



Ukraine

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CORPORATE ENTITIES

1. What are the main forms of corporate entity used in your jurisdiction?

Companies in Ukraine could be divided into two large groups:

- **Corporations (*tovarystva*).** A corporation is a modern corporate form represented mainly by limited liability companies (LLCs) and joint stock companies (JSCs). There are other types of corporations which are much less popular.
- **Enterprises (*pidpryemstva*).** An enterprise is a corporate form inherited from the Soviet past but still popular today. There is a distinction between state and municipal enterprises, on the one hand, and privately owned enterprises, on the other. Charter capital of the privately owned enterprises can be divided into shares and they can have more than one member. State (and municipal) enterprises can only be founded by the state (municipality) and they have a unitary charter capital (that is, one that cannot be divided into shares).

As of 1 August 2012, the most popular company types were LLCs (479,261), private enterprises (281,881) and JSCs (25,930) comprising 49.7%, 29.2% and 2.7%, respectively, of all corporate entities registered in Ukraine. Although state and municipal enterprises amount to just 22,000 entities, together with JSCs, they make the most significant contribution to the country's GDP.

This article focuses on LLCs and JSCs as the most popular corporate forms in Ukraine for medium-sized and large private businesses. Private and other enterprises are not covered here because all major sources of corporate law in Ukraine do not apply to these corporate entities. One of the reasons why Ukrainian legislature pays so little attention to corporate forms representing almost 50% of the entire corps of the commercial entities in Ukraine is because many of the enterprises are closely held companies that are capable of resolving their corporate affairs without extensive corporate law regulation.

LLCs and JSCs have a number of crucial differences. LLCs receive share capital from their members without the need to register a share issue report or prospectus with the National Securities and Stock Market Commission (Securities Commission). By contrast, JSCs must deal with the Securities Commission every time they issue shares, a process that takes several months to complete.

Shares in LLCs are not freely transferable: for the shareholders to sell their shares they must seek the majority approval. In the absence of that approval the only exit strategy available for the

minority shareholders is to withdraw from the company and claim its property pro rata to the size of their shareholding. Exit of a shareholder holding a significant interest in the company may put the whole company at risk. Furthermore, minority shareholders are always at risk of being expelled by the shareholder(s) holding in aggregate more than 50% of the company's shares, a procedure used to penalise a minority shareholder preventing the company from reaching its objectives.

JSCs can be public (Public JSCs) or private (Private JSCs). The terms public and private in this context have a technical meaning relating mostly to specific regulation of those corporate forms under Ukrainian law and do not necessarily correspond to the meaning of public or private under, for example, English or US law. Private JSCs represent 72% of all registered JSCs. Although shares of Private JSCs cannot be traded on the stock exchange and can only be offered to investors in a private placement, both Private JSCs and Public JSCs alike must disclose their accounts on the stock market. A Private JSC or an LLC must be converted into a Public JSC if the number of its shareholders exceeds 100. It is usually due to this rule, rather than anything else, that the companies become public in Ukraine. Some choose such exotic corporate forms as additional liability company (for which there are no restrictions on the number of members) to avoid having to create a Public JSC and being subject to, as a result, additional disclosure duties and regulation by the Securities Commission.

Shareholders of Private JSCs can agree in the company's charter that they will enjoy a pre-emption right (the right to buy the shares of any leaving shareholder). Many experts believe that Private JSCs owe their popularity to this possibility to impose limitations on transferability of their shares. Another advantage of the private form is that the law affords some degree of flexibility to shareholders of Private JSCs in determining the voting thresholds for their decision-making.

LEGAL FRAMEWORK

2. What is the regulatory framework for corporate governance and directors' duties?

The general regulatory framework for LLCs and JSCs is set out in the Civil Code of Ukraine 2004 (Civil Code). Scarce regulation concerning enterprises can be found in the Commercial Code of Ukraine 2004. The Laws of Ukraine On Business Associations 1991 (LLC Law) and On Joint Stock Companies 2009 (JSC Law) stipulate rules for the governance of LLCs and JSCs, respectively.



The Securities Commission is the state regulator responsible for supervising the stock market and activities of the JSCs. It issues regulations that are binding on all JSCs.

3. Has your jurisdiction adopted a corporate governance code?

The Principles of Corporate Governance (Principles) were approved by the Securities Commission in 2003 as recommendations. Companies are generally not required to implement the Principles or report on the extent to which they comply with them and the reasons for any deviations. Since 2012, however, financial services providers must disclose this information and publish it as part of their corporate governance report. The law does not make a distinction between private and public JSCs in this respect; provision of financial services is the key criterion for disclosure.

The Principles cover the following:

- Shareholders' rights.
- Supervisory board and executive body (management board).
- Disclosure of information and transparency.
- Internal controls.
- Conflict of interest.

BOARD COMPOSITION AND REMUNERATION OF DIRECTORS

4. What is the management/board structure of a company?

Structure

Most JSCs have a two-tier board structure where the management board conducts daily business of the company and the supervisory board controls the management board and also takes certain important decisions. This structure is mandatory for JSCs with more than ten shareholders and optional for all other JSCs. LLCs can arguably also have supervisory boards but this is not expressly recognised by law.

Management

Because ownership of Ukrainian companies is highly concentrated and almost all of them are ultimately controlled by one person or very few people, the role of shareholders in the management of the companies is important. The general meeting of shareholders (GMS) can resolve any matter of the company's business and its decisions override decisions of the board. The law also provides that certain important decisions can only be made by the GMS. Management board implements the decisions of the supervisory board and of the GMS. The scope of the board's responsibility is entirely in the hands of the company's shareholders. They can, and frequently do, restrict the management board's ability to enter into contracts of certain type or value but can also grant to the board all responsibility for the daily operations of the company. Such limitations are usually, but not always, recorded in the company's charter. (See Question 14, *Director's powers*.)

Board members

Supervisory board. The supervisory board comprises one or several members whose number is determined by the GMS. Individuals as well as legal entities can be elected as members of the supervisory board. In the latter case a legal entity must be the company's shareholder. Legal entities exercise their functions on the board through one or several representatives who act on the basis of the power of attorney (PoA) issued by the entity elected to the board.

Management board. The management board comprises one or several individuals appointed by the GMS or by the supervisory board. The chairman of the board is the company's chief executive officer (CEO) who is statutorily authorised to bind the company in dealings with third parties without the PoA. The default rule is that the chairman of the board is appointed by the supervisory board but the charter may provide for his appointment by either the GMS or the management board.

Employees' representation

Employees are not involved in corporate governance and do not have a right to board representation.

Number of directors or members

There are no requirements as to the minimum or maximum number of members of either of the boards. The number of members of the supervisory board is determined by the GMS while the number of members of the management board must be determined in the company's charter.

5. Are there any general restrictions or requirements on the identity of directors?

Age

Directors must have full legal capacity, which is generally acquired at the age of 18.

Nationality

Directors who are not Ukrainian citizens or permanent residents must obtain a work permit if they have the status of the company's employees (which need not be the case for members of the supervisory board).

Gender

No gender quotas apply.

6. Are non-executive, supervisory or independent directors recognised or required?

Recognition

Members of the supervisory board are, most commonly, representatives of the majority or large shareholder nominees. It is not common for members of supervisory boards to be employees of the company on whose board they sit. The Principles recommend that at least 25% of members of the supervisory board be independent directors. However, this recommendation is not supported by any mandatory requirement and very few companies, if any, engage independent directors, as that term is understood under the Principles (see below, *Independence*).

Board composition

From 2009 to 2011 Public JSCs were required to have at least five members on their supervisory boards. Supported with the requirement of cumulative voting (a system of voting in which each voter is given as many votes as there are positions to be filled and allowed to cast those votes for one candidate or distribute them in any way among the candidates), this rule allowed, in principle, minority shareholders to appoint their representative to the board. Ever since the cancellation of the minimum number requirement in 2011, it would be fair to say that the minority shareholders are unlikely to have their members on the JSCs' boards if confronted with the controlling shareholder's reluctance to allow an independent member on the board.

Independence

According to the Principles, independence means the absence of substantial business, financial or personal relationship with the company or its management board, or its controlling shareholder(s). The Principles also set out factors that exclude independence (for example, a director owning more than 5% of the company's shares cannot be deemed independent).

Duties and liabilities

The law does not distinguish between various members of the management and supervisory boards in terms of the scope of their duties and liabilities (see *Question 16, General duties*).

7. Are the roles of individual board members restricted?

Members of the supervisory board cannot be members of the management board at the same time and vice versa.

8. How are directors appointed and removed? Is shareholder approval required?

Appointment of directors

Supervisory board. Members of the supervisory board are appointed as follows:

- Public JSCs: by the GMS by a cumulative vote.
- Private JSCs: by either a cumulative vote or based on a proportional method or representation. The latter essentially means that the company's bye-laws can establish classes of shares allowing the appointment of a certain number of members per class.

Where a member of the supervisory board is a legal entity, this member may have an unlimited number of representatives (all sharing one vote) acting on the basis of PoAs.

Management board. Members of the management board in LLCs and JSCs are appointed by a simple majority vote by the GMS or the supervisory board.

Removal of directors

Supervisory board. Members of the supervisory board can be removed by the GMS by a simple majority vote. If the members of the supervisory board are not employees of the company they can be removed at any time for no cause, unless the charter or

bye-laws provide otherwise. Where the board was elected by a cumulative vote, removal of any individual member of the board is only possible by way of removal of the entire board.

Management board. Any member of the management board in LLCs and JSCs can be removed at any time for no cause by the GMS or the supervisory board by a simple majority vote. However, as employment contracts are governed by employee-protecting employment law rather than corporate law, removal from the board does not automatically terminate the employment of the removed director unless, in the case of the chairman, his employment contract provides otherwise.

9. Are there any restrictions on a director's term of appointment?

Supervisory board. The maximum term in office of a supervisory board member is three years in JSCs. The applicable laws of Ukraine do not expressly provide for a supervisory board in an LLC and, as such, do not regulate the legal status of its members.

Management board. The law does not provide any restrictions on the term of office of the management board members in LLCs and JSCs.

10. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

Directors employed by the company

Members of the management board are deemed to be employees of the company. Members of the supervisory board may be employed by the company subject to the agreement between them and the company.

Shareholders' inspection

Remuneration and other terms of employment of the members of the management board and terms of engagement of the members of the supervisory board are not subject to inspection by the shareholders and in many cases are deemed to be confidential information (see *Question 12, Disclosure*).

11. Are directors allowed or required to own shares in the company?

There are no statutory requirements or limitations on directors owning shares in the company.

12. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

Determination of directors' remuneration

Remuneration of the members of the supervisory board is optional and only 11% of the JSCs opted to pay remuneration to the board members in 2011. Where remuneration is paid, its amount is established by the GMS. As a matter of practice, however, the GMS rarely, if at all, considers these matters in any detail but rather empowers an authorised representative to negotiate and



sign agreements with the members of the supervisory board governing terms of their engagement, including remuneration.

Remuneration of the members of the management board is determined by the GMS or by the supervisory board where such a board is established. The terms of remuneration are part of the employment contract with the director and are usually negotiated between the authorised representative (or the head of the supervisory board) and a member of the management board.

Disclosure

Since 2010, JSCs must disclose information about the remuneration of the members of the boards. In its annual reports for 2010 and 2011 the Securities Commission noted, however, that this requirement is generally ignored by the companies.

MANAGEMENT RULES AND AUTHORITY

13. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

There are two important default rules for the supervisory board meetings that the shareholders can change at their discretion:

- 50% of the board members constitute a quorum.
- Decisions are taken by a simple majority vote.

The mandatory rule is that each member of the supervisory board has one vote. Decisions of the supervisory board can be made through a written resolution rather than at a meeting if this is expressly allowed by the company's charter.

There are no default or mandatory rules applicable to the management boards in LLCs and JSCs. Shareholders are free to regulate the decision-making process at the management board level.

14. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

Directors' powers

It is the GMS rather than directors that can exercise all the powers of the company both in LLCs and JSCs (see *Question 4, Management*). GMS may delegate some of their powers to the boards; however, there are matters that cannot be delegated and can only be resolved by the GMS. Likewise, the law lists matters for which the supervisory board, if established, is primarily responsible and that cannot be delegated to the management board, for example, issuance of the securities other than shares, determination of the market value of the company's assets in cases where such determination is required by law, and establishment of subsidiary companies. The management board deals with all matters not reserved by law or company's charter for the GMS or the supervisory board.

Restrictions

The chairman of the management board represents the company in dealings with third parties. However, the chairman's role is generally limited to the physical act of signing a contract. The decision to enter into a contract must be made by the GMS, or the supervisory board, or the management board acting collectively depending on the internal allocation of managerial powers between these organs (see *Question 15*). If the chairman signs a contract without having first obtained the approval of the relevant board or the GMS the contract remains binding on the company only if subsequently approved by the authorised governing body.

The law provides that restrictions on the contracting powers of the person(s) representing the company in dealings with third parties are not enforceable against these parties unless they knew or ought to have known about these restrictions. However, the courts generally enforce these restrictions even if they were not publicly disclosed because courts generally believe that third parties are under an obligation to review the company's charter and bye-laws before trading with it. Notably, charters and bye-laws of companies other than JSCs are treated as classified information that can only be disclosed by the state registrars at the request of a company's member.

15. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

This matter is not directly addressed in the Ukrainian law, which gives rise to conflicting interpretations by the courts and the Securities Commission. While the latter believes that the delegation is possible, the Supreme Court's view is that the individual member of the board, including its chairman, cannot have an exclusive competence delegated to him by the board. The Supreme Court believes that authority can only be delegated by the shareholders in the company's charter and only to a company's organ (that is, supervisory or management board). The chairman of the board is not an organ of the company, and therefore to bind the company in dealings with third parties he must at all times seek approval from the board. This interpretation, if followed strictly, would probably block operations even of a medium-size company, let alone large corporations. In practice, companies usually work out various ways around this rule. Delegation is also possible based on ordinary civil law instruments, such as a PoA.

The supervisory board can create temporary or permanent committees from among its members to study and prepare certain matters within the supervisory board's powers. However, creation of audit, appointment or remuneration committees is very rare in Ukraine.

DUTIES AND LIABILITIES OF DIRECTORS

16. What is the scope of a director's duties and personal liability to the company, shareholders and third parties?

General duties

Members of the supervisory and management boards must act in the interests of the company, in compliance with the law and the company's charter and bye-laws (*Article 63.1, JSC Law*).



Their other duties may be set out in a contract with the company. Article 92.3 of the Civil Code uses a slightly different language in relation to management board members stating that they must act in good faith and in a reasonable manner, in the interests of the company, and within the limits of powers set out by the company's charter.

Members of both boards may be criminally liable for certain criminal offences (see *below*).

Theft and fraud

Breach of directors' duties may potentially amount to theft or fraud. The punishment can be as severe as up to eight years of imprisonment if a director's fraudulent actions resulted in illegal transfer of property worth more than 250 tax-exempt minimums from the company to the director or a third party. A tax-exempt minimum is set at UAH554 for 2013.

Securities law

Amendments to the Criminal Code of Ukraine (Criminal Code) recently created the following criminal offences:

- Insider trading.
- Market manipulation.
- Failure to disclose certain information about the company to investors in its securities.

Insolvency law

Directors can be held criminally liable if they knowingly led the company towards bankruptcy provided that the creditors' losses exceed 500 tax-exempt minimums (UAH277,000).

Health and safety

Putting into circulation of the products that do not meet safety requirements is a criminal offence in Ukraine if the value of the affected products exceeds 500 tax-exempt minimums (UAH277,000).

Environment

Violation of the environmental laws is a criminal offence in Ukraine if it results in damage to the public health or to the environment.

Anti-trust

There is no criminal liability for violations of anti-trust law. Non-compliance, however, may result in administrative liability for directors.

Cyber-crime

Ukrainian criminal legislation does not specifically impose any liability on directors for cyber-crimes.

Other

Infringement of copyright and related rights is a criminal offence if the infringement results in a "significant loss", that is an amount in excess of 20 tax-exempt minimums (UAH11,080). Punishment varies from a fine to up to six years of imprisonment in most severe cases.

The majority of the criminal cases initiated in Ukraine against companies' officials are tax evasion crimes. Criminal liability is

triggered if the amount of unpaid tax exceeds 1,000 tax-exempt minimums (UAH554,000). However, if the outstanding amount is paid on opening of the criminal proceedings the director is relieved from criminal liability.

17. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

Directors' civil liability is limited to the amount of their monthly average salary. This is a general cap imposed on liability of employees under the employment law. There is no exemption for directors who are deemed regular employees for the purposes of limitation of their liability. This rule is subject to the provision to the contrary in the employment contract, but only in the case of the chairman of the management board.

Supervisory board members are rarely employed by the companies that exposes them to unlimited liability for breach of their duties. Limitation of their liability may be provided under a contract between the company and a board member. The law does not restrict the freedom of the parties to set these limits.

Directors may be held fully liable if they are found guilty of a criminal offence. In civil proceedings, damage caused by a company's employee (including a director) to a third party must be compensated by the company rather than the employee. The companies have a right of recourse against the director(s) responsible, which is limited to the amount of the monthly salary in cases where the director is the company's employee.

18. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

Although legally possible, in practice, insurance against personal liability is rarely, if at all, sought by directors due to significant statutory limits on the personal liability of directors (see *Question 17*). These limits make insurance of liability unnecessary.

19. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

The concept of a de facto (or shadow) director is not recognised.

TRANSACTIONS WITH DIRECTORS AND CONFLICTS

20. Are there general rules relating to conflicts of interest between a director and the company?

JSCs. Any transaction between a company and the following is deemed to involve a conflict of interest:

- Any of its directors.
- Close member of a director's family.
- Another company in which a director holds at least 25% of shares.



These transactions must be approved by the supervisory board. If the director in question is a member of the supervisory board, he does not participate in voting. If the majority of supervisory board members have a conflict of interest, the transaction must be approved by the GSM. Notably, all shareholders have the right to vote, even if the transaction is between the company and the shareholder's nominee on the supervisory board who declared a conflict of interest based on his affiliation with such a shareholder.

A transaction made in violation of these rules is void.

LLCs. No such rules apply to LLCs.

21. Are there restrictions on particular transactions between a company and its directors?

See *Question 20*.

22. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?

Public JSCs. Directors are prohibited from entering into transactions, for their own benefit or for the benefit of third parties, with the company's shares and other securities if they have inside information in relation to the securities they deal in. Inside information is defined by law as any undisclosed information about the company that, should it be disclosed, would significantly affect the price of the securities. Information ceases to be inside after its disclosure.

LLCs and private JSCs. The charter of the Private JSC may restrict the right to transfer shares freely without first offering them to other shareholders. Transferability of shares is limited by law in LLCs. Directors buying or selling the company's shares are bound by these restrictions.

DISCLOSURE OF INFORMATION

23. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

LLCs. Since 2006 all companies, including LLCs, must disclose their accounts through the state registrar. The law was amended to bring the disclosure requirements in line with the EU directives. However, since the enactment of this requirement, companies have ignored it and the government did nothing to create the necessary systems. Directors must disclose certain information to shareholders on their request.

JSCs. The law provides for various disclosure obligations of the management board of Public and Private JSCs towards shareholders, the public and regulatory bodies. Major sources of information for shareholders are the company's annual accounts and the right to obtain information on request. JSCs must publish regular reports about the results of their operations and make ad hoc announcements about price-sensitive events (for example, taking a loan in excess of 25% of the company's assets).

Public JSCs must also disclose their International Financial Reporting Standards (IFRS) accounts. All necessary information can be accessed at www.smida.gov.ua, an official website run by the State Agency for the Development of the Stock Market Infrastructure.

COMPANY MEETINGS

24. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

LLCs. The shareholders' general meeting is called at least twice a year, unless the company's charter provides otherwise. At the annual meeting the shareholders approve the year-end results. The quorum at the annual shareholders' meeting is 60% of voting shares plus one share.

JSCs. A JSC must hold an annual meeting of shareholders every year before April 30th. The annual shareholders' meeting requires 60% of voting shares to form a quorum.

The agenda of every annual meeting must include:

- Approval of the annual report of the company.
- Distribution of the company's profits and allocation of losses.
- Consideration of the reports of the supervisory board, management board and/or audit commission or auditor.

At least once every three years the annual meeting of shareholders must appoint new members of the supervisory board. There are no restrictions on the number of times that a member can serve on the board.

25. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

LLCs. Shareholders holding in aggregate more than 20% of the company's share capital can request that an extraordinary shareholders' meeting be held. If, within 25 days from the date of the request, the chairman of the company fails to comply with the request, the shareholder(s) concerned can convene a shareholders' meeting himself. Notably, in LLCs the chairman of the company is an officer whose only function is convocation of general meetings. Quite often LLCs operate without a chairman and the meetings are held when the shareholders so agree. In the absence of a chairman, minority shareholders may encounter a difficulty implementing their right to convene extraordinary shareholders meeting.

Any shareholder can demand that items be put on the agenda for resolution by the shareholders' meeting, provided that such demand was submitted at least 25 days before the date of the meeting.

JSCs. The supervisory board can be requested to convene a general meeting of shareholders holding in aggregate at least 10% of



the company's share capital. The supervisory board then has ten days to convoke an extraordinary GMS. Failing that, the shareholders can convene the meeting themselves.

Shareholders holdings in aggregate not less than 5% of the shares can request that items be put on the agenda for resolution by the shareholders' meeting, provided that the request is submitted at least 20 days before the date of the meeting (seven days if the proposition concerns candidates to be elected to the company's organs).

MINORITY SHAREHOLDER ACTION

26. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

Any shareholder, irrespective of the level of shareholding, can bring a claim challenging the decision of the GMS. Such a claim can be brought within:

- Three years from the date of the meeting in LLCs.
- Three months from the date of the meeting in JSCs.

In 2008, the Supreme Court of Ukraine published its opinion that shareholders do not have a right to derivative claims, (that is, the claim brought by a shareholder in the interests of a company). Before 2008, the courts saw a growing wave of these claims by the smallest shareholders challenging the validity of significant contracts made by the companies with third parties. Many commentators agreed that quite often these claims were abusive of the shareholders' rights. The Supreme Court's opinion was a response to these developments. In 2009, the law was changed and the shareholders regained their right to challenge the contracts entered into by the company with third parties but only if the contracts violated the conflict of interests rules. However, in 2011, the law was changed yet again and the right to a derivative claim was finally removed from the Ukrainian legal system.

INTERNAL CONTROLS, ACCOUNTS AND AUDIT

27. Are there any formal requirements or guidelines relating to the internal control of business risks?

JSCs. The Principles contain recommendations that each governing body of the company create an organ responsible for internal control of business risks. These organs include an internal control department to be created by the management board, audit committee of the supervisory board, and audit commission elected by the GMS.

Before 2011, the companies were obliged by law to have the audit commission elected by the GMS. In 2011, however, this requirement was lifted.

LLCs. LLCs must have an audit commission, which must include at least three members who are elected from among the shareholders of the company by its GMS. This requirement has been criticised for its apparent disregard of companies with less than three shareholders. The rigidity of the requirement is balanced by the absence of any sanctions for its violation. In practice, many companies do not create audit commissions.

THE REGULATORY AUTHORITY

National Securities and Stock Market Commission (Securities Commission)

Main activities. The Securities Commission was established with the aim to regulate relations arising on the securities market. It develops and approves legal acts that regulate issuing and trading of securities. The Principles of Corporate Governance are also adopted by the Securities Commission.

28. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

A chairman of the management board (or a director in a single-member board) and a chief accountant of the company are liable for the correctness of the company's financial statements by virtue of the fact that they are the two company officials who must certify the statements with their signatures. Inclusion of false information in the company's financial statements is an administrative offence punishable by a monetary fine ranging from UAH136 to UAH255.

29. Do a company's accounts have to be audited?

JSCs. The JSC Law requires that accounts of Public JSCs be audited. However, the Law On Securities and Stock Market does not make any distinction between Public and Private JSCs and imposes an obligation on both types of JSCs to publish their annual reports on the results of operations supported with audit reports.

LLCs. Accounts of LLCs do not have to be audited unless an LLC is an issuer of bonds or other securities.

30. How are the company's auditors appointed? Is there a limit on the length of their appointment?

JSCs. An independent auditor is appointed by the supervisory board that approves the terms of engagement of the auditor, including the length of appointment. There are no limits on the length of appointment of the auditor. If there is no supervisory board in the company the auditor is appointed by the GMS.

LLCs. There are no statutory rules governing the appointment of an independent auditor.

31. Are there restrictions on who can be the company's auditors?

A company's auditors must be independent and must also be registered with the Audit Chamber of Ukraine. Certain relationships can disqualify an auditor from being independent (for example, an auditor cannot be an officer or employee of the company being audited or of an associated undertaking (such as a parent or subsidiary company)).



32. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

Company's auditors are not allowed to provide consulting services to the company.

33. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

Auditors can only be held liable to the persons with whom they made a contract for the provision of audit services. The parties to this contract can freely limit the auditor's liability. The maximum limit of liability is established by law and cannot exceed the amount of actual damages incurred by the client through the auditor's fault.

CORPORATE SOCIAL RESPONSIBILITY

34. Is it common for companies to report on social, environmental and ethical issues? Please highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.

The law does not require companies to report on social, environmental or ethical issues and disclosure of such information is not common.

COMPANY SECRETARY

35. What is the role of the company secretary in corporate governance?

LLCs. The position of company secretary is not provided for by law.

JSCs. On the initiative of the chairman of the supervisory board, the latter can appoint a company secretary to be responsible for interaction of the company with its shareholders and investors. A company secretary is usually also responsible for preparation of the meetings of the supervisory board. (A company secretary will soon be required in companies with over 100 shareholders (see *Question 37, Reform: JSCs*.)

INSTITUTIONAL INVESTORS AND SHAREHOLDER GROUPS

36. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? Please list any such groups with significant influence in this area.

The influence of institutional investors, such as mutual funds, is very limited as they have only marginal visibility on the Ukrainian

stock market. The pension reform in Ukraine is still in the nascent state and the pension funds have not yet emerged as stock market players and an independent factor in the development of good corporate governance. Private equity funds and international financial institutions (such as the European Bank for Reconstruction and Development) and other influential creditors providing financing in exchange for the minority (or, sometimes, majority) stake in the borrowers' share capital are more visible in this respect.

REFORM

37. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

LLCs. Although regulation of this most popular corporate form is limited to just a dozen articles included in the LLC Law, which is now more than 20 years old and which has seen very little change since its enactment, the Ukrainian government is not active in bringing about reform. In 2009, one of the MPs launched a private initiative by submitting a draft law on LLCs. The law was rejected by the Parliament in June 2012 during the first reading. The lack of consistency and poor legal technique were highlighted as one of the many drawbacks of the draft.

JSCs. In August 2012, the Securities Commission proposed a fresh list of amendments to the various laws affecting JSCs. The key changes include:

- Full liability for members of the management and supervisory boards for losses inflicted on the company by breach of their duties.
- Shareholders' pre-emption right becomes subject to the GSM's decision whether to allow or disallow the exercise of that right.
- GSM's decisions can be taken by means of a written resolution.
- A company secretary must be appointed in companies with more than 100 shareholders.
- Majority shareholder's right to squeeze-out shareholders holding in aggregate less than 5% of the shares.
- Prohibition for the JSCs to merge with companies of different corporate forms or to de-merge into companies other than JSCs.
- Prohibition of certain strategies aimed at squeezing-out inactive shareholders.
- Mandatory disclosure of the results of review by the company's organs of the transactions with conflicts of interest.

These proposals raise issues that are rather sensitive for many influential interest groups in Ukraine and the likelihood of them being approved by the Parliament should be assessed with caution.



ONLINE RESOURCES

W www.rada.gov.ua

Description. This is an official website of the Ukrainian Parliament, Verkhovna Rada of Ukraine, where original language legislation is accessible for free. The database is updated on a regular and timely basis and available in Ukrainian language only.

W www.commerciallaw.com.ua

Description. This website provides the English translation of some pieces of commercial legislation.

W www.reyestr.court.gov.ua

Description. This is an official database of judgments made by the Ukrainian courts since 2006. The language of the database is Ukrainian.

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