

Corporate Governance

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GETTING THE
DEAL THROUGH 

Ukraine

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Sources of corporate governance rules and practices

1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The primary sources of law relating to corporate governance in Ukraine are:

- the Civil Code of Ukraine (2003);
- the Commercial Code of Ukraine (2003);
- the Law of Ukraine on Joint Stock Companies (2008); and
- the Law of Ukraine on Limited and Additional Liability Companies (2018).

The focus of this chapter is on limited liability companies (LLCs) and joint-stock companies (JSCs) – the most popular organisational forms of commercial companies for medium-sized and large businesses.

The Civil Code of Ukraine contains general provisions on legal entities, including the general regulatory framework for commercial companies. Scarce regulation concerning commercial companies can be found in the Commercial Code of Ukraine, which is primarily concerned with enterprises – a loosely regulated corporate form used by small businesses and in the state sector. The Law of Ukraine on Limited and Additional Liability Companies (the LLC Law) and the Law of Ukraine on Joint Stock Companies (the JSC Law) stipulate rules for the governance of LLCs and JSCs, respectively. The JSC Law envisages two types of JSCs – public JSCs, whose shares are publicly offered and listed on a stock exchange, and private JSCs, whose shares may not be publicly offered, but in some cases may be traded on a stock exchange.

Please also note that the Law of Ukraine on Limited and Additional Liability Companies, on which the part of this chapter related to LLCs is based, is effective from 17 June 2018.

In addition, there are specific laws relating to corporate governance in certain business sectors, such as the Law of Ukraine on Banks and Banking Activity for banks or the Law of Ukraine on Management of State Property Objects for state-owned companies. The peculiarities of corporate governance in state-owned companies are established in the regulations of the Cabinet of Ministers of Ukraine.

The National Securities and Stock Market Commission (the Securities Commission) approved the Principles of Corporate Governance (2014) (the Corporate Governance Principles), which are mandatory for public JSCs with the first level of listing. Such JSCs are required to explain non-compliance with these principles in the annual management report. Other JSCs may adhere to the Corporate Governance Principles voluntarily. The National Bank of Ukraine (NBU) adopted the Methodological Recommendations on Improvement of Corporate Governance in Banks in Ukraine (2007) – non-binding recommendations that apply to Ukrainian banks.

2 Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder groups or proxy advisory firms whose views are often considered?

The general framework for corporate governance is established in the codes and laws enacted by the Ukrainian parliament.

The Securities Commission is the primary regulator for JSCs and professional participants of stock market (securities traders, asset managers, depositories, stock exchanges, etc). The Securities Commission elaborates corporate governance rules for JSCs, oversees their application and has certain enforcement powers (eg, by ordering to remove violations or imposing fines). The NBU enforces corporate governance rules in Ukrainian banks.

The Ministry of Justice is responsible for ensuring operation of the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations – the public register containing information on all legal entities registered in Ukraine.

The enforcement of corporate governance rules may also take place in Ukrainian courts pursuant to actions brought by shareholders in their own name or derivative suits brought by shareholders on behalf of the company.

The rights and equitable treatment of shareholders

3 Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

Corporate governance in Ukrainian JSCs is comprised of the general meeting of shareholders (GMS) as the highest governing body, a sole director or a management board as the executive body, and a supervisory board as the non-executive governing body overseeing and regulating the activity of the management board and protecting shareholders' rights. Creation of a supervisory board is mandatory for all public JSCs and banks and in private JSCs with 10 or more shareholders (unless all shareholders are affiliated). For private JSCs with fewer than 10 shareholders, creation of a supervisory board is optional. In addition, an audit commission (or a sole internal auditor), a corporate body separate from the supervisory board, may be created in a private JSC for auditing the company's financial and commercial activities.

As a general rule, members of the supervisory board are elected and removed by the GMS, and members of the management board are elected and removed by the supervisory board. However, the JSC's charter may determine that election or removal of the management board is a matter reserved for the GMS, in which case the supervisory board will not have the right to elect or remove the management board.

Supervisory board members of a JSC are elected for a term not exceeding three years. In public JSCs and banks, supervisory board members are elected by way of cumulative voting. In private JSCs, the type of voting for election of supervisory board members (ie, by cumulative voting or by simple or qualified majority of votes) is determined in the charter, but the default rule is cumulative voting.

The GMS may terminate the powers of supervisory board members at any time, and in cases where the supervisory board was elected by cumulative voting, the decision on termination applies to the whole composition of the supervisory board. The GMS does not need to have any grounds for such termination. In addition, if a supervisory board member was elected as a representative of a shareholder (as opposed to an independent member), the shareholder may replace its representative in the supervisory board at any time by giving a written notice to the company (ie, without the need to convene a GMS and, in case the supervisory board is elected by cumulative voting, re-elect the whole composition of the supervisory board).

The procedure of appointment and removal of the director or management board members in a JSC is prescribed in its charter. The GMS may not appoint and remove the director or management board members if the respective matters are within the exclusive competence of the supervisory board under the JSC's charter. This is because of a rule established by the JSC Law, according to which the GMS may not decide on matters within the exclusive competence of the supervisory board unless the supervisory board itself brings such matter for consideration at the GMS (this rule may be waived only in private JSCs without majority stake of the state, and if such private JSC has more than 100 shareholders, a decision on waiving this rule has to be taken by more than 95 per cent of votes of all shareholders).

As regards LLCs, their corporate governance is comprised of the general meeting of participants (GMP) as the highest governing body and a sole director or a board of directors as the executive body. LLCs may also establish supervisory boards. Appointment and removal of supervisory board members is within the exclusive competence of the GMP. Appointment and removal of a sole director or a management board of an LLC is by default within the exclusive competence of the GMP and may be delegated to the supervisory board, if established. The relevant decision may be taken by the GMP at any time by a simple majority of votes of participants (unless a higher vote is required by the charter). Moreover, the GMP generally has the right to decide on all matters relating to the activity of an LLC, including matters delegated to the supervisory board or executive body.

4 Shareholder decisions

What decisions must be reserved to the shareholders?

What matters are required to be subject to a non-binding shareholder vote?

Ukrainian law reserves a number of decisions to the exclusive competence of the GMS or GMP (depending on the corporate form). Exclusive competence of the GMS of a JSC includes:

- determination of main areas of activity of the company;
- amending the company's charter;
- increasing or decreasing the company's charter capital;
- placement, cancellation, split-up, consolidation, redemption of shares, placement of securities convertible into shares, waiver of shareholders' pre-emptive right to purchase new shares placed by the company;
- determination of the type of the JSC (public or private);
- approval of internal regulations on the GMS, the supervisory board, the management board and the audit commission, and of the corporate governance code;
- approval of internal regulation on remuneration of supervisory board members and reports on remuneration of supervisory board members;
- approval of annual reports of the company;
- hearing of the report of the supervisory board and approval of measures based on consideration of such report;
- hearing of the results of independent audit and approval of measures based on consideration of such results;
- distribution of profit and covering losses, approval of the amount of annual dividends;
- election of supervisory board members, approval of the terms of their engagement and remuneration, termination of their powers;
- election of audit commission members (internal auditor), termination of their powers, approval of conclusions of the audit commission (internal auditor);

- approval of significant transactions if the market value of the property, works or services in the transaction exceeds 25 per cent of the company's assets;
- approval of interested-party transactions if the market value of the property, works or services in the transaction exceeds 10 per cent of the company's assets; and
- spin-off from the company, wind-up and liquidation of the company.

Exclusive competence of the GMP of an LLC includes:

- determination of main areas of activity of the company;
- amending the company's charter;
- changing the company's charter capital;
- approval of monetary value of in-kind contributions to the charter capital;
- redistribution of participation interests between the company's participants in cases determined in the law;
- appointment and removal of the supervisory board or its individual members, establishing the amount of their remuneration;
- appointment and removal of the sole executive body or members of coactive executive body, establishing the amount of their remuneration;
- determination of forms of control over the executive body;
- creation of other bodies of the company and determination of procedures of their activity;
- redemption of participation interest in the company;
- approval of annual reports or reports for other periods;
- distribution of profit, payment of dividends;
- wind-up and liquidation of the company.

In addition to the decisions listed above, the law allows for the designation of additional matters to the exclusive competence of the GMS or GMP.

The concept of non-binding shareholder votes is not common in Ukraine.

5 Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

As a general rule, one ordinary share in a JSC gives the shareholder one vote to decide on all issues considered at the GMS, but there are a number of exceptions, outlined below.

Cumulative voting is a type of voting used at the GMS for electing members of coactive bodies. Cumulative voting is mandatory for the election of supervisory board members in public JSCs and banks, and may be used in private JSCs or for the election of management board members if this is provided for in the charter. During cumulative voting, the total number of votes of a shareholder is multiplied by the number of members to be elected and the shareholder may give all votes to one nominee or distribute the votes between several nominees. Cumulative voting takes place for all nominees simultaneously. The nominees who receive most votes secure election.

During votes at the GMS on the issue of approval of an interested-party transaction, the interested shareholders do not vote, and the decision is passed by a majority of those participating shareholders who do not have a conflict of interest. This rule may be waived in private JSCs.

Treasury shares and shares owned by companies controlled by the JSC in question are not taken into account for the purpose of determination of quorum and voting at a GMS.

The Law on the Depository System of Ukraine, which took effect in October 2013, established that all shares must be converted into non-documentary (electronic) form and required owners of all JSC shares existing in documentary form to open securities accounts with depository institutions and transfer their shares to such accounts by October 2014. If a shareholder failed to do so, their shares are not taken into account for the purpose of determining a quorum and voting at the GMS.

JSCs may issue preference shares or several classes of preference shares with limited voting rights. Preference shares may not exceed 25 per cent of charter capital of the JSC. Owners of preference shares of a certain class have voting rights on the following decisions:

- wind-up of the company that provides for conversion of preference shares of this class into preference shares of another class, ordinary shares or other securities;
- making amendments to the company's charter providing for limitation of rights of owners of this class of shares;
- making amendments to the company's charter providing for the placement of a new class of preference shares whose owners will have priority for receipt of dividends or distributions in case of the company's liquidation or the increase of shareholder rights of owners of preference shares having priority for receipt of dividends or distributions in case of company liquidation; and
- decrease of the company's charter capital.

The charter of a private JSC may also provide owners of preference shares with voting rights on other issues.

A JSC may not establish limitations on the amount of shares or the amount of votes under shares owned by one shareholder.

Participants of an LLC by default have a number of votes at the GMP proportional to their participation interests (ie, stakes held in the charter capital of an LLC), unless otherwise established in its charter. Participation interest redeemed by the company is not taken into account for the purpose of voting at the GMP.

It should be mentioned separately that the NBU, the Securities Commission and the National Commission on State Regulation of Financial Services Markets may temporarily restrict the use of voting rights of shareholders of banks, professional participants of stock market and non-banking financial institutions, respectively. This is a sanction for certain violations of legislation (eg, failure to obtain prior approval for acquisition of a significant shareholding in a regulated entity).

6 Shareholders' meetings and voting

**Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?
Can shareholders act by written consent without a meeting?
Are virtual meetings of shareholders permitted?**

Persons included on the list of shareholders having the right to participate in the GMS and their proxies may participate in the GMS. This list is prepared by the central depository three business days in advance of the GMS. Amendments to this list following compilation are prohibited. Shareholders or their proxies must register with the registration commission, which is appointed by the supervisory board for each GMS. Powers of attorney for representation at the GMS must be made in writing, and, if issued by an individual, must be notarised or certified by a depository institution.

A GMS is deemed quorate if shareholders owning more than 50 per cent of voting shares register for participation in the GMS. The quorum requirement is mandatory and may not be derogated in the charter of a JSC.

Voting at the GMS may be carried out only with the use of voting bulletins.

Absentee voting may be allowed in JSCs having not more than 25 shareholders in cases provided for by the charter. In such cases, the draft resolution in question is sent to shareholders, who must return their votes within five days from receipt thereof. A unanimous vote of all shareholders with voting shares is required to take a decision via absentee voting.

If a JSC has a sole shareholder, written resolutions of this shareholder have the status of GMS decisions and there is no need to convene and hold a GMS.

As regards LLCs, all participants of the LLC or their proxies have the right to participate in the GMP. GMP envisages joint presence of the participants in one place, but may also be held as a videoconference, provided that all participants of the GMP may see and hear each other simultaneously. Absentee voting is allowed by way of notarised notice to the GMP or by way of affirmative polling vote of all participants. A GMP decision may also be taken by a written resolution, signed by all participants.

7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

A JSC is obliged to convene an annual GMS to be held not later than 30 April each year. An extraordinary GMS can be convened by the supervisory board at its own initiative, at the request of the executive body, audit commission or shareholders owning at least 10 per cent of voting shares, and in other cases provided by the charter. If the supervisory board does not convene an extraordinary GMS within 10 days of receipt of the convocation demand, the GMS may be convened by the requesting shareholders.

Each shareholder of a JSC has the right to submit proposals to the agenda of the GMS at least 20 days in advance of the GMS and propose nominees to the company's governing bodies at least seven days in advance of the GMS. Proposals of shareholders owning at least 5 per cent of voting shares are mandatory for inclusion into the agenda of the GMS.

Annual GMP of an LLC is convened within six months from the end of the year. Participants of an LLC owning more than 10 per cent of charter capital have the right to demand convocation of an extraordinary GMP at any time and on any matter. If the company fails to convene the GMP within 10 days, the participants may proceed with the convocation themselves. Any participant owning more than 10 per cent of charter capital may demand an issue to be considered at the GMP. The GMP may take decisions on issues that were not included into the agenda if all participants are present at the GMP and agree to consider such issues.

8 Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

The law does not generally prescribe any specific duties of controlling shareholders of JSCs or participants of LLCs with respect to the company and non-controlling shareholders or participants. At the same time, owners of a substantial interest in a bank are specifically obliged to sustain the bank's capital adequacy ratio at a level established by the NBU and to take timely measures for avoidance of the bank's insolvency.

9 Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

As a general rule, shareholders of a JSC and participants of an LLC are not liable for the obligations of the company and bear the risk of losses related to the company's activity within the value of their shares or contributions into the company's charter capital. However, shareholders or participants may face subsidiary liability for the company's obligations if the company is declared bankrupt owing to their fault.

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

Because of a lack of actual public takeovers, the concept of anti-takeover devices has not been developed in Ukraine. The JSC law provides that any person (or persons acting in concert) intending to acquire a significant shareholding in a JSC (more than 10 per cent of voting shares) must give a 30-day written notice to the JSC, the stock exchange where the JSC's shares are traded, and the Securities Commission, and to publish such notice in the public securities market database administered by the Securities Commission. The JSC Law expressly states that the target JSC does not have the right to take measures aimed at preventing such acquisition.

11 Issuance of new shares**May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?**

Taking decisions on the issuance of new shares is within the exclusive competence of the GMS. The supervisory and management boards are not permitted to issue new shares or securities convertible into shares or decide on increases of charter capital.

Owners of ordinary shares of a JSC enjoy a pre-emptive right of purchase of newly issued ordinary shares proportionally to their shareholding. Owners of preference shares enjoy a pre-emptive right of purchase of newly issued preference shares of the same class or of a new class of preference shares, if such shares grant their owners priority for receipt of dividends or distributions in case of the company's liquidation.

Pre-emptive right to acquire newly issued shares may be waived by a GMS decision taken by more than 95 per cent of votes of all shareholders.

LLCs do not have shares as such, but rather participation interest in the charter capital, which do not qualify as securities.

12 Restrictions on the transfer of fully paid shares**Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?**

Shareholders of public JSCs may freely dispose of their shares. A charter of a private JSC with not more than 100 shareholders may provide for the shareholders' right of first refusal in cases involving the transfer of shares to third parties. Transfer of participatory interest in an LLC to third parties without consent of other participants may be prohibited by the charter. Participants of an LLC have the right of first refusal in respect of participatory interest of other participants sold to a third party (unless expressly provided otherwise in the charter).

13 Compulsory repurchase rules**Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?**

Compulsory share repurchase in a JSC at the company's initiative is not allowed. Shareholders may force the JSC to redeem its own shares at market value if they disagree with certain decisions at the GMS (see question 14).

14 Dissenters' rights**Do shareholders have appraisal rights?**

Owners of ordinary shares of a JSC have the right to demand the mandatory buyout of their shares by the company if they voted at a GMS against any of the following decisions: corporate reorganisation or change of company type; approval of a significant or interested party transaction; change of the amount of charter capital; or waiver of pre-emptive right of shareholders to acquire newly issued shares.

Owners of preference shares of a JSC have the right to demand mandatory buyout if they voted at a GMS against any of the following decisions: making amendments to the company's charter providing for placement of a new class of preference shares whose owners will have a priority for receipt of dividends or distributions in case of the company's liquidation; increase of rights of shareholders – owners of preference shares having priority for receipt of dividends or distributions in case of the company's liquidation; or waiver of the pre-emptive right of shareholders to acquire newly issued shares.

The JSC is obliged to buy shares from shareholders who have made a mandatory buyout demand at a price that may not be lower than market value determined based on stock exchange quotations or, failing that, by an independent valuator.

The responsibilities of the board (supervisory)**15 Board structure****Is the predominant board structure for listed companies best categorised as one-tier or two-tier?**

Ukraine has adopted a two-tier board structure: JSCs have a supervisory board and a management board (executive body). Members of

the supervisory board may not be members of the management board. Most LLCs have only an executive body (either a sole director or a board of directors) and do not form a supervisory board.

16 Board's legal responsibilities**What are the board's primary legal responsibilities?**

The supervisory board of a JSC is responsible for protecting shareholder rights while controlling and regulating the activity of the management board. The JSC law refers a number of matters to the exclusive competence of the supervisory board that cannot be delegated to the management board. Such matters include the appointment and removal of the executive body, convocation of a GMS, placement and buyout of securities (other than shares and securities convertible into shares), selecting the company's auditor, approval of qualifying significant and interested party transactions, etc. The charter may extend the exclusive competence of the supervisory board.

The supervisory board of an LLC controls and regulates the activity of the executive body. The LLC law does not prescribe the competence of the supervisory board leaving this matter for the charter, it only mentions that its competence may include appointment and removal of the executive body and determining remuneration of its members.

17 Board obligees**Whom does the board represent and to whom does it owe legal duties?**

The supervisory board of a JSC represents its shareholders and protects their rights. At the same time, supervisory board members, as well as other officers of a JSC, are obliged to act in the company's interests. The duties of supervisory board members are outlined in the company's charter and by-laws, as well as agreements between the supervisory board members and the company.

Members of the supervisory board of an LLC must act reasonably and in good faith in the interests of the company.

18 Enforcement action against directors**Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?**

Officers of JSCs and LLCs (including members of the supervisory and management boards) are liable for damages caused to the company by their guilty actions, in particular, if such damages were caused by: excess or abuse of the officer's powers or actions committed by the officer without prior approval when required, or if they received prior approval for such actions by providing false information. A claim against the officer for recovery of such damages may be filed by the company or by shareholders or participants owning at least 10 per cent of the company's charter capital on behalf of the company (a derivative suit).

19 Care and prudence**Do the board's duties include a care or prudence element?**

The JSC law does not expressly impose duties of care or prudence upon supervisory board members. However, the Corporate Governance Principles provide that officers of a JSC (including members of the supervisory and management boards) must act in good faith, reasonably, and in the best interests of the company. The LLC law provides that members of the supervisory board of an LLC must act reasonably and in good faith in the interests of the company.

20 Board member duties**To what extent do the duties of individual members of the board differ?**

Ukrainian law does not provide for any differences in the duties of individual supervisory board members depending on their skills or experience, etc.

21 Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

Powers and responsibilities of the supervisory board that fall under its exclusive competence in accordance with the law or the company's charter may not be delegated to its committees, the management board or other persons. The supervisory board may create committees for reviewing and preparing conclusions on issues within its competence, and even though in public JSCs the supervisory board may adopt decisions on matters within the competence of its committees only based on such committee's proposals, the supervisory board committees as such are not vested with decision-making powers.

22 Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Ukrainian law does not distinguish between 'executive' and 'non-executive' directors owing to the two-tier board structure where supervisory board members do not have executive functions.

The supervisory board of a public JSC, a bank or a JSC in which the state owns more than 50 per cent of shares must have at least one-third and no fewer than two (in case of a bank, three) independent members. The JSC law does not establish any different duties and responsibilities of shareholders' representatives and independent supervisory board members save for an obligation of an independent supervisory board member to step down should they cease to comply with the independence criteria. A supervisory board member may not be deemed independent if such member:

- was a member of a governing body of the company or its affiliate within the last five years;
- receives or received within the last three years additional remuneration exceeding 5 per cent of gross annual income of such person in the respective year from the company or its affiliate;
- is a direct or indirect owner of 5 or more per cent of charter capital or an officer or manager of a legal entity or an individual contractor who had substantial business relations with the company or its affiliate within the last year;
- is or was within the last three years an independent auditor or an employee of an independent auditor of the company or its affiliate;
- is or was within the last three years an employee of the company or its affiliate;
- is an owner of a controlling shareholding in the company or a proxy of an owner of a controlling shareholding in any civil relations;
- was the company's supervisory board member for more than 12 years in total; or
- is a close relative of the above-mentioned persons.

The above criteria do not apply to matters arising out of holding the office of an independent supervisory board member. Additional independence criteria may be envisaged in the charter or by-laws.

23 Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

The size of the supervisory board is determined in the JSC's charter as long as the minimal size of the supervisory board of a public JSC or a bank is five members. The election of supervisory board members is within the exclusive competence of the GMS. If the supervisory board is elected by cumulative voting, filling a vacancy is possible only by termination of powers of the entire supervisory board and election of a

new supervisory board by the GMS. These rules do not affect the rights of shareholders whose representatives were elected to the supervisory board to replace such supervisory board members at any time by notice to the company (ie, without the need to convene a GMS).

Supervisory board members must have full legal capacity. Persons with a criminal record of offences against property or white-collar crime may not become officers (including supervisory board members) of a JSC.

JSCs are required to disclose to the Securities Commission the following information on supervisory board composition on a regular basis:

- information on members of the supervisory board (name, passport data, date of birth, education, work experience, number of shares of the JSC owned by the member, criminal record, if any) and their terms of powers, specifying whether they are independent members or shareholders' representatives; and
- information on changes in the composition of the supervisory board, specifying reasons.

The size of the supervisory board of an LLC is not regulated by the law and may be determined in the charter.

24 Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

As the supervisory board and the management board are separate bodies, the CEO may not sit on the supervisory board.

25 Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

Establishing an audit committee, a nomination and a remuneration committee is mandatory in public JSCs and JSCs in which the state owns more than 50 per cent of shares, given that nomination committee and remuneration committee may be joined. These committees must be composed predominantly of independent supervisory board members and presided over by them. JSCs may establish other temporary or permanent supervisory board committees for consideration of issues within the supervisory board's competence.

26 Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The JSC law requires supervisory board meetings at least once a quarter. The charter may provide for more frequent meetings of the supervisory board.

Frequency of meetings of the supervisory board of an LLC is not regulated and may be determined in the charter.

27 Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

A publicly disclosed annual report on corporate governance in a JSC should contain, inter alia, information on the composition of the supervisory board, average annual number of supervisory board meetings for the last three years, committees created in the supervisory board, and how the amount of remuneration of supervisory board members is defined.

28 Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

In JSCs, approval of by-laws and reports on the remuneration of the supervisory board members and establishing the amount of remuneration of supervisory board members is within the exclusive competence of the GMS. Remuneration must be determined in a civil law or labour contract with the supervisory board member. The length of contracts with supervisory board members is dependent on the term of powers for which they are appointed.

The Corporate Governance Principles recommend that supervisory board members receive reasonable remuneration for their work, providing incentives including variable remuneration elements dependent on the performance of the respective member and the company as a whole. The Corporate Governance Principles also recommend that the company's policy on lending officers should be clearly defined in its internal documents and that decisions to provide a loan to a company's officer are approved by the supervisory board.

In LLCs, remuneration of supervisory board members is approved by the GMP.

29 Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

In JSCs, approval of by-laws and reports on the remuneration of the management board members (director) and establishing the amount of remuneration of management board members (director) is within the competence of the supervisory board or the GMS. Remuneration must be determined in the labour contract with the management board member (director). The length of contracts with management board members (director) is dependent on the term of powers for which they are appointed.

According to the Corporate Governance Principles, the amount and form of remuneration of management board members should be determined by the supervisory board pursuant to recommendations of the nomination and remuneration committee (if created) and should correlate with the company's performance in view of the company's and shareholders' long-term interests.

In LLCs, establishing officers' remuneration is within the exclusive competence of the GMP, unless delegated to the supervisory board. Levels of remuneration are determined in labour contracts.

30 D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

D&O liability insurance is permitted and the company may pay premiums, but it is not common in Ukraine.

31 Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

Ukrainian law does not prohibit or constrain indemnification of officers for liabilities incurred in their professional capacity, but is not very common in practice.

32 Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

According to the law, officers of JSCs and LLCs (ie, members of the supervisory and management boards) are liable for damages caused to the company if these damages were caused by: excess or abuse of the officer's powers; actions committed by the officer without prior approval if required, or if they received prior approval for such actions by providing false information; or other guilty damaging actions of the officer. The law does not allow limits to officers' liability for damages caused to the company as a result of their actions.

Moreover, the JSC Law stipulates that shareholders are jointly liable for damages caused to the company by their representatives in the supervisory board.

The LLC law establishes a general rule that the members of the supervisory board and the management board, respectively, bear joint and several liability before the company. However, a member of the supervisory board or management board will not be held liable if they prove that they are not guilty of causing damages to the company.

33 Employees

What role do employees play in corporate governance?

In JSCs, a labour union representative may be present at any GMS and meeting of the management board, and may be invited to supervisory board meetings with the right of advisory vote. Other than that, employees do not have powers to affect the decision-making process in governing bodies, unless otherwise provided for by the company's by-laws.

34 Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

The supervisory board of a public JSC and of a bank is required to prepare an annual report on evaluation of its work, which should include evaluation of:

- composition, structure and activity of the supervisory board as a coactive body;
- competence and efficiency of each member of the supervisory board, including information on their activity as officers of other companies or other activity, whether paid or not;
- independence of each independent member of the supervisory board;
- competence and efficiency of each of the supervisory board's committees, in particular, information on the list and personal composition of committees, their functional competence, number of meetings held and description of main issues dealt with by the committees; and
- performance of the aims set by the supervisory board.

In addition, according to the Corporate Governance Principles, the supervisory board should annually evaluate its performance as a whole and the performance of each member individually. The main tasks of determining evaluation criteria and procedures should be performed by the nomination and remuneration committee or other committee composed predominantly of independent members, with at least the following criteria taken into account: attendance of meetings, level of preparation for meetings and impartiality in decision-making. The supervisory board should also regularly evaluate the performance of the management board.

Publicly disclosed annual information on corporate governance in a JSC should specify whether the supervisory board carried out self-evaluation of its composition, organisation of activity and, if so, information on the competence and effectiveness of the supervisory board (or its members and committees) and performance of its tasks.

Disclosure and transparency

35 Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

A public JSC must publish its charter and by-laws on its governing bodies on its own website.

In addition, charters of all companies registered after 1 January 2016, and charters restated after that date are contained in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations in electronic form; however, they can only be downloaded with an access code that should be requested from the respective company.

36 Company information

What information must companies publicly disclose? How often must disclosure be made?

The Securities Commission requires JSCs to disclose regular and special information in a publicly available database (www.stockmarket.gov.ua), official printed media and on their website. In addition, issuers of publicly traded securities or securities admitted to trade on a stock exchange are obliged to disclose on their websites an annual calendar plan for their information disclosure.

Regular information includes annual and interim reporting information on the issuer's activity. Regular annual information of a JSC should be disclosed no later than on 30 April of the year following the reporting year and includes:

- name and address of the company, amount of its charter capital;
- information on the company's governing bodies, officers and founders;
- information on the company's commercial and financial activity;
- information on the company's securities, including whether they were publicly offered or admitted to trade on a stock exchange;
- annual financial statements, if applicable, confirmed by an independent auditor;
- a list of owners of 5 per cent or more of the company's shares and information on change of owners of voting shares whose shareholding reaches or crosses the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting shares;
- information on change of owners of financial instruments attached to voting shares of the company reaching or crossing the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting rights;
- management report;
- assurance of the management that the annual financial statements and the management report are true and accurate;
- information on the company's participation in other legal entities;
- information on capital structure indicating the types and classes of shares and the rights and obligations of shareholders;
- information on any limitations on trading of the company's securities, including the requirement to receive consent of the company or other owners of securities for transfer of such securities;
- information on ownership by the company's employees of any securities of the company and the company's shares in an amount exceeding 0.1 per cent of the company's charter capital;
- information on shareholders' agreements known to the company;
- information on any agreements or transactions, the validity of which is dependent on absence of change of control over the company;
- information on the total number of voting shares, the number of voting shares with restricted voting rights and the number of voting shares, voting rights under which were transferred to another person due to such restrictions;
- information on payment of dividends and other return on securities in the reported period;
- information on repurchase of the company's shares; and
- information on branches and other separated subdivisions of the company.

Annual information of a public JSC or a bank should additionally include:

- a report by the independent auditor on the audit of the company's financial statements;

- information on the conclusion of significant or interested party transactions or pre-approval of such transactions;
- information on persons interested in conclusion by the company of interested party transactions and circumstances existence of which causes such interest;
- information on the change of owners of voting rights reaching or crossing the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting rights; and
- information on any remuneration or compensation to be paid to the company's officers in case of their dismissal.

Regular interim information must be disclosed quarterly by public JSCs whose shares were publicly offered or are admitted to trade on a stock exchange and banks and includes:

- the name and address of the company, amount of its charter capital;
- information on the company's governing bodies, officers and founders;
- information on the company's commercial and financial activity;
- information on the company's securities;
- interim financial statements accompanied by the auditor's confirmation;
- an interim management report;
- assurance of the management that the interim annual financial statements and the interim management report are true and accurate;
- information on the company's participation in other legal entities;
- information on the conclusion of significant or interested party transactions and on persons interested in conclusion by the company of interested party transactions and circumstances existence of which causes such interest; and
- information on the total number of voting shares, the number of voting shares with restricted voting rights and the number of voting shares, voting rights under which were transferred to another person due to such restrictions.

Special information must be disclosed by the JSCs within one business day upon occurrence of the respective event:

- a decision on the placement of securities for the amount exceeding 25 per cent of charter capital;
- a decision on the repurchase of the company's shares;
- facts of listing or delisting of securities on a stock exchange;
- a decision on the approval of significant transactions, pre-approval of significant transactions or approval of interested party transactions
- information on persons interested in conclusion by the company of interested party transactions and circumstances existence of which causes such interest;
- a change of the company's officers;
- a change of owners of voting shares whose shareholding reaches or crosses the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting shares;
- a decision on establishing or liquidation of branches or representative offices;
- a decision to reduce charter capital;
- initiation of proceedings on recovery by the company's officer of damages caused to the company;
- initiation of bankruptcy proceedings;
- a decision of the company's GMS to liquidate the company or of the court on declaring the company bankrupt; and
- direct or indirect acquisition by a person or persons acting in concert of a block of shares exceeding 50 or 95 per cent of the company's shares.

For public JSCs and banks, the following events also have to be disclosed as special information:

- the existence, effective period and parties of a shareholders' agreement;
- a change of owners of voting rights reaching or crossing the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting rights;
- a change of owners of financial instruments attached to voting shares of the company reaching or crossing the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting rights;

Update and trends

Over the past year, Ukrainian corporate law has undergone a significant transformation. In particular, the Ukraine parliament adopted a number of laws that were highly anticipated by both the Ukrainian business community and foreign investors:

- Law of Ukraine No. 1983-VIII dated 23 March 2017 'On Amendments to Certain Legislation of Ukraine Regarding Improvement of Corporate Governance of Joint Stock Companies' (Law 1983);
- Law of Ukraine No. 1984-VIII dated 23 March 2017 'On Amendments to Certain Legislation of Ukraine Regarding Corporate Agreements' (Law 1984);
- Law of Ukraine No. 2210-VIII dated 16 November 2017 'On Amendments to Certain Legislation of Ukraine Regarding Simplifying Business Activity and Attraction of Investments by Securities Issuers' (Law 2210); and
- Law of Ukraine No. 2275-VIII dated 6 February 2018 'On Limited and Additional Liability Companies' (the LLC Law).

Law 1983 implements provisions of EU Directive 2004/25/EC on takeover bids into Ukrainian joint-stock company legislation. In accordance with the law, direct or indirect acquisition by a person (or persons acting in concert) of a shareholding exceeding 95 per cent of ordinary shares of a joint stock company triggers the right to squeeze out the remaining minority shareholders. In turn, minority shareholders will have the right to sell out their shares should the majority shareholder omit to use the right of squeeze-out. Notably, during a two-year transition period following the effective date of the law, persons owning more than a 95 per cent shareholding as of that date will also have the right to trigger a squeeze-out. In addition, the law also exempts public joint-stock companies that have decided to change their status to private joint-stock company or to reorganise into another corporate form such as a limited liability company from the requirement to procure the reissue of licences, permits and other documents, which would otherwise be triggered as a result of a change of the company's official name. This is one of the moves encouraging 'quasi-public' companies to transform into private companies following other legislative amendments enhancing corporate governance and disclosure requirements for public companies.

Law 1984 introduced a legal framework for agreements between shareholders of Ukrainian limited liability companies and joint-stock companies. This law also sets out a general framework for the enforcement of shareholder agreements and introduced certain legal instruments that should ensure the performance of obligations under shareholder agreements, such as an irrevocable power of attorney and specific contractual termination rights.

Law 2210 was also aimed at approximation of the legislation on joint-stock companies with European Union standards. The law changes the approach to defining a public joint stock company, which is defined now as a joint-stock company whose shares were publicly offered or whose shares are admitted to trade on a stock exchange. In addition, Law 2210 introduced numerous changes regarding the issue of the securities process, new requirements to the scope and methods of issuer disclosure, and improved corporate governance in joint stock companies.

The LLC law overhauled a legal framework for LLCs in Ukraine. Generally, the law aims to give more discretion to LLC participants in arranging the management of the company. In particular, it allows the creation of supervisory boards in LLCs, simplifies the participatory interest transfer procedure, increases liability and duties for LLC's executives, etc.

On 29 March 2018, the Securities Commission approved the Concept of Corporate Governance for professional participants of capital markets implementing provisions of OECD Principles of Corporate Governance, EU Directive 2014/65/EC (MiFID II) and Regulation (EU) No. 600/2014 (MiFIR). The Concept aims to establish a systematic approach for corporate governance of professional participants of capital markets based on proportionality principle (balance between requirements and size of the business).

On 3 May 2018, the Securities Commission approved a draft resolution on amending the rules of functioning of stock exchanges. According to the proposed amendments, the two levels of listing will be abolished, and the listing requirements will be the same as the existing requirements for the second level of listing. It is expected that the resolution will be passed upon its public discussion and concurrent review by interested state bodies.

- a repurchase of shares exceeding the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting shares;
- the approval of amendments to the charter affecting the shareholder rights;
- the number of voting shares and the amount of charter capital as a result of its increase or decrease; and
- direct or indirect acquisition by a person or persons acting in concert of a block of shares exceeding 75 per cent of the company's shares.

JSCs are also obliged to publish in the above-mentioned manner notices on convocation of the GMS and on changes in its agenda (if any).

In addition, public JSCs are obliged to disclose the following documents on their websites:

- the company's charter and by-laws on the GMS, the supervisory board, the management board, the audit commission and other governing bodies (if any);
- the by-laws of branches and representative offices;
- the corporate governance code;
- GMS minutes;
- conclusions of the audit commission and independent auditor;
- annual financial statements;
- reports submitted to the state authorities;
- securities issue prospectuses or decisions on issue of securities, certificates on registration of securities;
- a list of the company's affiliated persons;
- the company's special information;
- reports of the supervisory board, the management board and the audit commission (internal auditor);
- the by-laws on remuneration of members of the supervisory board and management board; and
- the protocols of voting results at the GMS.

Hot topics

37 Say-on-pay

Do shareholders have an advisory or other vote regarding executive remuneration? How frequently may they vote?

In JSCs, the GMS may not decide on remuneration of the management board if according to the charter such decisions are within the competence of the supervisory board (except for private JSCs whose charters expressly provide that the GMS may decide on any matters of the company's activity). In LLCs, deciding on the remuneration of the management board (director) is within the exclusive competence of the GMS, unless delegated to the supervisory board. There is no limitation on the frequency of such decisions.

38 Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

In JSCs, each shareholder may nominate candidates to the company's governing bodies to be appointed by the GMS as long as the number of nominees from one shareholder does not exceed the number of members of the respective body. Nominations must be made at least seven days prior to the GMS. Nominations from shareholders owning 5 per cent or more of shares are mandatory for inclusion into the GMS agenda.

Procedure of nomination of officers of an LLC is not regulated in detail by the law and is determined in the charter.

39 Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

In Ukraine, shareholders are typically actively engaged in the company's activity throughout the year, and not only during the annual meeting season. This engagement is typically through the company's senior management. The law provides that the supervisory board of a JSC may appoint a corporate secretary, who is responsible for interaction with the company's shareholders. However, in practice corporate secretaries are rarely appointed.

40 Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

Ukrainian companies are not required to provide disclosure with respect to corporate social responsibility matters.

41 CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

Ukrainian companies are not required to disclose the 'pay ratio' between the officers' compensation and compensation of other workers.

42 Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

Ukrainian companies are not required to disclose 'gender pay gap' information.



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