

Corporate Governance

Contributing editor
Holly J Gregory



2017

GETTING THE
DEAL THROUGH

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Corporate Governance 2017

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Preface

Corporate Governance 2017

Sixteenth edition

Getting the Deal Through is delighted to publish the sixteenth edition of *Corporate Governance*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Chile, Russia and Ukraine.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Holly J Gregory of Sidley Austin LLP, for her continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
June 2017

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 Commercial Companies (1991); and
- the Law of Ukraine on Joint Stock Companies (2008).

The Civil Code of Ukraine contains general provisions on legal entities, including the general regulatory framework for the most popular types of commercial companies for medium-sized and large businesses, which are the focus of this chapter – limited liability companies (LLCs) and joint-stock companies (JSCs). Scarce regulation concerning LLCs and JSCs 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 Commercial 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.

In addition, there are specific laws relating to corporate governance in certain business sectors, such as the Ukraine Law on Banks and Banking Activity for banks or the Ukraine Law 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 'comply or explain' approach is not applicable in Ukraine. The National Securities and Stock Market Commission (the Securities Commission) approved the Principles of Corporate Governance (2014) (the Corporate Governance Principles), which are recommended or mandatory for public JSCs (depending on the level of their listing). Public JSCs are not required to explain publicly non-compliance with these principles. 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. The Securities Commission elaborates corporate governance rules for JSCs, oversees their application and has certain enforcement powers

(eg, by ordering JSCs 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 controlling body overseeing and regulating the activity of the management board and protecting shareholders' rights. Creation of a supervisory board is mandatory for JSCs with 10 or more shareholders and optional for JSCs with fewer than 10 shareholders. In addition, an audit commission (or a sole internal auditor), a corporate body separate from the supervisory board, may be created in a 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. At the same time, the GMS may resolve any matter of the company's business and its decisions override the decisions of the supervisory and management boards, so effectively the GMS may also elect and remove the management board. In addition, 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 public JSC are elected at a GMS for the term until the next annual GMS (effectively, they must be re-elected at each annual GMS) by way of cumulative voting. In private JSCs, the term of office and type of voting for election of supervisory board members (ie, by cumulative voting or by simple or qualified majority of votes) are determined in the charter.

The GMS can 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 providing notice to the company (ie, without the need to convene a GMS).

The procedure of appointment and removal of the director or management board members in a JSC is prescribed in its charter.

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 can arguably also have supervisory boards, but this is neither expressly recognised nor prohibited by law. Appointment and removal of a sole director or a management board of a LLC is within the exclusive competence of the GMP. The relevant decision may be taken by the GMP at any time by a simple majority of votes of participants present at the GMP. Moreover, the GMP generally has the right to decide on all matters relating to the activity of the LLCs, including matters delegated to the 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/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 charter;
- increasing or decreasing the company's charter capital;
- placement, cancellation, split-up, consolidation, redemption of shares;
- determination of the type of the JSC (public or private);
- approval of internal regulations on GMS, the supervisory board, the management board and the audit commission, corporate governance code, and of other internal documents provided for in the charter;
- approval of annual reports of the company;
- 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 net 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 net assets; and
- spin-off from the company, wind-up and liquidation of the company.

Exclusive competence of the GMP of a LLC includes:

- determination of main areas of activity of the company, approval of business plans and reports on their performance;
- amending the company's charter, including changes in charter capital;
- determination of the amount and form of additional contributions to the charter capital;
- redemption of participation interest in the company and expulsion of a participant from the company;
- appointment and removal of the executive body;
- determination of forms of control over the executive body, creation of respective controlling bodies;
- approval of annual reports, distribution of profit, payment of dividends, covering losses;
- establishment, reorganisation and liquidation of subsidiaries, branches and representative offices, approval of their charters and regulations;
- taking decisions to bring the company's officers to material liability;
- determination of the company's organisational structure;
- determination of remuneration of officers of the company, its subsidiaries, branches and representative offices; and
- wind-up and liquidation of the company.

Taking decisions on matters within the exclusive competence of the GMS/GMP may not be delegated to other governing bodies. In addition

to the decisions listed above, the law allows for the designation of additional matters to the exclusive competence of the GMS/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:

Cumulative voting – a type of voting used at the GMS for electing members of collegial bodies. Cumulative voting is mandatory for the election of supervisory board members in public JSCs and can 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.

Treasury shares 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 has failed to do so, his or her 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 – owners of preference shares having priority for receipt of dividends or distributions in case of company liquidation; and
- 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 have a number of votes at the GMP proportional to their participation interests (ie, stakes held in the charter capital of an LLC). Participation interest redeemed by the company is not taken into account for the purpose of determination of quorum and voting at the GMP. When the GMP decides on the expulsion of a participant from the company, the expelled participant does not participate in voting.

The Civil Code additionally prescribes that a shareholder or participant may not vote at the GMS or GMP on issues related to a transaction or a dispute between the company and such shareholder or participant.

It should be mentioned separately that the NBU and the National Commission on State Regulation of Financial Services Markets may temporarily restrict the use of voting rights of shareholders of banks 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 bank or a non-banking financial institution).

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 appointed by the supervisory board. 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. A GMP is deemed quorate if participants owning more than 50 per cent of votes are present. The Charter of an LLC, in which the state does not hold a participatory interest, may establish a different quorum for the GMP. Absentee voting in LLCs may be allowed in cases prescribed by the charter. All participants of the LLC must take part in absentee voting in order for the vote to be valid.

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 ordinary shares, and in other cases provided by the charter. If the supervisory board does not convene an extraordinary GMS within 10 days from 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 ordinary shares are mandatory for inclusion into the agenda of the GMS.

A GMP of an LLC is convened at least twice a year, unless otherwise provided by its charter. Participants of an LLC owning more than 20 per cent of votes 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 25 days, the participants may proceed with the convocation themselves. Any participant may demand an issue to be considered at the GMP provided it is notified at least 25 days before the GMP. The GMP may take decisions on issues that were not included into the agenda, subject to the consent of all participants present at the GMP.

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 prescribe any specific duties of controlling shareholders of JSCs or participants of LLCs with respect to the company and non-controlling shareholders or participants.

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 due to their fault.

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

Due to 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 ordinary shares) must give a 30-day written notice to the JSC, the stock exchange where the JSC is listed, and the Securities Commission, and to make a printed publication of such notice. The 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 or increases of charter capital is within the exclusive competence of the GMS or GMP. The supervisory and management boards are not permitted to issue new shares or decide on increases of charter capital.

Shareholders of JSCs enjoy a pre-emptive right of purchase of newly issued shares proportionally to their shareholding, but only in cases of private placement of shares (ie, placement among shareholders and a pre-defined list of investors not exceeding 100 persons). Owners of preference shares only have these pre-emptive rights if specified in the company charter. It should be noted that private JSCs can only carry out the private placement of shares, while public JSCs may carry out both private and public placement of shares.

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 may be prohibited by the charter, otherwise participants always have the right of first refusal.

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; or change of the amount of charter capital.

Owners of preference shares of a JSC have the right to demand mandatory buyout if they voted at a GMS against 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 or increase of rights of shareholders – owners of preference shares having priority for receipt of dividends or distributions in case of the company's liquidation.

The company is obliged to buy shares from shareholders who have made a mandatory buyout demand at a price which may not be lower than market price 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 body.

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 GSM, placement and buyout of securities (other than 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.

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. 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.

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 (ie, members of the supervisory and management boards) are liable for damages caused to the company if such damages were caused by: excess or abuse of the officer's powers;

actions committed by the officer without prior approval when required, or if they received prior approval for such actions by providing false information; or other guilty damaging actions of the officer. 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?**

Ukrainian law does not expressly impose duties of care or prudence upon supervisory board members. However, the Corporate Governance Principles provide that a company's officers (including members of the supervisory and management boards) must act in good faith, reasonably, and in the best 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, but supervisory board committees 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 due to the two-tier board structure where supervisory board members do not have executive functions.

The supervisory board of a public JSC or of a JSC in which the state owns more than 50 per cent of shares must have at least two independent members. The law does not establish any different duties and responsibilities of shareholders' representatives and independent supervisory board members. A person may be an independent supervisory board member if that person:

- is not and during the past five years was not an affiliated party of shareholders or the company or its subsidiary, or an officer of the company or its subsidiary;
- does not and did not previously receive substantial additional remuneration from the company or its subsidiary, except the remuneration of an independent director;
- does not and within the past year did not have substantial business relations with the company or its subsidiary;
- is not and within the previous three years was not an employee of the current or past independent auditor of the company or its subsidiary;
- is not and was not the chairperson or member of an executive body of the company's affiliates; or
- is not a close relative of the mentioned persons.

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 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.

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 and a nomination and remuneration committee is mandatory in public JSCs and JSCs in which the state owns more than 50 per cent of shares. These committees must be composed exclusively or 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 law requires supervisory board meetings at least once a quarter. The charter may provide for more frequent meetings of the supervisory board.

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?

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.

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, 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. 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

Update and trends

On 23 March 2017, the parliament of Ukraine passed two draft laws allowing shareholder agreements to be entered into under the Ukrainian law (No. 4470) and improving takeover (squeeze-out and sell-out) rules for Ukrainian joint stock companies (No. 2302a-d). These laws are still awaiting the President's signature and official publication in order to take effect.

Historically, Ukrainian corporate governance laws have been rather inflexible, as they did not allow shareholders of private companies to deviate from mandatory rules prescribed by the law and contractually agree on the regulation of relations among themselves. Draft law No. 4470 introduces a legal framework for agreements between shareholders of Ukrainian limited liability companies and joint-stock companies. The draft law also sets out a general framework for the enforcement of shareholder agreements and introduces certain legal instruments that should ensure the performance of obligations under shareholder agreements, such as an irrevocable powers of attorney and specific contractual termination rights.

Draft law No. 2302a-d aims to implement provisions of EU Directive 2004/25/EC on takeover bids into Ukrainian joint-stock company legislation. In accordance with the draft 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 a more than 95 per cent shareholding as of that date will also have the right to trigger a squeeze-out.

In addition, the draft 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 re-issue 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 recent legislative amendments enhancing corporate governance and disclosure requirements for public companies.

On 20 December 2016, the parliament of Ukraine passed in the first reading the draft law 'On Limited Liability Companies' (No. 4666). The draft law is currently awaiting a second reading in Parliament. When enacted, the draft law will overhaul the legal framework for LLCs in Ukraine. It aims, among other things, to give more discretion to LLC participants in arraigning the management of the company. In particular, the draft law will allow for the creation of supervisory boards in LLCs, improve the regulation of procedure for accession, withdrawal and expulsion of participants and simplify the participatory interest transfer procedure.

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 law stipulates that shareholders are jointly liable for damages caused to the company by their representatives in the supervisory board.

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 directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

Current law and regulations do not require mandatory evaluation of the supervisory board, its committees, or the management boards. However, 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 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. This information includes:

- Regular annual information including:
 - general information about the company;
 - information on the company's officers;
 - information on owners of 10 per cent or more of the company's shares;
 - information on the GMS;
 - information on the company's securities;
 - information on the company's commercial and financial activity;
 - information on corporate governance; and
 - an annual financial report;
- Annual information of a public JSC should additionally include:
 - information on licences (permits) for specific types of activity;
 - information of the company's participation in other companies;
 - information on corporate secretary;
 - information on the company's rating agency;
 - information on shareholders and the amount of shares owned;
 - information on dividends;
 - information on professional participants of the stock market, auditors, legal consultants, insurers and rating agencies engaged by the company;
 - description of business; and
 - the text of the auditor's report;

- Regular quarterly information (applicable to issuers of publicly traded securities and JSCs in which the state owns 25 per cent or more of shares) which includes:
 - general information about the company;
 - information about the company's officers;
 - information on professional participants of the stock market, auditors, legal consultants, insurers and rating agencies engaged by the company;
 - information on the company's securities;
 - information on the company's commercial and financial activity;
 - information about the company's participation in other companies;
 - information on corporate secretary; and
 - quarterly financial reports;
- Special information which must be disclosed within one business day upon occurrence of the respective event:
 - decision on placement of securities exceeding 10 per cent of charter capital;
 - decision on repurchase of company shares;
 - listing or delisting of shares on a stock exchange;
 - decision on approval of significant or affiliated party transactions;
 - change of the company's officers;
 - change of owners of 10 per cent or more of voting shares;
 - decision on establishing or liquidating branches or representative offices;
 - decision to reduce charter capital;
 - initiation of proceedings on recovery by the company's officer of damages caused to the company;
 - decision to pay dividends;
 - initiation of bankruptcy proceedings;
 - decision to liquidate the company; and
 - change of type of the JSC;
- JSCs are also obliged to publish notifications on the convocation of a GMS and changes in its agenda (if any).

In addition, public JSCs are obliged to disclose the following documents on their websites: charter, by-laws on GMS, supervisory board, management board, audit commission and other governing bodies, by-laws of branches and representative offices, corporate governance code, GMS minutes, conclusions of the audit commission and

independent auditor, securities issue prospectuses, list of the company's affiliated persons, and notifications to shareholders as may be required by legislation.

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 decide on remuneration of the management board even if according to the charter such decisions are within the competence of the supervisory board. In LLCs, deciding on the remuneration of the management board (director) is within the exclusive competence of the GMS. 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 GSM 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 GSM agenda.

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.

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