed in keeping with the law and shall assume responsibility for the accounting and financial reporting of all transactions relating to the liquidation procedures, including assessment of property and liabilities, and drawing up a liquidation balance sheet.</p> | | |
| <p>Article 9. Basic Accounting Documents and Ledgers</p> | | |
| <p>1. Accounting business transactions shall be carried out on the strength of basic documents attesting to these transactions. The said documents shall be executed at the time of such operations or - if this is impossible - immediately afterwards. Summary accounting documents may be executed, on the strength of basic documents, to secure the monitoring and proper arrangement of processed data.</p> <p>2. Basic and summary accounting documents may be executed as hard copies or computer files, provided each has the following obligatory requisites:</p> <ul style="list-style-type: none"> - title of the document (form); - date and place of execution; - name of the enterprise in whose behalf a given document is executed; - description of a given transaction and unit of measurement; - ranks/positions of the persons responsible for the execution of a given transaction and correctness of its execution; - signature or other means of identifying the person taking part in a given transaction. <p>3. Information contained in duly registered basic</p> | <p>Recital 39</p> <p>The Member States are strongly encouraged to develop electronic publication systems that allow undertakings to file accounting data, including statutory financial statements, only once and in a form that allows multiple users to access and use the data easily.</p> | <p>Formal amendment proposal:</p> <p>The Directive exploits wording “form that allows multiple users to access and use the data easily” instead of reference to “electronic” or “machine” or “computer” form.</p> <p>The suggestion is to substitute the existing wording as follows:</p> <p>Part 2 of Article 9 of the Law:</p> <p>“Basic and summary accounting documents may be executed as hard copies or in a form that allows multiple users to access and use the data easily”</p> <p>Part 6 of Article 9 of the Law to substitute “as computer files” for “in a form that allows multiple users to access and use the data easily”</p> |

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| <p>documents shall be systematized in synthetic accounting ledgers and book inventory records by double entry in interconnected bookkeeping accounts. Foreign exchange operations shall also be reflected in the currency of payments with regard to each foreign currency involved, recorded separately.</p> <p>Data from book inventory records shall tally with that on synthetic bookkeeping accounts as of the first day of each month.</p> <p>4. Each ledger shall be titled, providing the time of registration of business transactions, names, signatures, or other data allowing the identification of the parties concerned.</p> <p>5. Business transactions shall be reflected in the ledgers relating to the accounting period in which these transactions were performed.</p> <p>6. In the case of basic documents and ledgers as computer files, a given enterprise shall, at its own expense, produce their hard copies if so requested by other participants in business operations or by law enforcement and other authorities acting within their respective legally established competence.</p> <p>7. Each enterprise shall take all measures required to prevent unauthorized and furtive corrections in basic documents and ledgers, and shall arrange for their proper storage over the established period.</p> <p>8. Persons executing and signing such basic documents and ledgers shall be held responsible for their delayed execution, presentation, or corrupt information detected therein.</p> <p>9. Copies of source documents and accounting registers may only be seized from an enterprise on decisions of the competent agencies made within the scope of their powers vested in them by laws. The compilation of a register of documents to be seized in accordance with the procedure prescribed by the legislation shall be obligatory.</p> <p>Seizing original documents and registers of this kind shall be prohibited, except for cases covered with the criminal procedural law.</p> | | |
| <p>Article 10. Inventory of Assets and Liabilities</p> | | |
| <p>1. To secure the authenticity of accounting data, each enterprise shall take stock of the assets and liabilities, verifying their presence and status, assessing them, and providing</p> | | <p>Nothing to mention</p> |

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| <p>documentary proof thereof.</p> <p>2. The objects of such inventory and the periodicity of stock-taking shall be determined by the proprietor (manager) of a given enterprise, except in cases when such inventory is compulsory under the law</p> | | |
| <p>Article 11. General Requirements to Financial Reports</p> | | |
| <p>1. Each enterprise shall be under the obligation to draw up financial reports. Each such report shall be signed by the manager and accountant of a given enterprise.</p> <p>2. Each such financial report (except in the case of budget-sustained institutions, representations of foreign business entities, and small businesses recognized as such in keeping with the laws currently in effect) shall include: balance sheet; profit and loss account; cash flow report; report on property assets [ownership capital]; notes to the reports.</p> <p>3. The National Accounting Regulations (Standards) shall determine concise forms of financial reports for small business and representations of foreign business entities, consisting of a balance sheet and business performance report.</p> <p>4. The forms of financial reports for enterprises (except banks) and procedures of filling them in shall be determined by the Ministry of Finance in Ukraine, in co-ordination with the Central executive body that implements the state policy in the sphere of statistics.</p> <p>5. Financial statement forms of banks shall be specified by the National Bank of Ukraine.</p> <p>6. Forms of financial statements of budget-funded institutions and financial reporting on budget execution shall be specified by the Central executive body to form the state financial policy.</p> <p>7. Legal entities, which meet the criteria of item 154.6 of Article 154 of the Tax Code of Ukraine, shall be obliged to compile financial statements instituted for small business entities and submit the same to competent agencies once a year.</p> | <p>1) Obligatory audit for large and medium-sized undertakings</p> <p>Recital 43</p> <p>Annual financial statements and consolidated financial statements should be audited. [...] The annual financial statements of small undertakings should not be covered by this audit obligation, as audit can be a significant administrative burden for that category of undertaking [...]</p> <p>Article 34</p> <p><u>Member States shall ensure that the financial statements of public-interest entities, medium-sized and large undertakings are audited</u> by one or more statutory auditors or audit firms approved by Member States to carry out statutory audits on the basis of Directive 2006/43/EC.</p> | <p>The legislation of Ukraine does not establish obligatory audit requirements for large and medium-sized enterprises.</p> <p>Formally, there is an obligation for all business companies to carry out statutory audit (Article 18 of the Law of Ukraine “On Business Companies” states that accuracy and completeness of annual financial statements shall be assured by the auditor (audit firm). However, this legal requirement is not realized in practice insofar as the legal enforcement rules and liability measures in case of breach of this requirement are not stated.</p> <p>The formal amendment proposal: To supplement the Article 11 of the Law with provision 8 stating that the financial statements of public-interest entities, medium-sized and large undertakings shall be audited.</p> <p>The Law of Ukraine “On Auditing Activity” shall be amended accordingly.</p> |

Article 12. Consolidated and Summary Financial Reports

1. Enterprises with subsidiaries [affiliates], in addition to financial reports on their own business operations, shall draw up and submit consolidated financial reports.

2. The ministries, other central executive authorities having jurisdiction over enterprises based on public property, and bodies managing the property of enterprises based on municipal property, in addition to their own reports, shall draw up and submit consolidated financial reports covering all enterprises subordinated to them.

The said bodies shall also draw up consolidated financial reports with regard to economic associations whose shares are under state and municipal ownership.

3. Associations of enterprises, in addition to their own reports, shall draw up and submit consolidated financial reports with regard to all enterprises being members of these associations if so provided by constituent documents of associations of enterprises in accordance with the legislation.

Article 22

A Member State shall require any undertaking governed by its national law to draw up consolidated financial statements and a consolidated management report if that undertaking (a parent undertaking):

(a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking);

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking;

(c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions.

(d) is a shareholder in or member of an undertaking, and:

(i) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated financial statements are drawn up, have been appointed solely as a result of the exercise of its voting rights; or

(ii) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. The Member States may introduce more detailed provisions concerning the form and contents of such agreements.

1. Apart from the obligation to consolidate financial reports, the groups of undertakings shall be obliged to consolidate the management reports

2. The obligation to draw up consolidated financial reports in Ukraine is stated in the Law only for enterprises with subsidiaries. This formulation as to the entities for which the present obligation is established is much narrower than the one given in Article 22 of Directive.

Recommendation: To transpose the provisions of Article 22 of Directive 2013/34 to Article 12 of the Law, in particular, parts (a)-(d) without amendments.

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| | <p>Article 23</p> <p>1. Small groups shall be exempted from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public-interest entity.</p> <p>2. Member States may exempt medium-sized groups from the obligation to draw up consolidated financial statements and a consolidated management report, except where any affiliated undertaking is a public-interest entity.</p> <p>3. [...] Member State shall, in the following cases, exempt [...] any parent undertaking (the exempted undertaking) [...] which is also a subsidiary undertaking, including a public-interest entity [...], the own parent undertaking of which is governed by the law of a Member State [...]</p> | <p>The exemption from consolidation for small groups of undertakings shall be established in Ukrainian legislation. Potentially it may be done by adding the following provision to part 1 of Article 12 of the Law:</p> <p>“The present obligation does not apply to small groups except where any affiliated undertaking is a public-interest entity”</p> <p>The application of exemption for medium-sized groups may also be considered</p> |
| <p>Article 12-1. Application of International Standards</p> | | |
| <p>1. International standards shall be used to compile financial statements, unless they contradict this Law and if they have been published officially on the web site of the Central executive body to form the state financial policy.</p> <p>2. Public joint stock companies, banks, insurers and enterprises exercising the lines of business entered into a list specified by the Cabinet of Ministers of Ukraine shall compile financial statements and consolidated financial statements in accordance with international standards.</p> <p>3. Enterprises, other than specified in part two of this article, shall determine the appropriateness of the use of international standards for the compilation of financial statements and consolidated financial statements on their own.</p> <p>4. Enterprises shall inform the Central executive body that implements the state policy in the field of statistics about their compiling financial statements and consolidated financial statements under international standards in accordance with the procedure specified by the Cabinet of Ministers of Ukraine.</p> <p>5. The financial statements and consolidated financial</p> | <p>According to Article 4 of Regulation (EC) No 1606/2002 the entities shall compose their financial reports in compliance with international accounting standards if, at their balance sheet date, their securities are admitted to trading on a regulated market of any Member State [...]</p> | <p>The requirements of Article 12-1 of the Law comply with the requirements posed by Article 4 of Regulation (EC) No 1606/2002</p> |

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| statements compiled under international standards shall be submitted in accordance with the procedure prescribed by this Law. | | |
| Article 13. Accounting Period | | |
| <p>1. A calendar year shall be the accounting period for which a financial report is drawn up. Interim reports shall be made on a quarterly basis, using the progressive total method, as of the start of the year and as part of the balance sheet and business performance report. A balance sheet shall be drawn up as of the end of the last day of the quarter (of the year).</p> <p>2. The first accounting period of a newly established enterprise may be less than 12 months, but not longer than 15 months.</p> <p>3. In case of liquidation, the accounting period shall be the time from the beginning of the accounting year till the date on which a decision on liquidation was made.</p> | | Nothing to mention |
| Article 14. Presentation and Publication of Financial Reports | | |
| <p>1. Enterprises shall be under the obligation to submit quarterly and annual financial reports to the authorities having jurisdiction over these enterprises, also to work collectives if so requested, proprietors (originators) as per foundation instruments), unless otherwise provided by this Law. Executive authorities and other users shall be presented financial reports as provided by law. The deadline for the submission of financial statements shall be specified by the Cabinet of Ministers of Ukraine or, in case of banks, by the National Bank of Ukraine.</p> <p>2. Financial reports submitted by enterprises shall not be qualified as commercial secrets, except in cases stipulated by the law.</p> <p>3. Enterprises (other than budget-funded institutions) must provide the state registrar (with registered mail) with the financial statements covering business activities comprising a balance sheet and an annual profit/loss account in the location of the registration case not later than by 1 June of the year that follows the financial reporting year.</p> <p>4. Public joint stock companies, corporate issuers of mortgage bonds, mortgage certificates, corporate bonds and real-estate transaction fund certificates, as well as professional stock market members, banks, insurers and other financial institutions shall be obliged to publish annual financial statements and annual consolidated financial statements together with the auditor's opinion</p> | <p>Article 30</p> <p>1. Member States shall ensure that undertakings publish within a reasonable period of time, which shall not exceed 12 months after the balance sheet date, the duly approved annual financial statements and the management report, together with the opinion submitted by the statutory auditor or audit firm [..].</p> <p>Member States may, however, exempt undertakings from the obligation to publish the management report where a copy of all or part of any such report can be easily obtained upon request at a price not exceeding its administrative cost.</p> <p>Article 31</p> <p>1. Member States may exempt small undertakings from the obligation to publish their profit and loss accounts and management reports.</p> <p><u>Re: Electronic submission</u> Recital (39)</p> | <p>The Directive imposes the obligation to publish not only annual financial statements, but also the management report and audit opinion for all the undertakings covered by the scope of the Directive (undertakings with the limited liability of participants).</p> <p>In Ukraine the publication of management report is not required by any legal act and the obligation to publish annual financial statements is imposed on a limited number of entities (part 4 of Article 14 of the Law). In this respect the following changes are suggested:</p> <p>1) The obligation to publish management report shall be established for all the limited liability companies. The exemption for the small undertakings may be established.</p> <p>2) The obligation to publish annual financial statements and audit opinion shall be established for all the large, medium-sized enterprises (at least those which are companies with limited</p> |

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| <p>not later than by April 30 of the year following the financial reporting year by means of the placement thereof on their web site and the publication in periodical or non-periodical bulletins.</p> <p>Enterprises - subjects of electric-power industry which are not required to publish financial reporting in accordance with this Article shall ensure the availability of appropriate financial reporting for public review at the location of the executive body of such enterprise.</p> <p>5. In case of liquidation, the liquidation committee shall draw up a liquidation balance sheet and have it published within 45 days in cases stipulated by the law.</p> <p>6. The national accreditation agency of Ukraine shall be obliged to publish annual financial statements by means of the distribution thereof as separate publications and/or the placement thereof on its own web site on the Internet not later than by June 1 of the year that follows the financial reporting year.</p> | <p>The Member States are strongly encouraged to develop electronic publication systems that allow undertakings to file accounting data, including statutory financial statements, only once and in a form that allows multiple users to access and use the data easily.</p> | <p>liability of participants – JSCs, LLSs) and public interest entities.</p> <p>The following exemptions may be established:</p> <p>2.1 The small undertakings may be exempt from the obligation to publish audit opinion insofar as the audit is not mandatory for small undertakings;</p> <p>2.2. Small undertakings are allowed not to publish their profit and loss accounts.</p> <p>The Directive establishes the obligation to submit only annual financial reports. <u>Recommendation:</u> To withdraw the obligation to submit quarterly reports from the present Law and other regulatory acts</p> <p>Electronic publication of financial reports of all other limited liability companies apart from those stated in part 4 of Article 14 of the Law shall be ensured in Ukrainian legislation.</p> |
| <p>Article 15. Monitoring Observance of the Accounting and Financial reporting Laws</p> | | |
| <p>Duly designated authorities, acting within their respective competence determined by the law, shall monitor observance of the accounting and financial reporting laws in Ukraine.</p> | | <p>Nothing to mention</p> |

Annex 1

Differentiation of undertakings and groups of undertakings according to Directive 2013/34/EU

The preamble to the Directive 2013/34/EU states that annual financial statements pursue various objectives and do not merely provide information for investors in capital markets but also give an account of past transactions and enhance corporate governance. Union accounting legislation needs to strike an appropriate balance between the interests of the addressees of financial statements and the interest of undertakings in not being unduly burdened with reporting requirements.

In the light of the above the Directive's Article 3 defines different categories of undertakings and groups of undertakings for the purposes of differentiation of requirements to their annual or consolidated financial reports.

| Category | Balance sheet total, EUR | Net turnover, EUR | Average number of employees |
|-------------------------------|--------------------------|-------------------|-----------------------------|
| Undertakings | | | |
| Large | > 20 000 000 | > 40 000 000 | > 250 |
| Medium-sized | ≤ 20 000 000 | ≤ 40 000 000 | ≤ 250 |
| Small | ≤ 4 000 000 | ≤ 8 000 000 | ≤ 50 |
| Micro | ≤ 350 000 | ≤ 700 000 | ≤ 10 |
| Groups of undertakings | | | |
| Large | > 20 000 000 | > 40 000 000 | > 250 |
| Medium-sized | ≤ 20 000 000 | ≤ 40 000 000 | ≤ 250 |
| Small | ≤ 4 000 000 | ≤ 8 000 000 | ≤ 50 |

In Ukraine Commercial code states the following categorization of enterprises:

| Category | Net turnover, EUR | Average number of employees |
|---------------------|-------------------|-----------------------------|
| Undertakings | | |
| Large | > 50 000 000 | > 250 |
| Medium-sized | > 10 000 000 | > 50 |
| Small | ≤ 10 000 000 | ≤ 50 |
| Micro | ≤ 2 000 000 | ≤ 10 |

The categorization of enterprises given in Commercial Code entirely corresponds to the one given in the Directive. However, the following shall be considered as the issues which need to be amended in order to comply with the Directive:

- Ukrainian legislation shall define the categories of groups of enterprises for the purposes of different financial reporting requirements' establishment
- Differentiation for the purposes of financial reporting is currently made only for small and micro enterprises. The requirements to the financial reporting to all other enterprises (large and medium-sized) and for groups of enterprises do not differ. In order to comply with the requirements of the Directive the accounting legislation of Ukraine shall foresee the following:
 - Possibility to compose the abridged P&L for middle-sized enterprises
 - Additional disclosures for medium-sized and large undertakings and public-interest entities which are stated in Articles 17-18 of the Directive shall be incorporated to the Form of Financial Reporting N 5 "Notes to financial statements" and to the respective national accounting standards.

Annex 2

Comparative analysis of balance sheet stated by П(С)БО 25 and abridged form of balance sheet provided by the Directive 2013/34/EU for small and micro undertakings (Vertical layout)

| National accounting standard (П(С)БО 25) | Directive 2013/34/EU |
|---|--|
| Assets | Assets |
| I. Non-current assets | C. Fixed assets |
| - | I. Intangible assets |
| Outstanding capital investments | - |
| Fixed assets: - initial cost - depreciation cost | II. Tangible assets |
| Long-term biological assets | Long-term financial investments |
| Long-term financial investments | III. Financial assets |
| Other non-current assets | - |
| <i>Total for Section I</i> | |
| II. Current assets | D. Current assets |
| Stocks Including outgoing inventories | I. Stocks |
| Current biological assets | |
| Accounts receivable for goods, works, services | II. Debtors |
| Accounts receivable for statutory payments Including CIT payments | |
| Other accounts receivable | |
| Short-term financial investments | III. Investments |
| Cash and equivalents | IV. Cash at bank and in hand |
| Prepaid expenses | E. Prepayments and accrued income |
| Other current assets | |
| <i>Total for Section II</i> | |
| III. Non-current assets kept for further sale and retirement of non-current assets | |
| Balance | |
| Liabilities | Capital, reserves and liabilities |
| I. Equity Capital | A. Capital and reserves |
| Authorized (share) capital | I. Subscribed capital |
| Additional capital | II. Share premium account III. Revaluation reserve |
| Reserve capital | IV. Reserves |
| Undistributed earnings (uncovered loss) | V. Profit or loss brought forward VI. Profit or loss for the financial year |
| Unpaid capital | - |
| <i>Total for Section I</i> | X |
| II. Long-term liabilities, target financing and provisions | B. Provisions |

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| | C. Creditors |
| III. Short-term liabilities | |
| Short-term bank credits | |
| Current liabilities under long-term liabilities | |
| Accounts payable for goods, works, services | |
| Short-term liabilities for: liabilities before State insurance liabilities salaries and wages | |
| Deferred income | D. Accruals and deferred income |
| Other short-term liabilities | - |
| <i>Total for Section III</i> | x |
| IV. Liabilities related to non-current assets kept for further sale and retirement of non-current assets | - |
| Balance | x |

Annex 3

Comparative analysis of profit and loss accounts stated by П(С)БО 25 and abridged form of profit and loss accounts provided by the Directive 2013/34/EU for small and medium-sized undertakings (layout by function of expense)

| National accounting standard (П(С)БО 25) | Directive 2013/34/EU |
|---|---|
| Proceeds (net) from sales of goods, works, services | 1. Net turnover, |
| Other operating income | 2. Cost of sales (including value adjustments), |
| Other income | 3. Gross profit or loss |
| Gross income | 6. Other operating income May be combined under "Gross profit or loss" |
| | 7. Income from participating interests, with a separate indication of that derived from affiliated undertakings |
| | 8. Income from other investments and loans forming part of the fixed assets, with a separate indication of that derived from affiliated undertakings. |
| | 9. Other interest receivable and similar income, with a separate indication of that derived from affiliated undertakings |
| Cost price of sold goods, works, services | 2. <i>Cost of sales (may be consolidated under "Gross profit or loss")</i> |
| Other operating costs | 4. Distribution costs (including value adjustments) |
| Other costs | 5. Administrative expenses (including value adjustments) |
| | 11. Interest payable and similar expenses, with a separate indication of amounts payable to affiliated undertakings |
| X | 10. Value adjustments in respect of financial assets and of investments held as current assets. |
| Financial result prior to taxation | |
| Profit tax | 12. Tax on profit or loss |

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| - | 13. Profit or loss after taxation |
| - | 14. Other taxes not shown under items 1 to 13 |
| Net profit (loss) | 15. Profit or loss for the financial year |

| Ukrainian legislation | Relevant EU legislation | Comments / amendments / proposals |
|---|--|--|
| Law of Ukraine on Audit Activity | Directive 2006/43/EC | |
| Article 1. Scope of the Law | | |
| <p>Provisions of this Law shall operate on the territory of Ukraine and apply to all business entities regardless of forms of ownership and activities.</p> <p>This Law shall not apply to the audit activities of state authorities, their units and officials authorized by laws of Ukraine to exercise the state financial control.</p> | | Nothing to mention |
| Article 2. Legislation on Audit Activities | | |
| <p>Audit activities in the field of the financial control shall be governed by the Commercial Code of Ukraine, this Law, other regulatory acts and audit standards. If an international treaty accepted as binding by the Parliament of Ukraine specifies rules other than those contained in this Law, the rules of the international treaty shall apply.</p> <p>Specifics of the exercise of other types of audit activities shall be governed by special legislation.</p> | | Nothing to mention |
| Article 3. Audit Activities | | |
| <p>"Audit activities" shall be understood as entrepreneurial activities that comprise the organizational and methodological support to the audit, the practical execution of audits (audit), and the provision of other audit services.</p> <p>"Audit" shall be understood as the verification of accounting data and financial statement indicators of a business entity in order to express an independent opinion of an auditor on their trueness in all material aspects and the conformity with requirements of laws of Ukraine, accounting policies (standards) or other rules (internal policies of business entities) in accordance with requirements of users.</p> <p>The information shall be deemed material, if the omission or the incorrect presentation thereof may affect the economic decisions of users made on the basis of financial reports.</p> <p>The audit shall be carried out by independent parties (auditors) and audit firms authorized by business entities to carry out the same.</p> <p>The audit may be carried out on the initiative of business entities and in cases specified by law (statutory audit).</p> <p>Auditors (audit firms) may provide other audit services related to their professional activities, including the</p> | <p>Article 2 of the Directive gives the following definitions: 'statutory audit' , 'statutory auditor' .</p> <p>Article 3 states that the statutory audit shall be carried out only by statutory auditors or audit firms which are approved by the Member State requiring the statutory audit.</p> | <p>Formal amendment proposal:</p> <p>(i)adding words 'international accounting standards' after words "accounting policies (standards)" in item 2 of Article 3;</p> <p>(ii)adding the definitions 'statutory audit' , 'statutory auditor'</p> <p>(iii) adding a provision stating that the statutory audit may only be carried out by statutory auditors or audit firms.</p> |

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| <p>maintenance and the restoration of accounting, in the form of the accounting and financial statements advisory, expert appraisal and the evaluation of the status of financial and business activities, and other types of the economic and legal support to the business activities of business entities. Auditors (audit firms) may audit the mortgage cover in accordance with the Law of Ukraine "On Mortgage Bonds".</p> <p>The list of services that can be provided by auditors (audit firms) shall be specified by the Chamber of Auditors of Ukraine in accordance with audit standards.</p> | | |
| <p>Article 4. Auditor</p> | | |
| <p>An auditor may be an individual being in possession of a certificate defining the individual's suitability for the exercise of audit activities on the territory of Ukraine.</p> <p>An auditor shall have the right to exercise audit activities as a sole trader or as a member of an audit firm in conformity with requirements of this Law and other regulatory acts.</p> <p>An auditor shall have the right to exercise audit activities as a sole trader solely after the inclusion of the auditor into the Register of Audit Firms and Sole Auditors.</p> <p>Auditors shall be prohibited from directly exercising other business activities but this does not preclude their right to receive dividends on shares and revenues from other corporate rights.</p> <p>No person, who has a non-lifted or non-reversed conviction for crime or who has been subjected to an administrative penalty for the commission of a corrupt offence, may be an auditor.</p> <p>An auditor shall be prohibited from making use of his office for the obtainment of the illegitimate benefits or accepting promises or offers of such benefits for himself or other parties.</p> | <p>Article 3</p> <p>3. Without prejudice to Article 11, the competent authorities of the Member States may approve as statutory auditors only natural persons who satisfy at least the conditions laid down in Articles 4 and 6 to 10, in particular:</p> <p>(i) good repute;</p> <p>(ii) educational qualifications (a person needs to attain university entrance or equivalent level, then complete a course of theoretical instruction, undergo practical training and pass an examination of professional competence of university final or equivalent examination level). The practical training shall last not less than three years and at least two thirds of such training shall be completed with a statutory auditor or audit firm.</p> | <p>The requirements to natural persons who may be admitted to carry out the statutory audit shall be reflected in the Law. In any case they shall be not less than those laid down in Articles 3, 4 and 10 of the Directive.</p> |
| <p>Article 5. Audit Firm</p> | | |
| <p>"Audit firm" shall be understood as a legal entity established in accordance with the legislation that exercises solely audit activities.</p> <p>The right to exercise audit activities shall be vested in audit firms entered into the Register of Audit Firms and Sole Auditors.</p> <p>The total interest of founders (participants) of an audit firm, who are not auditors, in the authorized capital may not exceed 30 per cent.</p> <p>Only an auditor may be a chief executive officer of</p> | <p>Article 3</p> <p>4. The competent authorities of the Member States may approve as audit firms only those entities which satisfy the following conditions:</p> <p>(a) the natural persons who carry out statutory audits on behalf of an audit firm must satisfy at least the conditions imposed by Articles 4 and 6 to 12 and must be approved as statutory auditors in the Member State concerned;</p> <p>(b) a majority of the voting rights in an entity must be</p> | <p>The requirements to the audit firms which can carry out the statutory audit shall be developed at national level and reflected in the Law</p> |

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| <p>an audit firm.</p> | <p>held by audit firms which are approved in any Member State or by natural persons who satisfy at least the conditions imposed by Articles 4 and 6 to 12. Member States may provide that such natural persons must also have been approved in another Member State. For the purpose of the statutory audit of cooperatives and similar entities as referred to in Article 45 of Directive 86/635/EEC, Member States may establish other specific provisions in relation to voting rights;</p> <p>(c) a majority — up to a maximum of 75 % — of the members of the administrative or management body of the entity must be audit firms which are approved in any Member State or natural persons who satisfy at least the conditions imposed by Articles 4 and 6 to 12. Member States may provide that such natural persons must also have been approved in another Member State. Where such a body has no more than two members, one of those members must satisfy at least the conditions in this point;</p> <p>(d) the firm must satisfy the condition of a good repute</p> | |
| <p>Article 6. Audit Standards</p> | | |
| <p>Auditors and audit firms shall apply appropriate audit standards while exercising audit activities.</p> <p>Audit standards shall be adopted on the basis of the Standards of Audit and Ethics of the International Federation of Accountants in conformity with requirements of this Law and other regulatory and legal acts.</p> <p>The approval of audit standards shall be the exclusive right of the Chamber of Auditors of Ukraine. In cases covered by law, the audit standards shall be concurred with other entities.</p> <p>Audit standards shall be binding upon auditors, audit firms and business entities.</p> | <p>Item 11 Article 2</p> <p>The Directive introduces the definition of ‘international auditing standards’ - International Standards on Auditing (ISA) and related Statements and Standards, insofar as relevant to the statutory audit</p> | <p>Formal amendment proposal: Article 6 shall be read as follows:</p> <p>Auditors and audit firms shall apply appropriate International Standards on Auditing while exercising audit activities.</p> <p>International Standards on Auditing issued by International Federation of Accountants are professional standards defining the rules for provision of audit services, issues related to ethics and quality assurance.</p> <p>International Standards on Auditing shall be binding upon auditors and audit firms provided they are [mechanism of adoption of International Standards on Auditing shall be developed at national level].</p> <p>Apart from above the substitution of words ‘Audit standards’ for ‘International Standards on Auditing’ throughout the whole text of the Law shall be carried out.</p> |
| <p>Article 7. Audit Opinion and Other Official Documents</p> | | |
| <p>"Audit opinion" shall be understood as a document compiled in accordance with audit standards that provides</p> | <p>Item 9 Article 2</p> | <p>Formal amendment proposal: Substitution of the word “opinion” for the</p> |

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| <p>for assuring users in respect of the conformity of financial statements or other information with conceptual fundamentals applied during the compilation thereof. Laws and other regulatory acts of Ukraine, accounting policies (standards), internal requirements and policies of business entities, and other sources may be such conceptual fundamentals.</p> <p>Audit services in the form of the advisory may be provided verbally or in writing with the execution of a certificate and other official documents. Audit services in the form of the expert appraisal shall be formalized with an expert opinion or a protocol.</p> <p>Results of the provision of other audit services shall be formalized in accordance with audit standards.</p> <p>An audit opinion of an auditor of a foreign state in case of the official submission thereof to an institution, an organization or a business entity of Ukraine must be confirmed by a Ukrainian auditor, unless otherwise prescribed by an international treaty of Ukraine.</p> | <p>The Directive operates the wording ‘audit report’ instead of “audit opinion”</p> <p>The Directive states that ‘audit report’ means the report referred to in Article 51a of Directive 78/660/EEC and Article 37 of Directive 83/349/EEC issued by the statutory auditor or audit firm. The requirements to the audit report are stated in Article 35 of Directive 2013/34/EU;</p> <p>Article 28 (as amended by Article 35 of Directive 2013/34/EU)</p> <p>1. Where an audit firm carries out the statutory audit, the audit report shall be signed by at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm.</p> | <p>word “report” throughout the text of the Law. Besides, the Article shall be complemented by the requirement as to signing the audit report:</p> <p>In case an audit firm carries out the statutory audit, the audit report shall be signed by at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm.</p> |
| <p>Article 8. Statutory Audit</p> | | |
| <p>The audit performance shall be obligatory for the following purposes:</p> <p>1) the confirmation of the truthfulness and the completeness of annual financial statements and consolidated financial reports of open joint-stock (public) companies, enterprises being issuers of bonds, professional securities market members, financial institutions and other business entities, whose statements are subject to the official disclosure in accordance with the legislation of Ukraine, except for institutions and organizations that are fully maintained at the expense of the state budget;</p> <p>2) the verification of the financial standing of founders of banks, enterprises with foreign investments, open joint-stock (public) companies (other than individuals), insurance and holding companies, joint investment institutes, trust companies and other financial intermediaries;</p> <p>3) issuers of securities and derivative securities (derivatives), as well as during the obtainment of a license for the exercise of professional activities on the securities market.</p> <p>The audit must also be performed in other cases when prescribed by laws of Ukraine.</p> | <p>Article 2</p> <p>13. The Directive introduces a definition of ‘public-interest entities’ which means entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, credit institutions as defined in point 1 of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (1) and insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC.</p> <p>Recital 23</p> <p>Since public-interest entities have a higher visibility and are economically more important, stricter requirements should apply in the case of a statutory audit of their annual or consolidated accounts.</p> <p>Article 34 of Directive 2013/34/EU</p> <p>Member States shall ensure that the financial</p> | <p>Formal amendment proposal:</p> <p>1. Addition to the present Article the definition of ‘public-interest entities’ and a provision of statutory audit for such entities (by supplementing Article 8 of the Law with the provision 4). The amendment shall take account that the requirements for auditors carrying out the statutory audit of public-interest entities shall be stricter than to other statutory audit.</p> <p>2. adding item 4) stating that the audit shall be obligatory for medium-sized and large enterprises as defined by Article 55 of Commercial code of Ukraine (please refer to Annex 1 to Approximation table on accounting legislation describing the categories of enterprises according to Directive 2013/34/EU and Commercial code of Ukraine)</p> |

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| | statements of <u>public-interest entities, medium-sized and large undertakings</u> are audited by one or more statutory auditors or audit firms approved by Member States to carry out statutory audits on the basis of Directive 2006/43/EC. | |
| Article 9. Duties of Business Entities in the Course of the Audit | | |
| <p>Management bodies of the business entity must provide the auditor (the audit firm) with appropriate conditions for the high-quality performance of the audit.</p> <p>Management bodies of the business entity shall be liable for the completeness and the trueness of documents and other information provided to the auditor (the audit firm) for the performance of the audit or the provision of other audit services.</p> <p>The financial reports of the business entity that are subject to the statutory audit by law must be audited and disclosed in accordance with requirements of laws of Ukraine.</p> | | Nothing to mention |
| Article 10. Certification of Auditors | | |
| <p>The certification (the ascertainment of the qualification aptitude for the exercise of audit activities) of auditors shall be carried out by the Chamber of Auditors of Ukraine.</p> <p>The procedure of the certification of auditors that will audit banks shall be approved by the Chamber of Auditors of Ukraine in concurrence with the National Bank of Ukraine.</p> <p>The right to the obtainment of a certificate shall be enjoyed by individuals that have higher education in the field of Economics or Law, for which the document is recognized in Ukraine, the necessary knowledge in the field of audit, finance, economics and commercial law, and the experience of at least three consecutive years of work on positions of an inspector, an accountant, a lawyer, a financier, an economist, an auditor's assistant.</p> <p>The availability of the required level of knowledge for the obtainment of a certificate shall be determined by means of a written qualification examination on the basis of the curriculum approved by the Chamber of Auditors of Ukraine.</p> <p>The certificate validity period may not exceed five years.</p> <p>The certificate validity shall be extended in five years as a result of a control test in the specialization in</p> | <p>Article 13</p> <p>Member States shall ensure that statutory auditors are required to take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level, and that failure to respect the continuing education requirements is subject to appropriate penalties as referred to in Article 30.</p> | <p>Formal amendment proposal: Replacing parts 5, 6, 7 of Article 10 with the following wording: 'Auditors are required to take part in appropriate programmes launched by [competent authority] of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level. In case of failure to comply with the continuing education requirements the certificate is subject to revocation'.</p> |

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| <p>accordance with the procedure prescribed by the Chamber of Auditors of Ukraine.</p> <p>A fee shall be charged for the certification in the amount specified by the Chamber of Auditors of Ukraine on the basis of the expense budget of the Chamber of Auditors of Ukraine.</p> | | |
| <p>Article 11. Register of Audit Firms and Sole Auditors</p> | | |
| <p>"Register of Audit Firms and Sole Auditors" shall be understood as a database containing the information about audit firms and auditors that exercise audit activities individually as sole traders (hereinafter referred to as the "Register").</p> <p>The Register maintenance procedure shall be defined and supported by the Chamber of Auditors of Ukraine.</p> <p>The Register shall be published at least once a year in the specialist bulletin of the Chamber of Auditors of Ukraine.</p> <p>Audit firms and auditors registered as sole traders shall have the right to exercise audit activities solely after being entered into the Register.</p> <p>A certificate in the appropriate form shall be issued to the audit firms and auditors listed in part four of this article that are entered into the Register.</p> <p>A fee shall be charged for the entry into the Register in the amount specified by the Chamber of Auditors of Ukraine.</p> | <p>Article 15</p> <p>The Directive lays down the following rules regarding the public register (particularly, Article 15):</p> <ol style="list-style-type: none"> (1) each statutory auditor and audit firm is identified in the public register by an individual number. (2) registration information shall be stored in the register in electronic form and shall be electronically accessible to the public. <p>Article 17</p> <p>1. As regards audit firms, the public register shall contain at least the following information:</p> <ol style="list-style-type: none"> (a) name, address and registration number; (b) legal form; (c) contact information, the primary contact person and, where applicable, the website address; (d) address of each office in the Member State; (e) name and registration number of all statutory auditors employed by or associated as partners or otherwise with the audit firm; (f) names and business addresses of all owners and shareholders; (g) names and business addresses of all members of the administrative or management body; (h) if applicable, the membership of a network and a list of the names and addresses of member firms and affiliates or an indication of the place where such information is publicly available; (i) all other registration(s) as audit firm with the competent authorities of other Member States and as audit entity with third countries, including the name(s) of the registration authority(ies), and, if applicable, the registration number(s). | <p>Formal amendment proposal:</p> <p>Adding Article 11-1 stating the information which shall be reflected in public register with regard to audit firms (the content of Article 17 item 1);</p> <p>Substitution of "register" for "public register";</p> <p>Due allocation of auditors individual numbers and possibility of electronic access by public shall be guaranteed at national level.</p> |
| <p>Article 12. Powers of the Chamber of Auditors of Ukraine</p> | | |

Powers of the Chamber of Auditors of Ukraine shall be defined with this Law and the Charter of the Chamber of Auditors of Ukraine.

The Charter of the Chamber of Auditors of Ukraine shall be adopted by two thirds of votes of the total number of members of the Chamber of Auditors of Ukraine.

The Chamber of Auditors of Ukraine shall:

1) carry out the certification of the parties intent on exercising audit activities;

2) approve audit standards;

3) approve auditor training curricula and, in concurrence with the National Bank of Ukraine, bank auditor training curricula;

4) maintain the Register;

5) control the compliance of audit firms and auditors with requirements of this Law, audit standards, auditor professional ethics standards;

6) take measures to ensure the independence of auditors in the course of the performance of audits by them and to organize control over the quality of audit services;

7) regulate relations among auditors (audit firms) in the course of the exercise of audit activities and apply sanctions to them, if necessary;

8) exercise other powers envisaged by this Law and the Charter of the Chamber of Auditors of Ukraine.

The Chamber of Auditors of Ukraine shall receive reports from audit firms and auditors on the work carried out by them, analyze them and submit the consolidated information about the status of audit activities in Ukraine to the Cabinet of Ministers of Ukraine on an annual basis.

Article 3

2. Each Member State shall designate competent authorities which shall be responsible for approving statutory auditors and audit firms [..]

Article 29

1. Each Member State shall ensure that all statutory auditors and audit firms are subject to a system of quality assurance which meets at least the following criteria:

(a) the quality assurance system shall be organised in such a manner that it is independent of the reviewed statutory auditors and audit firms and subject to public oversight as provided for in Chapter VIII [..]

Article 30

1. Member States shall ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of the statutory audit [..]

Article 32

1. Member States shall organize an effective system of public oversight for statutory auditors and audit firms based on the principles set out in paragraphs 2 to 7.

The following shall be implemented at national level (either by extending the competence of a current regulator –Chamber of Auditors of Ukraine or by establishing a separate authority):

- empowering the competent authority to approve statutory auditors and audit firms and to ensure that they are subject to a system of quality assurance. In such case it is necessary to guarantee the independence of the system of quality assurance from the auditors and audit firms;

- developing the system of investigations and penalties to detect, correct and prevent inadequate execution of the statutory audit.

Separately, there is a requirement to develop the system of public oversight over statutory auditors and audit firms. The system of public oversight shall have an ultimate responsibility for oversight the following activities:

(i) approval and registration of statutory auditors and audit firms;

(ii) adoption of standards on professional ethics, internal quality control of audit firms and auditing; and

(iii) continuing education, quality assurance and investigative and disciplinary systems

Playing a role of supervisor over the processes of certification, standardization, quality assurance etc., and the public oversight body shall be independent from the entities directly reliable for these processes (currently, the Chamber of Auditors of Ukraine).

Besides, the system of public oversight shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit. The State shall guarantee the establishment of the respective public oversight body at national level.

Article 13. Establishment of the Chamber of Auditors of Ukraine

The Chamber of Auditors of Ukraine shall operate as an independent body.

The Chamber of Auditors of Ukraine shall be a legal entity and maintain appropriate accounts and reports.

The Chamber of Auditors of Ukraine shall be a not-for-profit organization.

The Chamber of Auditors of Ukraine shall be vested with powers of a legal entity upon its registration with the central executive agency in charge of the implementation of the state policy in the field of the state registration (legalization) of associations of individuals and other public formations on the basis of an application and a Charter approved in accordance with the procedure prescribed by this Law.

The Chamber of Auditors of Ukraine shall be formed on a parity basis by means of the delegation of auditors and representatives of state authorities.

The total number of members of the Audit Chamber of Ukraine shall be twenty people.

The state authorities shall be represented by one representative each of the central executive agencies in charge of the development and implementation of the state finance policy, the state economic development policy, the Ministry of Justice of Ukraine, central executive agencies in charge of the implementation of the state policy in the field of the state registration (legalization) of associations of individuals and other public formations, the state tax policy, the state statistics policy, the state policy in the field of the state financial control, the National Bank of Ukraine, the National Securities and Stock Market Commission, the national commission in charge of the state regulation in the field of financial service markets, and the Chamber of Accounts.

Ten highly qualified auditors with the uninterrupted audit experience of at least five years, representatives of specialist educational establishments and scientific organizations shall be delegated to the Chamber of Auditors of Ukraine by auditors.

The right of auditors to elect representatives to the Chamber of Auditors of Ukraine and to be elected shall be exercised via decisions to be made at a congress of auditors of Ukraine.

The procedure of the delegation of representatives to the Chamber of Auditors of Ukraine shall be defined by

Nothing to mention

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| <p>the congress of auditors of Ukraine, a board of state authorities or another highest governance agency.</p> | | |
| <p>Article 14. Activities of the Chamber of Auditors of Ukraine</p> | | |
| <p>Decisions of the Chamber of Auditors of Ukraine shall be made at its sessions by a simple majority subject to the presence of more than a half of its members, except for cases covered by this Law and the Charter.</p> <p>The Chamber of Auditors of Ukraine shall exercise regulatory activities taking account of requirements of the Law of Ukraine "On Principles of the State Regulatory Policy in the Field of Business".</p> <p>The Chamber of Auditors of Ukraine may establish regional branches on the territory of Ukraine, whose powers shall be specified by the Chamber of Auditors of Ukraine.</p> <p>The term of office of a member of the Audit Chamber of Ukraine shall be five years. The same person may not be delegated to the Chamber of Auditors of Ukraine for more than two consecutive terms.</p> <p>New members of the Chamber of Auditors of Ukraine instead of those retired shall take place in accordance with the procedure prescribed by this Law.</p> <p>Members of the Chamber of Auditors of Ukraine, except for the Chairman of the Chamber of Auditors of Ukraine shall perform their duties on a voluntary basis.</p> <p>The activities of the Chamber of Auditors of Ukraine may be funded from the following sources:</p> <ul style="list-style-type: none"> the fee for the certification of individuals for the exercise of audit activities; the fee for the entry into the Register; the voluntary contributions paid by professional organizations of auditors of Ukraine; other sources not prohibited by law. <p>The Chamber of Auditors of Ukraine may set up commissions from among its members in order to perform its functions. Experts not being members of the Chamber of Auditors of Ukraine may be involved into the work of commissions.</p> <p>The current affairs in the Chamber of Auditors of Ukraine shall be managed by the Secretariat to be headed by the head. The Secretariat Head shall be personally liable for the efficient use of the property and the funds of the Chamber of Auditors of Ukraine and the creation of appropriate conditions for the exercise of functional duties by its members.</p> | | <p>Nothing to mention</p> |

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| Article 15. Chairman of the Chamber of Auditors of Ukraine | | |
| <p>The Chairman of the Chamber of Auditors of Ukraine shall perform his duties on a professional basis.</p> <p>The Chairman of the Chamber of Auditors of Ukraine shall be elected from among its members for his term of office as the member of the Chamber of Auditors of Ukraine by the vote of majority of the total number of members of the Chamber of Auditors of Ukraine.</p> <p>The Chairman of the Chamber of Auditors of Ukraine may be dismissed early by decision of the Chamber of Auditors of Ukraine and in other cases covered by the legislation of Ukraine.</p> <p>Powers of the Chairman of the Chamber of Auditors of Ukraine shall be defined with the Charter of the Chamber of Auditors of Ukraine.</p> <p>The Chairman of the Chamber of Auditors of Ukraine shall ensure setting up the new membership of the Chamber of Auditors of Ukraine.</p> | | Nothing to mention |
| Article 16. General Conditions for the Performance of the Audit and the Provision of Other Audit Services | | |
| <p>The audit shall be performed and other audit services shall be provided by auditors and audit firms that have acquired the right to exercise the audit activities in accordance with this Law.</p> <p>The general conditions of the performance of the audit and the provision of other audit services shall be defined by audit standards approved by the Chamber of Auditors of Ukraine.</p> | | Nothing to mention |
| Article 17. Grounds for the Performance of the Audit and the Provision of Other Audit Services | | |
| <p>The audit shall be carried out on the basis of a contract between the auditor (the audit firm) and the principal.</p> <p>Other audit services may be provided on the basis of a contract, a written or verbal request of the principal addressed to the auditor (the audit firm).</p> <p>The principal shall have the option to choose an auditor (an audit firm) freely in conformity with requirements of this Law.</p> <p>The contract for the performance of the audit and the provision of other audit services shall specify the subject matter and the time frame of the audit, the volume of audit services, the amount and the conditions of the payment, the liability of the parties.</p> <p>The audit standards may also provide for other material conditions of the contract for the performance of the audit and the provision of other audit services.</p> | | Nothing to mention |

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| <p>Any provisions of the contract focused on the complete release of the auditor (the audit firm) from the pecuniary liability for the non- trueness of the audit opinion or another document reflecting results of the audit instituted by law shall be null and void.</p> <p>Documents handed over by the principal to the auditor (the audit firm) for the purposes of the performance of the audit shall not be divulged or seized without the consent of the principal.</p> | | |
| <p>Article 18. Rights of Auditors and Audit Firms</p> | | |
| <p>Auditors of Ukraine shall have the right to unite in public organizations on a professional basis while adhering to requirements of this Law and other laws.</p> <p>Professional organizations of auditors of Ukraine shall contribute to enhancing the professional level of auditors, protect social and professional rights of auditors, make proposals on the further improvement of audit activities, exercise other powers envisaged by their charters and policies.</p> <p>While exercising audit activities, auditors and audit firms shall have the right:</p> <ol style="list-style-type: none"> 1) to define on their own forms and methods of the performance of the audit and the provision of other audit services on the basis of the current legislation, audit standards and conditions of contract with the principal; 2) to obtain the necessary documents related to the subject matter of the audit and being in possession of both the principal and the third parties. <p>The third parties being in possession of documents in respect of the subject matter of the audit must provide them on request of the auditor (the audit firm). The said request must be officially confirmed by the principal;</p> <ol style="list-style-type: none"> 3) to obtain the necessary clarifications in writing or orally from the management and the personnel of the principal; 4) to check the availability of the property, the money, the valuables; to require that the management of the business entity perform control inspections and measurements of the performed work, the ascertainment of the quality of products, in whose respect the document inspection is being carried out; 5) to involve specialists of various profiles into the inspection on a contractual basis. | | <p>Nothing to mention</p> |
| <p>Article 19. Duties of Auditors and Audit Firms</p> | | |
| <p>Auditors and audit firms shall be obliged:</p> | | <p>Formal amendment proposal:</p> |

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| <p>1) to abide by requirements of this Law, the Law of Ukraine "On Corruption Prevention and Inhibition Principles" and other regulatory acts, audit standards, auditor independence guidelines and other appropriate decisions of the Chamber of Auditors of Ukraine in the course of the audit activities;</p> <p>2) to properly perform the audit and provide other audit services;</p> <p>3) to notify owners and individuals authorized thereby, the principals of deficiencies in the maintenance of accounts and the compilation of financial statements detected in the course of the audit;</p> <p>4) to keep confidential the information obtained in the course of the performance of the audit and the provision of other audit services, not to divulge the information classified as commercial secrets, and not to use the same in own interests or interests of third parties;</p> <p>5) to be liable to the principal for the violation of conditions of the contract in accordance with the contract and the law;</p> <p>6) to restrict their activities to the provision of audit services and other activities directly related to the provision of audit services in the form of the advisory, audits or expert appraisals;</p> <p>7) to timely submit a report on audit activities to the Chamber of Auditors of Ukraine.</p> | | <p>Substituting words 'audit standards' for 'International Standards on Auditing'</p> |
| <p>Article 20. Special Requirements</p> | | |
| <p>The performance of the audit shall be prohibited:</p> <p>1) by an auditor who has direct kinship relation with members of management bodies of the business entity to be audited;</p> <p>2) by an auditor who has personal property interests in the business entity to be audited;</p> <p>3) by an auditor being a member of management bodies, a founder or an owner of the business entity to be audited;</p> <p>4) by an auditor being an employee of the business entity to be audited;</p> <p>5) by an auditor being an employee or a co-owner of the subsidiary enterprise, the branch or the representative office of the business entity to be audited;</p> <p>6) if the remuneration for the audit services does not account for the time, the proper skill, knowledge, professional qualification and liability of the auditor required for the appropriate performance of such services;</p> | | <p>Nothing to mention</p> |

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| <p>7) by an auditor in other cases, in which the requirements for his independence are not satisfied.</p> <p>Members of administrative, managing and controlling bodies of audit firms, who are not auditors, as well as founders, owners, and participants of audit firms shall be prohibited from interfering with the practical performance of an audit in a manner violating the independence of auditors, who are performing the audit.</p> <p>Note: "Family relationship with close relatives referred to in the Law of Ukraine "On Corruption Prevention and Inhibition Principles" shall be defined as the direct family relations.</p> | | |
| <p>Article 21. Liability of Auditors and Audit Firms under Civil Law</p> | | |
| <p>An auditor (an audit firm) shall bear the pecuniary and other liability regulated by the civil law in accordance with the contract and the law for the improper performance of his/its duties.</p> <p>The extent of the pecuniary liability of auditors (audit firms) may not exceed the damage actually caused to the client through the fault of theirs.</p> <p>All disputes in relation to the failure to perform conditions of the contract and property disputes between the auditor (the audit firm) and the principal shall be settled in accordance with the procedure instituted by law.</p> | <p>Article 30</p> <p>1. Member States shall ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of the statutory audit.</p> <p>2. Without prejudice to Member States' civil liability regimes, Member States shall provide for effective, proportionate and dissuasive penalties in respect of statutory auditors and audit firms, where statutory audits are not carried out in conformity with the provisions adopted in the implementation of this Directive.</p> <p>3. Member States shall provide that measures taken and penalties imposed on statutory auditors and audit firms are appropriately disclosed to the public. Penalties shall include the possibility of the withdrawal of approval.</p> | <p>To develop and implement at national level the transparent system of investigation and penalties, in particular, ensure publicity of investigations and penalties imposed.</p> |
| <p>Article 22. Other Types of Liability of Auditors and Audit Firms</p> | | |
| <p>The Chamber of Auditors of Ukraine may apply a sanction in the form of the warning, the certificate suspension by up to one year, the certificate annulment or the deletion from the Register to an auditor (an audit firm) for the improper performance of professional duties.</p> <p>The procedure of the application of sanctions to auditors (audit firms) shall be defined by the Chamber of Auditors of Ukraine.</p> <p>Decisions of the Chamber of Auditors of Ukraine on the application of sanctions to auditors (audit firms) may be disputed with court.</p> <p>Auditors may be subject to other types of liability in accordance with the law.</p> | <p>Article 31</p> <p>Before 1 January 2007 the Commission shall present a report on the impact of the current national liability rules for the carrying out of statutory audits on European capital markets and on the insurance conditions for statutory auditors and audit firms, including an objective analysis of the limitations of financial liability. The Commission shall, where appropriate, carry out a public consultation. In the light of that report, the Commission shall, if it considers it appropriate, submit recommendations to the Member States.</p> | <p>National discretion: Apply requirements on obligatory insurance to entities carrying out the statutory audit.</p> |

ANNEX XXXIV to Chapter 13
COMPANY LAW, CORPORATE GOVERNANCE, ACCOUNTING AND AUDITING

Ukraine undertakes to gradually approximate its legislation to the following EU legislation within the stipulated timeframes:

First Council Directive 68/151/EEC of 9 March 1968, as amended by Directive 2003/58 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community

Timetable: the Directive's provisions shall be implemented within 2 years of the entry into force of this Agreement.

Second Council Directive 77/91/EEC of 13 December 1976, as amended by Directives 92/101/EEC and 2006/68/EC on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent

Timetable: the Directive's provisions shall be implemented within 2 years of the entry into force of this Agreement.

Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies, as amended by Directive 2007/63/EC

Timetable: the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.

Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, as amended by Directive 2007/63/EC

Timetable: the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.

Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State

Timetable: the Directive's provisions shall be implemented within 2 years of the entry into force of this Agreement.

Twelfth Council Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies

Timetable: the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.

Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids

Timetable: the Directive's provisions shall be implemented within 4 years of the entry into force of this Agreement.

Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

Timetable: the Directive's provisions shall be implemented within 4 years of the entry into force of this Agreement.

Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

Timetable: the Directive's provisions shall be implemented within 4 years of the entry into force of this Agreement.

Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies

Timetable: the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.

ANNEX XXXV to Chapter 13
COMPANY LAW, CORPORATE GOVERNANCE,
ACCOUNTING AND AUDITING

Ukraine undertakes to gradually approximate its legislation to the following EU legislation within the stipulated timeframes:

Fourth Council Directive of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (78/660/EEC)

Timetable: the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.

Seventh Council Directive of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts (83/349/EEC)

Timetable: the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.

Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards

Timetable: the Regulation's provisions shall be implemented within 2 years of the entry into force of this Agreement.

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

Timetable: the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement.

ANNEX XXXVI to Chapter 13
COMPANY LAW, CORPORATE GOVERNANCE,
ACCOUNTING AND AUDITING

- OECD Principles on Corporate Governance.
 - Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies (2004/913/EC).
 - Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC).
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Minutes of the Meeting

Date: **December 15, 2014**

Title: **Assessment of approximate level of the present company, corporate governance, accounting and auditing legislation and existing practices in Ukraine to the EU standards and practices**

Location: **Kyiv, Ukraine**

Project team: **Arkadiusz Radwan, Alla Nadzon, Viktoriia Zdiruk**

Minutes produced by: **Yulia Vasyanovych**

Items covered

1. *Introduction.*

*Welcome address by **Enzo Damiani**, Attaché, Operational Section for Economic Cooperation, Social and Regional Development, European Union Delegation to Ukraine*

This study is located exactly there where it gives us an opportunity to see how we can align Ukrainian legislation with the EU requirements. We are now prepared for the developments, which will include development of business environment, particularly, for small and medium sized enterprises. This legislation is for companies, audit, accounting, and it is related to small enterprises. We are in the phase of programming. The next 3-5 years will be the transition period, and we need to think of some support for companies for this transition period.

What we face now is that sometimes new laws come in force, but we need to make them run, as the government and community are asking for some quick results. So we want to show in the next 3 months that the things are moving and getting advanced.

We need to identify the areas of support and we have to see what has to be done. I expect from this workshop to find which actions we have to look at in the next 2-5 years for the transition period.

*Introductory note by **Arkadiusz Radwan**, Senior Expert, Team Leader*

There are many theories that there are many forces and factors as the driving force. The recent factor, a trigger, for Ukraine is legal obligation under the

Association Agreement, so that Ukraine aligns its company legislation with the EU. Ukrainian development does not deviate from the EU standard.

There are different driving forces for changes. And Ukraine was driven by desire to have better economy, a better framework for supporting market economy, and there was a flow of ideas with regard to legislation.

Now we have a real obligation for Ukraine to harmonize its law, and we have to go article by article to see what is already in line, and what should be done. On the top of this we attempt to offer theoretical explanation.

The laws made in Brussels have different approaches and different standards, and since Ukraine is not a EU member, there is no direct line for Ukraine how to process, as Ukraine has to include its own specifics.

Structure of sessions:

1. General overview of what has to be done in the field of corporate law.
2. Auditing legislation
3. Models and theories influencing socio-economic environment.

1st Session:

Compliance of the Ukrainian company and corporate governance legislation (JSC Law, laws regulating operation of LLC) with the EU Acquis

We will start with internal contradictions very shortly, then we will proceed to external contradictions. And we will talk about what Ukraine is ahead of Brussels, what Ukraine has already implemented.

Alla Nadzon, Junior Expert, Team Member
Corporate law reform

Internal contradictions in the Ukrainian legislation:

- Civil Code
- Commercial Code
- Law of Ukraine “On LLCs”
- Law of Ukraine “On Companies”
- Law of Ukraine “On registration of entrepreneurs as legal entities”

Many provisions of these acts regulate the activities of different associations, some of them are in line with each other, and some of them are contradictory to each other. One of recommendation to eliminate at least those provisions of the Commercial Code that govern those activities.

One of the up-to-date and modern laws is the law on JSC, we also expect to pass the law on LLC. We hope the Parliament will be able to pass it.

Statistics from the National Commission website, just to remind you that there are almost 7000 of public and joint stock companies, and only 129 support stock exchange rate. Actually these companies do their business as corps.

There are more than 17 thousand private and closed companies. And many of them didn't harmonize their paperwork with the European law. If the provisions of the EU Directive will be implemented in the Ukrainian legislation we first will have to tackle the issue with these public and private companies. As the investors that acquired shares of the public companies at the stock market require different level of protection than private companies.

So the first step towards implementing European legislation shall be the transfer of formerly public JSC into private. After that we will have to start that harmonization process. In this area we will have to implement the mechanism of squeeze-out, to squeeze out the minoritarian shareholders, to improve the mandatory bid, which is also a mandatory mechanism, with the requirement for minoritarian to sell their shares to majoritarian.

In order to ensure this transformation, these majoritorians have to purchase shares from minoritorians. This is problem we have been discussing for quite some time already, and I hope it will find its reflection. Adoption of the law on LLC or Added LLC will offer opportunities for private companies, as they will be registered as LLC.

Right now the EU directors on the right to participate in the listed companies are applied to the companies that are already listed. There is no use to include all these provisions.

This EU Directive aimed at providing the opportunity to the Member State to settle some issues on the legislative level. Some provisions of the Ukrainian legislation already comply with EU legislation. For example, the General Meeting General shall be called within 21 days and we have it within 14 days. Or the right to access documents and information online at the website of the company between the convocation and holding of General meeting. But this we don't have implemented. So one don't have to go and get the documents physically. This should be provided, as despite your residency, the shareholders will have the equal rights to access documents by all shareholders, despite their residency, as well as right to use internet, regular mail. What has to be done is identification of the shareholders. This is one of the problems that we will be facing as voting with regular mail may be ground for falsification and fraud. We need to ensure security and safety to avoid this indecent behavior from shareholder. Maybe notary or power of attorney or approval is not easy to do. But this is meant to facilitate and simplify the procedure while this power of attorney might be not an easy thing to do.

The Directive also foresees that the results of the counting registered, indicating number of votes for and against, but the number of votes may not be disclosed until the decision is made by majority.

Provision of Directive 2004/25 about merger

This directive has been discussed for many years together with many acts. Mandatory bidding – obligatory propose to the major shareholder to buy the shares of other It fulfills the article 65 of the Law on JSC. However, it doesn't work the way it is supposed to. Proposals have to be made by the major shareholder.

Another procedure is squeeze-out when the shareholder has 90 or more % of shares, he/she has the right to buy the shares of minoritarian. The Directive foresees that the Member State can raise this threshold, but it can't be more than 95 %. Squeeze-out procedure is actively discussed on different levels. They were actively working on the draft law. But it was called back at the end of November.

The next procedure is sell-out procedure – it requires to sell out minoritarians' share by majoritarian.

We need to work on implementing legislation. Our work has to be comprehensive, it has to be based on detailed analysis of EU Directives and Ukrainian legislation, so some provisions shall not be taken out from and pasted into Ukrainian legislation as it going to create more problems than something good.

Arkadiusz Radwan, Senior Expert, Team Leader

To sum the information about this dual regime: European legislation on such companies put a lot of pressure on them. It would be useful to move to this dual regime and to consider which provisions shall be kept in the Companies Act and which shall be moved to the corporate market legislation.

Authorizing capital

Directive provides for possible member states to have authorized capital. Maybe useful to consider if certain check points have to be set, or to shorten the period from 5 to 3 years.

- The **prohibitions on capital increases** in cases whenever (art. 15 JSCL) : the value of company's equity is lower than the value of its charter capital; or
 - such an increase would be designed to cover losses of the companyUkrainian law shouldn't go beyond that.
- **Financial assistance** (art. 23 par. 5 JSCL – compare with art. 25 of the Capital Directive)

The general tendency in EU law is liberalization. It needed to be considered in the Ukrainian background. It can be more restrictive.

- **Appraisal rights for dissenting shareholders in cases of capital increase or decrease** (see art. 68 par. 1.3, sec. I.9 of the Decision of the NCSSM No. 822) are in excess of the justified need for minority protection.

It's something very unique. You will not find it anywhere, I never saw anything similar. How does it work in practice? It's going too far. Many important pieces of legislation are not in the law, but in the decision of the Commission. We need to inspect them more closely. We need to know whether the transposition was made correctly or not. How we can see these decisions? I understand that Commission reacts faster than the parliament. But it will require broadened scrutiny for legislation if Ukraine joins EU.

Pre-emptive rights (art. 33 of the Capital Directive): all the shareholders of listed and non-listed joint stock companies alike, shall have the pre-emptive right whenever the share capital is increased by consideration in cash.

[scope: companies]: the Directive has a broader scope, unlike Ukrainian law (art. 15 par. 3 JSCL) it mandates pre-emptive rights **for publicly issued shares as well**.

It is related to private and public companies. Directive requires pre-emptive rights, and Ukrainian legislation no, but Directive is very clear.

Pre-emptive rights

[scope: contributions]: even if under the Capital Directive shareholders enjoy pre-emptive right in all cases, whenever charter capital is increased by means of contributions in-cash, many Member States go beyond this requirement. Company laws of e.g. Germany, Austria, Poland, Croatia (different approach – pre-emptive right restricted to in-cash contribution e.g. in France, Italy, the Netherlands). It is recommended for the Ukrainian reform to embrace in-kind contributions as well, so that pre-emptive right is granted regardless of the contribution brought by investors to pay up new shares. The reason behind this recommendation: pre-emptive right is a clear-cut rule capable of protecting minority shareholders from dilution of their stock, both in terms of voting rights and value of investment. In a transitional jurisdiction with not yet sufficiently established standards of fiduciary duties and deficits of their proper enforcement, clear-cut rules prevail over open standards.

In case of contributions, in cash contributions are excluded. Germany, Austria Croatia have extended pre-emptive rights. They limit in cash contributions only if there is capital increase.

Extending pre-empting right is clear cut, it mandates to come up with reasons to justify this. It is maybe wiser to stick with this clear-cut rules.

Pre-emptive rights

[scope: shares]: Pre-emptive right should be given to shareholders of ordinary shares as well as to holders of preferred shares. This should be designed with a view of the underlying assumption that **pre-emptive rights should allow to**

maintain a *status quo* in the company both in terms of influence (voting rights proportions) and value (protection against stock dilution as a step-by-step expropriation technique). Whenever possible, the new issue should reflect the pre-existing structure of shares and their classes.

It is not in line with the Directive to have only one type of shares.

- **SB should be made mandatory for all JSC**, public and private alike
- Sec. 5 Boards should be organized in such a way that a sufficient number of **independent SB members** play an effective role in key areas where the potential for conflict of interest is particularly high.
- Rules and guidelines on **SB committees** should be put in place on a 'comply or explain'-basis (see *Recommendation 2005/162/EC* on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory board)
Independent board members in line with recommendations.
- Three committees of the board of the listed companies: **nomination, remuneration and audit** committees should be created within the (supervisory) board, where that board plays a role in the areas of nomination, remuneration and audit under national law.
 - However, pursuant to sec. 1.3.2 Member States should be allowed to choose, in whole or in part, between the creation within the (supervisory) board of any of the committees with the characteristics advocated in this Recommendation, and the use of other structures – external to the (supervisory) board – or procedures.
 - However, companies may group the functions as they see fit and create fewer than three committees.
 - Sec. 7.2. In companies where the (supervisory) board is small, the functions assigned to the three committees may be performed by the (supervisory) board as a whole, provided that it meets the composition requirements advocated for the committees.

Legal regime for listed and non-listed companies shall be separated.

Soft law – what is recommended and implemented in form of best practices code, corporate governance code, and is voluntarily adopted by the government.

- it should be mandated by law that the companies disclose their policies with regard to adherence to corporate governance / best practices codes, such as the Ukrainian PCG.
 - Pursuant to art. 20 of the **Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports**, (i.a.) companies listed on a regulated market shall include a **corporate governance statement in their management report**.
 - That statement shall be included as a specific section of the management report and shall contain information on:

- the corporate governance code to which the undertaking is subject;
- the corporate governance code which the undertaking may have voluntarily decided to apply;
- all relevant information about the corporate governance practices applied over and above the requirements of national law.

Commission has to explain why the company deviates from what is recommended.

- Where a company in accordance with national law, departs from a corporate governance code referred, an explanation by the undertaking as to which parts of the corporate governance code it departs from and the reasons for doing so (**‘comply or explain’**).
- By this rule, the **self-regulatory approach becomes rooted in the system of “hard law”, without losing its “soft” nature.**

Remuneration is a hot topic in Europe.

- **Remuneration report** (guidelines on directors remuneration see Recommendation 2004/913/EC, Recommendation 2009/385/EC) should be disclosed in the same manner as the CG statement – see the **Proposal for a Directive amending Directive 2007/36/EC (SRD) as regards the encouragement of long-term shareholder engagement (Presidency compromise text of November 10th, 2014), motive No. 18.**
- The **definitions** of mergers and divisions from the Third and Sixth EU Directives shall be implemented into the Law of Ukraine.

There are differences in term of definitions; they are not exactly the same as in the Directive. Directive contains number of provisions that have to be incorporated into Ukrainian law.

- The **documents** which are to be prepared for mergers or divisions shall contain **information** as it is provided in the Third and Sixth EU Directives.
- The rule about **right of inspection of the documents** concerning merger or division by shareholders at the registered office at least one month before the date fixed to the general meeting should be implemented as well.
- A limit on the cases in which **nullity** of conducted mergers or divisions can arise by providing that defects be remedied wherever that is possible and by restricting the period within which nullification proceedings may be commenced.

Have to be aligned:

- Special rules governing the **civil liability of members of the management bodies** of a company being acquired or divided towards the shareholders of that company **as well as the experts responsible for drawing up on behalf of that company the reports related to mergers and divisions** in respect of the misconduct in the performance of their duties during preparing and implementing the merger or division shall be introduced.
- Provisions to align with the **Tenth Company Law Directive** regarding **cross-border mergers** of public limited liability companies shall be introduced. *There were no similar rules in Ukraine, so it should be looked at.*
- Protection of minorities through **appraisal rights** (art. 68 JSCL). Possible excess? Ukrainian law goes far beyond that. No appraisal rights just for merging or division. Not as general rule that any merger apply appraisal rights.
- **Recommendation:** consider adoption of a new special (separate) law on corporate reorganisations (see e.g. German or Spanish models), embracing all kinds of reorganisations (mergers, divisions, spin-offs) and transformations of all companies' types not only JSC.

Fields that partly approached by harmonization. What might be considered as a good reform:

- Legal framework for private limited liability companies should be put in place in form of a **new law**.
- This new law should **increase the level of minority protection** while at the same time **leaving enough space for flexible arrangements** that are needed in small and medium sized enterprises.
- This preserved **flexibility** should be one of the fundamental **distinctions between LLC and non-listed JSC**.
- The law should allow for designing the company as a **closed company**, while at the same time **exit rights (at will?) should be allowed** in order to avoid deadlocks and imprisonment of shareholders. Exit rights only in Italy, but it also may be applicable for Ukraine as a clear-cut rule.
- Access to **information** should be assured. Possibility to establish a **SB (optional)** in a LLC shall be introduced.
- **Derivative action** should also be allowed under defined conditions. General tendency in Europe. It has to be fine-tuned.
- **Legal capital should not be mandatory** and non-par value shares should be considered. Many countries decide to abolish it whatsoever. **Solvency test** and **management solvency statement** should be put in place, but **balance sheet test** should play a role too. It's certain standard. Some clear rules should accompany the solvency test.

- Abuse should be curbed by introduction of **directors' liability for acting at the expense of creditors** (preferably a mix of German (*Insolvenzverschleppungshaftung*) and UK (wrongful trading) approach. For Ukraine German approach will be preferable as it's clear cut approach, so it's easier to follow.
- **Liability of de facto directors** should be anchored in the law as well.

The **obligation to specify information on the size of the participants' share in the company's statute shall be removed** (the relevant data should be stored exclusively in the Unified State Register).

Group law, which is not developed in Ukraine, but has to be approached. It's not determined by the European law.

- The French **Rozenblum doctrine** should be incorporated into Ukrainian company law (e.g. taking into consideration the recent Czech reform).
- Approaches to **group interest** should be considered and possibly anchored in law applicable to companies' group issues.
- **Safe harbors** for directors of dependent companies (subsidiaries) should be considered in this connection.
- **Appraisal remedy (exit right)** at the stage of group formation (see German example) as well as in cases of abuse of power by the parent company (see Italian example) should be introduced. Ukraine has it already quite elaborated. It should be looked into the context. To allow the exit of shareholders. Appraisal rights for non-listed companies should be considered.
- Mechanisms for improved **disclosure** should be considered
- Simplified rules for wholly-owned (single-member) subsidiaries with increased level of protection of creditors of such companies.
- **Arbitrability** of company law disputes should be considered in terms of JSC or LLC. How dispute are solved.
- **Online registration** based on a charter template with a list of opt-ins and opt-outs as well as limited scopes for customization of statutes should be considered. This would be a nice leapfrogging exercise as the EU only now is considering similar approach to registration of Single Member Limited Liability Companies the so called SUP (see the recent proposal for a draft Directive). Adequate safeguards would be needed to verify founders' identity so as to prevent abuse. Electronic signature or other means to prevent abuse.

Poland did this for some partnerships.

What Europe can learn from Ukraine?

Triggering events *de lege lata*:

- the merger, the affiliation, the division, the transformation, the spin off and the modification of the type of a company;
- the engagement of the company into a substantial transaction;

- the modification of the amount of the charter capital (art. 68 JSCL, Sec. I.9 of the Decision of the NCSSM No. 822 (14.05.2013) – to review this list
- Additional **possible triggering events to be considered (*de lege ferenda*)**:
- subordination of the company as a dependent company (subsidiary) in a corporate group – Spain. In Ukraine dividends are not paid quite often.
 - change of corporate charters resulting in limitations of shareholders rights
 - change of the regime governing the alienability of shares
 - withholding dividends

Ukraine defines significant transactions, Europe doesn't have it defined. This is the point that Ukraine is far from Europe, it can be used as example how to proceed.

Discussion:

1. Sergiy Yurgelevych, Commercial Law Center

It's been interesting to hear this presentation, especially given the fact that we have been making 2 draft laws on LLC and Added LLC. We are part of the team developing alternative draft law (Lyapina, Gorina, Voropayev). It's very nice to hear that some recommendations you are making are already taken into consideration regarding supervision board, liability of directors, general meeting, sizes of the shares, all that was taken into account. Some recommendations are new but will be considered in the new draft laws. But generally I would like to thank you for this presentation I am sure it will help us.

2. Volodymir Pospolityk, Working group of management of legislation of Private deposits guarantee fund

Listed companies they are different, and they are many in Ukraine, since we came from privatization process. If something happen to a bank listed, for instance, the whole world will know about this. If the bank collapses, there will be no currency. I don't want to be pessimistic. We had very bad situation this spring when Brokbiznesbank or Forum Bank collapsed. I don't know how the situation will develop next. We'll have what we'll have. But in the context of today's presentation, it's very important to protect the rights of shareholders. But right now we have the situation when we need to rescue some 30 banks, which had problems after NBU audit. Now the draft law has been developed. The name of this draft law is "Measures for capitalization, a list of bank's restriction". This law foreseen only one option before capitalization: through public money. On the one hand, we want to protect the shareholders rights, on the other hand we need to rescue bank. We need to find the balance. Bank is not a transport company. If Ukgazbank has troubles, then the Association of Loans for Young People who want to buy apartment will collapse. So here is the question. Do we have to stick to the rights of the shareholders if the bank is undercapitalized, or we need to save the bank. In the law says that the General meetings have to be done within 5 days. And we are practicing a lot of by-laws on how the Minister of Finance can be included to the banking structure. The question is following: IMF

bank is working on this draft law and they are more internationally perspective oriented. But since Ukraine is going to join EU, are there any recommendations, or maybe from experience of the specific country, is there any model that would allow to violate the rights of shareholders just because they undercapitalized the bank that would allow to rescue the bank, because this is the question of national security as well. Give us some European tools that would allow us to rescue the Bank, but legally restrict the rights of shareholder. Because the law says about additional placement of shares. Maybe it's not today, maybe you will need to look at something else but if there is an opportunity to rescue the bank on expense of shareholders. This is something we would be grateful for.

Arkadiusz Radwan, Senior Expert, Team Leader

There are not so many junctions between financial regulations of banks and company law. But there are some. Generally company law, same like banks law deals with supervisor board, how to control shareholders etc. So all the mechanisms I mentioned may help the banks to sustain. What is conflicting is: dividends and paying off the shareholders on companies exit. Appraisal rights are outside of European Directives. This is a choice of Members State, so it could be reconciled. As for the dividends the Second Directive says what cannot be done. It doesn't say what should be done. Member states can set higher or smaller thresholds for banks. Small tensions can be reconciled. This is the issue that can be solved by the Member states and is not regulated by EU law.

2nd Session:

Compliance of the Ukrainian accounting, financial reporting and audit with the EU legislation, standards, and practices

Viktoriia Zdiruk, Junior Expert, Team Member

Laws of Ukraine on accounting and audit

The main purpose is to analyze and compare our legislation on audit and accounting with EU requirements.

Agreement on Association between Ukraine and EU

Article 387

The Parties agree to cooperate in introduction at the national level of the relevant international standards and gradual approximation with the EU laws in the field of accounting and audit in accordance with the Attachment XXXV.

What EU regulations have to be taken into account, what have to be implemented in the Ukrainian legislation.

In the field of accounting:

- The Fourth Directive from July 25, 1978 on annual accounting reporting (78/660/EEC)
- The Seventh Directive from June 13, 1983 on consolidated reporting (83/349/EEC)

Both Directives lost power due to the adoption of the new Directive from June 26, 2013/34/EU on annual reporting, consolidated reporting and relevant reports of certain companies. We now ended up in the situation that the Association refers to these directives and they are already missing.

- Regulation 1606/2002 on application of the international accounting standards.

In the field of audit:

Directive 2006/43/EC from May 17, 2006 on mandatory audit of annual and consolidated reporting.

Key aspects, which we are missing in our legislation.

In accounting

Regulation 1606/2002 the companies the assets of which were sold in the regulated markets of EU.

-Amendments to the Law of Ukraine “On accounting and financial reporting” from 2011: obligation of PJSC, banks, insurers and other companies to make financial reporting and consolidated financial reporting according to IFRS.

Directive 2013/34/EU

- Differentiation of the requirements to the financial reporting depending on income, final balance, number of employees.

-Mandatory audit of financial reporting for large and medium companies

- Simplification of financial reporting requirements for small and medium companies (shortened balance form require detailed information in comparison to Directive)

- Exemption of small and medium group of companies from making consolidated financial reporting.

-Requirements for publication of the financial reports, audit reports, and reports of the management of all types of companies, except small

- Companies with subsidiaries are obliged to consolidate all reporting, including management reporting

- Collective responsibility of corporate management bodies’ members before the company for publication of the financial reporting

Directive has less requirements for financial reporting. It contains less requirements than we used to have. To have it aligned we have to cut it.

Requirements on collective legislation are missing in our legislation

In audit:
Directive 2006/43

- Lack of definition about subject of public interest. And we have to implement the requirement of compulsory audit for the large and medium companies, as well as requirement for publication of (consolidated) financial reporting, (consolidated) management reporting and audit reporting
- Introduction of special requirements to auditors and audit companies, which carry out mandatory audit.
- There has to be public oversight system over the audit activities and quality assurance of the auditing services
- Introduction of regulation on mandatory application of the IARS by all auditing companies
- Requirement to apply IFRS by all subjects of the public interest

Discussion:

1. Olena Velychko, Union of Auditors of Ukraine

I think this study shows more positive sides than negative on the current situation available. I agree that the audit standards have to be adjusted more on legislative level. As for the law on audit, it's done by the Chamber. Since 2003 we implemented international standards, so your remark can be right.

They are preparing a new law. They want to take many things into account. But I would also like to indicate one important thing. When you were saying on corporate management, particularly the law on shareholders in part of audit according to the law, they contradict with audit standards. Because the report on results has to be the report of the Revision committee, which is very different. Therefore the audit report contradicts with the JSC law. So we need to align these articles. But other laws on corporate management, assessment are in line with European standards, it's very progressive. In order to improve our legislation we will have to evaluate larger scopes reflected in the report. Allow me to disagree with you in terms of the facts we are missing requirements on auditing companies that are performing mandatory audit. Our requirements are more than tough as of today if a company failed to pass QA, they cannot do the mandatory audit. This requirement need probably certain relief, maybe we overworked it. The new draft laws, which have already been submitted to the parliament, require to have audit in LTDs and LLCs, but these norms are not controlled, so not performed. But it's rather a comment then a question.

Arkadiusz Radwan, Senior Expert, Team Leader

3rd Session:

Company law reform patterns and philosophies in transitional economy – Lessons from and for Ukraine

We need to have better understanding of pattern developed with regard to legal transplants:

- Legal borrowing
- Path dependence:
 - Mass privatisation
 - Highly concentrated ownership structure with popular (mass individual) share ownership
 - Deficits of the judicial system – law enforcement
 - Adherence to legal formalism – common feature of transition
 - Gaps and overlaps in regulatory framework - might be contradictory
 - Legacy of centrally planned economy
 - Multilayer ties between business and politics
- Regulatory models
 - **Prohibitory** model
 - **Enabling** model

For Ukraine which one to use: these are just models no jurisdiction adheres to one of them strictly, they might be combined, or one can be prevailing.
- A third way: **self-enforcing model of corporate law**
- the **need to control self-dealing** of managers with respect to shareholders; *clear cut rules will allow less adherence to judiciary*
- reliance on **procedural protections** (such as transaction approval by independent directors, shareholders) rather than on flat prohibitions of suspect categories of transactions;
- enforcement through actions by **direct participants** (shareholders, directors, managers), rather than indirect (judges, regulators, legal and accounting professionals etc.);
- usage, whenever possible, of **clear-cut, bright-line rules**, rather than standards, to define proper and improper behavior;
- **strong legal remedies on paper**, to compensate for the low probability that the sanctions will be applied in fact.

Examples of how corporate law can be implemented

- a **one share, one vote** rule; *Ukraine already has it*
- rules on **valuation and determination of market price**;
- **cumulative voting** rule for election of a supervisory board; inspired by American patterns
- Significant transactions require approval by a **supermajority** of shares;
- **exit rights**:
 - right of withdrawal (exit at will),

- dissenter's rights (appraisal remedy) through buy-out right in cases of fundamental changes or significant transactions,
- sell-out, squeeze-out; - not implemented
- the mandatory bid rule;
- special requirements to be met by the company to enter into **significant transactions** and non-arm's length transactions (**RPT**);
- **pre-emptive rights**

- **Rational apathy** of dispersed and uninformed individual minority shareholders →
- **Free-riding on monitoring by institutional investors**, provided →
- Strict adherence to the **principle of equal treatment of shareholders for foreign investments**

What can make Ukraine be advanced:

Leapfrogging

- Possible examples:
 - e-registration – possibility to set up a company via electronic system, which is not mandated, but a good example of leapfrogging, and it may be added to the EU legislation.
 - flexible capital regime

Closing remarks:

This study can't cover everything. But the idea is to have an overview, to understand what requires further elaboration. It's good to have a legal obligation, but it's also good to have an alibi to push the things forward. Ukraine will face choices in what way to adopt different laws. For now it's only guidelines how we should develop the legislation, in which direction we should proceed.