

Ukrainian Corporate Governance Principles

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Introduction

The essence of corporate governance

A company's success is determined, to a large extent, by its access to investment capital. In order to win investor confidence or to raise capital, the company must maintain good governance practices, including shareholder protection, a sound system of management and control, and transparency and openness in its activities.

In a larger sense, corporate governance is defined as a system for directing and controlling the activities of corporations. Corporate governance defines how investors oversee the activities of management, and how management is liable to investors for the company's performance. Good corporate governance allows investors to be certain that their investment is used prudently by management to increase the company's financial and business activity and, therefore, to create shareholder value.

Good corporate governance is not limited to relations between investors and management. It involves the protection of and cooperation with stakeholders who have a legitimate interest in the company's performance, such as employees, consumers, creditors, the government, the public, and so forth. One reason for this is that a company cannot exist outside the society in which it operates, and its ultimate success depends on the individual input of each stakeholder.

Therefore, the essence of corporate governance may be described as a system of relations between the company's owners, management, and stakeholders aimed at ensuring the sustainable performance of the company and a balance of influences and interests of the parties to corporate relations.

The importance of corporate governance

Corporate governance is important for joint stock companies because of its role in increasing their competitiveness and economic efficiency through:

- the protection of shareholder interests;
- a balance of influences and interests of parties to corporate relations;
- increased financial transparency; and,
- the implementation of good management and control practices.

Corporate governance is important for the state at large because of its effect on the country's social and economic development, as well as its role in:

- facilitating investment, and building investor confidence;
- increasing the efficiency of capital utilization and private sector performance; and,
- taking into account the interests of a broad range of stakeholders, in keeping with the goal of working for the benefit of society as a whole and maximizing national wealth.

Global trends in the development of corporate governance. Generally accepted principles of corporate governance

While no universal model of corporate governance exists in the world, there are generally accepted principles, or standards, of good corporate governance that may be applied within a wide range of legal, economic, and political contexts.

International standards of corporate governance appeared primarily as a result of heightened public interest in corporate governance generated by the globalization of financial markets and the liberalization of capital flows. An attempt was made to lay down universally acceptable, transparent and understandable ground rules for financial markets. International standards of corporate governance came about as a broad response to scandals in the world's financial community and a desire to stabilize financial markets.

Today, a large number of countries are making a concerted effort to improve corporate governance at the national level. One way to achieve this goal is through the introduction of national principles (codes) of corporate governance. Such documents came into existence as a result of:

First, a realization that national legislation alone cannot resolve all the problems of corporate governance, and that these must be addressed through the introduction of standards of ethics and a code of practice for corporate governance.

Second, the understanding that corporate governance is an important component of national development and an essential condition for surviving in a competitive global environment. Many countries now consider corporate governance to be an integral part of economic reform, a prerequisite for the development of private business, a method of increasing capacity to compete on international markets, and a means of improving overall economic performance.

The purpose of the Principles of Corporate Governance of Ukraine

The purpose of the Principles of Corporate Governance of Ukraine is to lay down the principles and recommendations, based on international best practices of corporate governance and tailored to Ukraine's needs and experience, that are necessary for the development of good corporate governance in Ukraine.

This is a systematic collection of the fundamental principles and recommendations for conducting the effective and transparent management of a joint stock company, through which the company will improve its ability to attract investment and to compete with others.

The scope of the Principles of Corporate Governance of Ukraine

Corporate governance is important for all types of companies and critical for corporations. This is due to the need to separate ownership from management and to ensure the protection of investor rights in a situation where the company is owned by one group of people and managed by another.

These Principles of Corporate Governance are intended for open joint stock companies traded on the stock market. The document also provides universal principles and recommendations for the efficient management of a company. Its provisions may be applied to other types of companies insofar as it is allowed by legislation governing their activity.

The status and mechanisms for enforcing the Principles of Corporate Governance of Ukraine

The Principles of Corporate Governance are recommendations only and designed to be optional. The primary incentive for companies to follow them is economic rationale and the demand for good corporate governance by capital markets when raising financing.

Companies should take a flexible and creative approach to introducing their own systems of corporate governance, using the provisions of this document as a basis and tailoring them to

their specific needs. Once in place, companies should constantly evaluate and improve their corporate governance systems.

Companies should follow the Principles of Corporate Governance in practice by:

- voluntarily applying the principles and recommendations for good corporate governance and on a day-to-day basis;
- including provisions of the Principles into company by-laws; and,
- disclosing information on the observance of the Principles in an annual report, or explaining the reasons for not following the recommendations provided in the Principles.

The living nature of the Principles of Corporate Governance of Ukraine

The Principles are a living document and will be reviewed and revised with regard to the development of corporate legislation and to the improvement of the practice and generally accepted principles of corporate governance.

Principles of Corporate Governance

1. Goal of the Company

The company's goal is to maximize shareholder value as measured by the increasing market value of shares and the dividends paid to shareholders.

The company should provide such conditions as to motivate potential investors to invest in its shares. To this end, the company should increase paid-in capital, establish meaningful relations with stakeholders, and create opportunities for listing the company's shares for trading on the stock market through securities exchanges and trading information systems.

The company's objectives must be stated in the charter. The company should inform its shareholders and stakeholders about the company's goal by including such information in its annual report.

In making their decision, governing bodies of the company should act with regard to the company's goal/objectives, managing the company in such a way so as to ensure the development of the company as a whole and to facilitate the right of each shareholder to obtain profit by investing in shares. In addition, the company should conduct its activity in compliance with the rules of business ethics with regard to the interests of society as a whole.

2. Shareholder Rights

The company should ensure the protection of the rights and legitimate interests of shareholders, regardless of whether the shareholder is a resident of Ukraine, the number of shares he/she owns, and other factors.

2.1. The company should ensure both the ability to exercise rights and the protection of the rights and legitimate interests of shareholders, including:

2.1.1. The right to participate in the corporate governance of the company by attending and voting at the general shareholders' meeting. To provide shareholders with an opportunity to exercise this right effectively, the company should facilitate the shareholder's right to:

a) participate in decisions on fundamental corporate matters, such as making changes to the charter, electing members of the supervisory board and audit commission, approving additional share issues, repurchasing any outstanding shares by the company, undertaking large transactions, reorganizing the company and other activities which may result in major corporate changes;

As company owners, shareholders should have the right to decide on fundamental corporate matters, such as those that may have a considerable impact on their rights or the value of their shares. Decisions on such issues should be subject to a vote by the general shareholders' meeting. Powers of the general shareholders' meeting, including those that are exclusive to it, should be expressly set forth in the company by-laws.

A regular general meeting should be held annually, but not later than four months after the end of a financial year.

b) be informed about the upcoming general meeting in a timely manner by means of a notice indicating the date, time and venue of the meeting, and to receive complete information about the agenda of the meeting, which shall specify the method through which shareholders can become familiar with documents related to the agenda. The time and venue of the general meeting and the registration procedure should facilitate the participation of shareholders in the general meeting;

The company should inform shareholders about the upcoming general meeting not later than 45 days before the date of the meeting.

The registration of shareholders participating in the general meeting should be conducted before the start of the meeting on the day and at the venue of the meeting within a period of time sufficient to register everyone arriving at the meeting. To conduct the registration, a registration (mandate) committee should be elected/appointed by the supervisory board from among individuals who are able to perform their mandate diligently and in good faith. Members of the mandate committee should include members of the supervisory board, representatives of minority shareholders, and an independent registrar. The quorum determined before the start of the meeting should remain unchanged until the meeting is adjourned.

The company should hold the general meeting for one day in the village, town, or city in which the company is located.

c) examine documents concerning the agenda of the general shareholders' meeting in a timely manner and by any convenient means, and to obtain, where needed, additional information on items included in the agenda from company officers;

To enable shareholders to make an informed decision on matters related to the agenda, the company must provide them with an opportunity to become familiar with agenda-related materials at any time after receipt of the general meeting notice and up to the date of the meeting, by any convenient means, including:

- providing the documents for examination on the company's premises;
- at the request of the shareholder, sending the documents by mail, fax or e-mail; or
- posting the documents on an Internet website indicated in the general meeting notice.

If the agenda includes a motion to approve the company's annual results, the allocation of net income, and the procedure for covering losses, shareholders should be provided with copies of the financial statements (including the balance sheet, profit and loss statement, cash flow statement, paid-in capital statement and notes to the statements), recommendations of the supervisory board, the opinion of the audit committee and the opinion of the external audit firm (auditor).

If the agenda includes a motion to elect governing bodies, shareholders should be provided with complete information about the candidates for the available positions (see Clause 3.1.3 of these Principles).

Shareholders should have the right to put forward questions and to obtain additional information about any provisions of the agenda or related materials, from the officers and other authorized representatives of the company.

d) make motions and request that motions made by shareholders with the appropriate number of votes be included in the agenda;

Any shareholder should have the right to make written proposals to add motions or parts thereof to the agenda not later than 30 days before the general meeting is scheduled to be held. The decision to accept a shareholder's motion is taken by the executive board and is subject to approval of the supervisory board. The grounds for dismissal of a shareholder's motion should be clearly set out in the company by-laws. Motions submitted by a shareholder (shareholders) holding the appropriate number of votes must be included in the agenda (as required under the law).

The company should, within 10 days in advance of the general meeting, inform shareholders about changes in the agenda by publishing a notice in those mass media where the general notice of the general meeting was published, as well as by mailing a personal notice in writing to registered shareholders. A personal notice sent to a shareholder whose motion was dismissed should state the grounds for such dismissal.

e) attend the general shareholders' meeting in person or through a freely appointed nominee. Votes cast at the general shareholders' meeting by shareholders and shareholder's nominees shall have an equal legal force;

The shareholder may not be restricted in his or her right to choose and appoint his or her nominee for participation in and voting at the general meeting. The shareholder's nominee,

acting on the basis of a proxy, may be another shareholder of the company or a third party. A proxy may be issued in relation to all shares held by the shareholders or any part thereof. A proxy issued to the nominee may contain voting instructions, i.e. a list of motions on the agenda with instructions for the nominee to vote for (or against) specific motions.

A proxy issued by a shareholder which is a legal entity is legalized by the signature of the director of the legal entity and sealed with its stamp. A proxy issued by a citizen shareholder should be notarized or certified in a fashion equivalent to notarization. A proxy for participation in and voting at the general meeting may be certified by the registrar maintaining the shareholder register or by the chair of the executive board of the company (by decision of the executive board, such right may be delegated to one of its members). The company shall legalize proxies free of charge.

The shareholder may at any time replace his or her nominee. The appointment of a nominee does not deprive the shareholder of the opportunity to participate in the general meeting or to vote in person (provided that the shareholder is duly registered for participation in the general meeting).

f) participate in the discussion of and vote on motions included in the agenda. The procedure used for voting at the general shareholders' meeting should ensure the transparency and accuracy of the vote count.

The company should have a procedure in place for discussing motions included in the agenda during the general meeting, which should provide a shareholder (or his or her nominee) with an opportunity to express his or her opinion about motions included in the agenda orally or in writing.

Shareholders have the right to vote for or against any motion included in the agenda, or to abstain from voting. A counting committee should be elected (or appointed) to count the votes and to perform other duties necessary to facilitate voting during the general meeting. The composition of and the procedure for electing such a committee should be set forth in company by-laws. The supervisory board should elect/appoint members of the counting committee from among individuals who are able to perform their mandate diligently and in good faith. The counting committee should consist of members of the supervisory board, representatives of minority shareholders, and an independent registrar. Candidates standing for election to the governing bodies of the company may not serve on the counting committee.

The use of ballots is recommended for increasing the efficiency of the voting procedure and the vote count; the format of a standard ballot form should be subject to approval by the supervisory board. Results of the vote and adopted resolutions should be disclosed to the shareholders in a timely fashion, i.e. prior to adjournment of the general meeting. Vote results should be recorded in the minutes of the meeting, which should be properly prepared and maintained by the company.

The company should provide every shareholder, regardless of whether he or she attended the general meeting, with an opportunity to examine documents related to the general meeting, such as the minutes of the meeting, the protocols of the registration (mandate) and counting committees, the protocol prepared by representatives of shareholders and the Securities and Stock Market State Commission (SSMSC) overseeing the registration of shareholders, any by-laws adopted at the general meeting, changes made to the charter, etc.

2.1.2 The right to share in the company's profits in an amount proportionate to the number of shares owned by the shareholder.

The company should have a transparent dividend policy, aimed at optimizing shareholder profit and developing the company. The company's dividend policy should facilitate the exercise of the shareholder's right to obtain dividends. At the same time, the company's dividend policy should set out instances where the payment of dividends is not allowed, such as, in the event of failure to pay for shares in full or the threat of insolvency of the company as a result of paying dividends. The dividend policy should also be formulated with regard to the need for and necessity of allocating a portion of profits (reinvesting dividends) for the development of the company. Dividends on shares are to be paid only in cash.

The company should pay dividends within three months of the adoption of the resolution on the payment of dividends by the general shareholders' meeting.

2.1.3 The right to receive complete and accurate information about the financial state of the company and the results of its economic activity, important facts which affect or may affect the value of corporate securities and/or earnings on them, the issuance of corporate securities, etc.

The right to receive information about the company is a fundamental shareholder right. A shareholder can make an informed decision about his or her investment and exercise most of his or her rights only on the basis of complete, accurate, and timely information about the company.

Company by-laws should set forth the principles of a communications policy aimed at ensuring shareholders' free and unrestricted access to information about the company and specify which documents should be available to shareholders. The company may charge a fee for providing copies of documents, including those certified, and for any extracts from company documents. The fee should not exceed the cost of producing the copies or extracts and postage charges (if applicable) (See Chapter IV of these Principles).

2.1.4 The right to dispose of shares freely.

The right to dispose of his or her shares is an inalienable right of a shareholder. The company is not allowed to impose any restrictions, either in by-laws or in practice, on the free disposal of shares by a shareholder (e.g. a preemptive right of other shareholders to purchase company shares, a requirement to obtain the company's permission to convey shares, etc.)

2.1.5 The right to a secure and effective mechanism for the registration and confirmation of share ownership:

- a) **the procedure for registering titles to shares should provide for a quick, effective, and easy method of registering and confirming share ownership;**
- b) **the company should make every effort to prevent officers of governing bodies and other shareholders from interfering with the process of registering share certificates; and,**
- c) **when choosing an independent registrar, the company should take this decision on the basis of the registrar's independence, professionalism, and trustworthiness.**

The company should perform share registration and maintain a database of registered shareholders and the shares they own by means of a depositary or registration system, depending on the form in which the shares are issued, which may be either non-documentary or documentary. If shares are issued in documentary form, the company should hire an independent registrar to facilitate the shareholder's right to a fair and efficient process of registration and confirmation of share ownership.

2.1.6. The right to request the redemption of shares by the company at a fair price for those shareholders who did not vote for or voted against certain decisions of the general shareholders' meeting which restrict their rights.

The right of a minority shareholder to request redemption of his or her shares by the company is aimed at protecting the rights of a minority shareholder who did not vote for or voted against certain decisions of the general meeting restricting his or her rights. In the absence of a liquid stock market, this right is particularly important for a shareholder. The right of a shareholder to request redemption of his or her shares by the company may arise in a situation where the general meeting decides on issues of fundamental importance, such as large transactions, reorganization of the company, etc. It is recommended to provide for a list of such issues in company by-laws unless otherwise stipulated by applicable legislation.

The redemption price should be fair, i.e. equivalent to the market value of shares redeemed:

- the redemption of shares traded at stock exchanges or trading and information systems should be conducted at the market price effective as of the time of redemption yet not less than the average weighted price at which the company's shares were traded on the market in the two preceding months;
- in companies whose shares are not publicly traded the market value of shares subject to redemption should be determined by an independent valuator.

2.2. The company should ensure equitable treatment of all shareholders owning same-class shares:

- a) **every common share issued by the company gives its owner the same scope of rights. Ukraine has adopted the one-share-one-vote principle;**
- b) **in the event that the general shareholders' meeting adopts a resolution which restricts the rights of preferred shareholders, they should have the right to vote on motions included in such a resolution; a shareholder who did not vote for or voted**

against the resolution should be entitled to the redemption of his/her shares at a fair price;

c) the same amount of dividends should be paid per each share of the same class issued by the company. It is not permitted to give privileges, in terms of receiving dividends, to different groups of shareholders within the same class; and,

d) all shareholders should have equal rights and opportunities in terms of access to information.

The investor's readiness to invest in a particular company depends on his/her confidence that his/her rights will be duly protected and that they will have an opportunity to exercise their rights on the same basis as other shareholders. The principle of equitable treatment of all shareholders is particularly important if the company plans to raise additional capital on the stock market and to obtain investment from portfolio and foreign investors. The company should make every effort to prevent the violation of minority shareholders' rights by officers of the company or shareholders holding a controlling block of shares.

Ukraine has adopted the one-share-one-vote principle, which prescribes that every common share issued by the company provides its owner with one vote. There are no exceptions to this principle (such as setting a minimum number of shares a shareholder should have to be able to vote, or limiting the number of votes one shareholder may have) or depriving the shareholder of his or her voting right.

2.3. The company should provide foreign and other shareholders with equal opportunities to exercise their rights.

To provide foreign and domestic shareholders with equal opportunities to exercise their rights, the company should take reasonable care to remove obstacles to the exercise of their rights by all shareholders. In particular, the company is recommended to provide a notice of the upcoming general meeting and documents related to the agenda in necessary foreign languages. In addition to using the post, companies are encouraged to use modern means of communications, such as facsimile, e-mail, etc. to provide information to shareholders.

2.4. In the event of an additional share issuance, the company should secure the equal preemptive right of every shareholder to purchase additionally issued shares in an amount proportionate to his or her share in the charter capital.

Share dilution is a serious violation of shareholder rights, which reduces the owner's share of the company's charter capital and, as a result, reduces the value of his/her shares and lessens his/her impact on decisions made by the higher governing body of the company. The company should follow legal procedures for shareholders to exercise their pre-emptive right to purchase additionally issued shares by:

- providing shareholders with the pre-emptive right to purchase additionally issued shares ahead of other potential investors;
- providing shareholders with an opportunity to purchase additionally issued shares in an amount proportionate to their current share in the charter capital;
- allowing for sufficient subscription time, to enable shareholders to exercise their pre-emptive right; and,
- providing shareholders with an opportunity to pay for purchased shares in cash.

2.5. Nominal share custodians participating in the general meeting on behalf of a shareholder on the basis of a properly issued power of attorney, should ask shareholders to issue a proxy to vote on motions included in the agenda in accordance with the appropriate instructions.

The power of a nominee with respect to representing a shareholder at the general shareholders' meeting should be certified by a proxy containing appropriate voting instructions.

2.6. The company should design and introduce an appropriate internal mechanism to prevent the misuse of insider information by company officers and other insiders for personal gain.

Insider information is defined as information about the company issuing securities, the securities themselves or transactions with such securities, which is important and not publicly available, and the disclosure of which may affect the market value of such securities. The use of insider information by officers of the governing bodies of the company and other insiders contradicts the principle of equitable treatment of shareholders by enabling some to trade in securities on the basis of information that may affect the value of such and earnings on securities and is not publicly available. Company by-laws should secure the duty of company officers and other insiders not to disclose such information to third parties and to abstain from purchasing/selling company securities before such information is made public.

3. The Supervisory Board and the Executive Board

Good corporate governance requires providing, within the corporate structure of the company, for an independent supervisory board and an efficient executive board (management), a rational distribution of responsibilities among the two governing bodies, and a proper system of accountability and control. The system of corporate governance should provide adequate conditions for a timely exchange of information and an efficient interaction between the supervisory board and the executive board. Bodies and officers of the company should perform their duties with due diligence and care in the best interests of the company and shareholders.

The terms of reference of company bodies should be clearly specified in the company's charter in line with their objectives and the relevant provisions of Ukrainian law. The company is recommended to specify in company by-laws which powers are exclusive to which body and which powers may be delegated to others. A decision to delegate powers should be recorded in the minutes of the meeting of the relevant governing body, indicating the body to which the powers are delegated, a list of powers delegated, and the term of delegation. If the supervisory board delegates powers to the executive board, they shall be jointly liable for handling these matters.

To ensure the proper state of corporate governance, apart from developing a clear corporate structure, it is important to make company bodies understand that, in performing their duties, they work as a team to accomplish the company's mission, and that the performance evaluation of each body is directly related to the outcome of the company's activity. To monitor the performance of all company bodies in the execution of their duties, the company should have an efficient system of accountability and control.

A decisive factor in ensuring efficient interaction between company bodies is the timely exchange of information which is necessary for company bodies to discharge their duties and to make informed decisions. The duty of company bodies to exchange information should be outlined in detail in company by-laws.

The company's performance depends on whether company officers act with due diligence, skill, and care. A company aiming to win investor confidence should establish proper internal mechanisms for protecting all shareholders from fraudulent asset-stripping or other acts by company officers in defiance of the company's interests.

3.1. Supervisory board

3.1.1 The supervisory board conducts the overall management of the company, controls activities of the executive board, and protects the interests of shareholders. Good governance requires that the supervisory board reports to the company's general shareholders' meeting.

In conducting the overall management of the company, the supervisory board sets the company's goals and approves the strategy for achieving them. The company's goals may consist of exploring new activities, developing the product and services portfolio, entering new markets, achieving certain financial targets, and so forth. In addition to setting the company's goals, the supervisory board, normally in close partnership with the executive board, should identify ways to achieve them, i.e. the company's strategy. The supervisory board should ensure the consistency of the company's activities with the adopted strategy through an on-

going evaluation of its efficiency. Finally, the supervisory board should formulate the company's policies defining how the company should be governed and how the company's activity affects stakeholders and participants.

In exercising control, the supervisory board should oversee the quality of managerial decisions of the executive board as they are being implemented or planned. In doing so, the supervisory board should monitor the performance of the executive board and evaluate its performance on a regular basis. Due to its authority to monitor the activity of the executive board, the supervisory board should have the right to nominate candidates for the positions of chair and other members of the executive board, to be approved by the general shareholders' meeting, and to suspend their powers. In addition, the supervisory board oversees the financial and business activity of the company, including ensuring the integrity and efficiency of the accounting and control systems adopted by the company, checking the accuracy of annual and quarterly reports released to the public, and so forth.

3.1.2 The charter of the company should clearly define the responsibilities of the supervisory board, including powers that are exclusive to the supervisory board. The main functions of the supervisory board include:

- a) ensuring the exercise and protection of shareholder rights;**
- b) approving the company's strategy, annual budget and business plans, and overseeing their implementation;**
- c) approving the terms of contracts with the chairman and members of the executive board, and determining the amount of their compensation and forms of oversight of the executive board's activity;**
- d) overseeing the financial and business activity of the company, including appointing an independent auditor and making available complete and accurate information about the company to the public; and**
- e) overseeing the detection, prevention, and resolution of conflicts of interest among company officers, such as the use of company property for personal needs and entering into agreements with related parties.**

3.1.3. Members of the supervisory board should be elected and dismissed by the general shareholders' meeting:

- a) **the procedure for forming the supervisory board should provide all shareholders, including minority shareholders, with an opportunity to nominate candidates for the supervisory board;**
- b) **candidates for the supervisory board should be nominated ahead of the general shareholders' meeting; shareholders should be provided with complete information about each candidate in advance, in order to be able to make a circumspect and informed decision; and,**
- c) **it is recommended that legal entities which are shareholders elect individuals to the supervisory board.**

Considering that the supervisory board is a body which conducts the overall management of the company and reports to shareholders, the power to elect members of the supervisory board should be exclusive to the general shareholders' meeting. Legal entities which are shareholders should elect individuals to the supervisory board. The use of ballots is recommended for electing members of the supervisory board.

Company by-laws should secure the right of any shareholder to nominate candidates for the supervisory board. Nominations for the supervisory board should be submitted in due time indicating the date of nomination, information about the candidate and proof of his or her share ownership.

Prior to elections for the supervisory board, the nomination and compensation committee should provide shareholders with information about the candidates, including:

- the candidate's first, middle, and last name, year of birth, nationality, area of residence, etc.
- educational and professional background;
- professional experience, including that in a managerial position;
- last place of employment, indicating position; and,
- presence of important connections to the company, executive board, or a large shareholder (see Clause 3.1.5 of these Principles).

In electing members of the supervisory board, shareholders should be free in exercising their choice and make a decision based on the professional and personal characteristics of the candidate.

Legal relations between the company and supervisory board members should be based on the provisions of the respective civil contracts between them. The provisions of such civil contracts specifying mutual rights and obligations, compensation, incentive plan, responsibilities of the parties, and the procedures for and consequences of terminating such legal relations should be made known in advance to all candidates for the supervisory board.

3.1.4. Members of the supervisory board should have the knowledge, qualifications and experience appropriate for accomplishing the company's mission and pursuing its

strategy. Members of the supervisory board should have sufficient time to perform their mandate.

The selection criteria for candidates for the supervisory board should be set out in company by-laws. When determining the selection criteria and nominating someone as a candidate for the supervisory board, it should be taken into account that the supervisory board should be composed of people who possess the knowledge, skills, and experience necessary for the performance of their duties. Considering that the supervisory board is required to exercise the strategic control of the financial and business activity of the company, every candidate for the position of a member of the supervisory board should have, or acquire during his/her term in office, a basic knowledge of financial analysis.

In addition to the candidates' qualifications and experience, other factors should be taken into account as well, such as reputation and age, potential conflicts of interest, potential participation of those individuals in handling matters related to the company's foreign economic activity, etc. To perform his/her mandate effectively, a member of the supervisory board should have sufficient time to keep up to date on the situation within the company, analyze materials related to the agenda of supervisory board meetings, attend supervisory board meetings in person, and so forth. In its by-laws, the company may set a limit on the number of supervisory board mandates one member of the supervisory board may have.

3.1.5. To ensure the independence of the supervisory board, due care should be taken to ensure that at least one quarter of its members are independent. A supervisory board member is independent if he/she has no serious business, family, or other connections with the company, members of the executive board, or a large shareholder of the company, and is not a representative of the state.

To ensure the efficiency of the supervisory board, some of its members should be independent, i.e. not related to company officers, related parties, important contractors, or otherwise related to the company in a way that might affect the impartiality of their judgment. In light of this, a supervisory board member may not be considered independent if he/she:

- serves or has served in the last three years as the chair or a member of the company's executive board or as an officer of a governing body of a subsidiary of the company;
- is a related party in relation to the company or to persons who are parties to any liabilities of the company for a total annual amount in excess of 5% of the book value of the company's assets;
- obtains any income from the company, other than compensation for performing the mandate of a supervisory board member and income generated by his or her ownership of the company's shares;
- owns more than 5% of the company's shares; or,
- is a representative of the state.

Independence criteria for members of the supervisory board should be set out in company by-laws. The company may set additional and/or more stringent independence requirements for supervisory board members. The supervisory board or the committee on nominations and compensation should check whether supervisory board members meet the independence

requirements established by the company. Information on the number of independent members should be disclosed in the annual report.

3.1.6. Members of the supervisory board should have access to complete and accurate information in order to make informed decisions.

Relevant information is critical for the supervisory board to perform its duties properly. The supervisory board's right of access to information and the duty of company bodies to provide such information should be set out in detail in the by-laws.

Providing an adequate information base for the performance of the supervisory board in carrying out its duties is a joint task of the executive board (the duty to provide information) and the supervisory board (the duty to collect information). In the event of a failure by the executive board to provide necessary or complete information, members of the supervisory board should demand that the executive board provide such information in full. Members of the supervisory board should have an opportunity to ask for an explanation and/or clarification, as well as to put questions to and get answers from the executive board.

3.1.7. Regular meetings of the supervisory board should be held as often as necessary to ensure the proper discharge of its duties. In any case, meetings of the supervisory board should be held at least once every three months.

Meetings are the principal form of organizing the work of the supervisory board. To discharge its duties properly, the supervisory board should meet on a regular basis. The procedure for calling and holding board meetings should be set forth in the appropriate company by-law. The by-law should include a requirement that members of the executive board attend meetings of the supervisory board at the request of the board.

3.1.8. Members of the supervisory board perform their duties in person and may not delegate their powers to other persons.

Supervisory board membership is directly related to the personal involvement of a member. The professional and personal characteristics of a supervisory board member are critical for the efficient performance of their duties and a condition for being elected to the office. In addition, every member of the supervisory board is personally liable to the company for their decisions. In light of this, the delegation of powers of a supervisory board member to another person is inappropriate.

3.1.9. Depending on the composition and duties of the supervisory board, supervisory board committees should be formed.

a) **to increase the efficiency of the supervisory board, committees should be formed for preliminary consideration, analysis, and drafting of decisions on matters that are exclusive to the supervisory board.**

b) **to prevent conflicts of interest among officers of company bodies, the supervisory board should form an audit committee and a committee for nominations and compensation, most of whose members should be independent.**

The supervisory board may form standing or ad hoc committees to study, analyze, and draft decisions on matters that are exclusive to the supervisory board. Standing committees help the board to fill in information gaps due to the sporadic participation of board members in the

activity of the company and to address issues that require a more detailed and thorough approach (e.g. strategic planning committee, finance and investment committee). The supervisory board forms ad hoc committees to deal with specific problems of the company's activity, e.g. to assess the impact of a potential reorganization of the company, conduct investigations of official misconduct, etc.

Standing committees which should be formed to prevent conflicts of interest among officers of company bodies include the audit committee and the committee for nomination and compensation. The task of the audit committee is to oversee the financial and business activity of the company, handle matters related to accounting and risk management, nominate and oversee an independent external auditor, and to identify areas to be audited. In performing its duties, the audit committee should interact with the audit commission of the company, the internal control service and the external auditor.

The task of the committee for nomination and compensation is to recruit qualified professionals to manage the company and to provide adequate financial incentives for their employment. The committee's main duties include:

- establishing the criteria for selecting candidates for the positions of chair and other members of the executive board, and directors of principal divisions of the company;
- formulating the company's compensation policy, including the amount of compensation for the chair and other members of the executive board, and an incentive plan for executives;
- setting the terms of contracts made with the chair and other members of the executive board;
- conducting a preliminary evaluation of candidates for the positions of the chair and other members of the executive board and their performance;
- establishing whether candidates for the supervisory board and the audit committee meet the selection criteria outlined in company by-laws; and,
- assessing the independence of members of the supervisory board.

Decisions passed by the committees in relation to issues that lie within their competence become binding upon approval by the supervisory board.

3.1.10 The supervisory board should have the power to execute, where needed, service contracts with professional consultants (lawyers, auditors, etc.) on behalf of the company; the budget of the supervisory board should have sufficient resources to pay for such services.

As supervisory board members are personally liable for decisions made on behalf of the company, company by-laws should include the right of the board members to engage external professional consultant services by independently executing service contracts with them on behalf of the company and at the expense of the company, and to employ services of professionals within the company (lawyers, financial officers, etc.).

3.1.11 Based on year-end results, the supervisory board should report to the general shareholders' meeting on its activities and the overall state of the company.

The report of the supervisory board, presented at the annual shareholder meeting, should contain complete information about the state of the company, including information about:

- the company's business activity, including a description of the nature and primary lines of business, stating the main types of goods (services) manufactured (provided), a description of the company's main markets and sales channels;
- the main financial indicators of the company's activity;
- any changes in the company's corporate structure;
- the company's stakes in other enterprises; and,
- activities planned for the next year.

3.1.12 The supervisory board is responsible for evaluating the activities of the supervisory board as a whole and each member in particular, on an annual basis. To this end, the supervisory board should form a special committee, most of whose members should be independent.

Performance evaluation should be based on fair and transparent criteria, which include the outcome of the company's activity, the extent to which long-term strategic goals are achieved, the efficiency of the adopted strategy, and so forth. The purpose of conducting an overall evaluation of the company's performance should be to meet the supervisory board's needs in terms of qualified professionals. In addition to evaluating the performance of the board as a whole, it is necessary to monitor and evaluate the performance of each board member, identifying areas where his or her professional qualifications can be improved and taking steps to achieve this. The performance evaluation of members of the supervisory board should be based, as a minimum, on such criteria as meeting attendance, degree of preparation and impartiality in decision-making.

Most of work regarding the establishment of criteria and evaluation of the supervisory board's performance should be done by the committee for nominations and compensation, most of whose members should be independent.

3.1.13. Members of the supervisory board should be entitled to adequate compensation and should be provided with an incentive to perform their duties for the benefit of the company. Information about the amount and form of compensation extended to individual or all members of the supervisory board in aggregate, the number of shares they own, etc. should be made public in the annual report.

The criteria for determining the amount of compensation for members of the supervisory board should be established by the committee for nomination and compensation based on a general compensation policy adopted by the company which has been endorsed by the general shareholders' meeting.

In establishing the amount of compensation and the procedure for remunerating members of the supervisory board, care should be taken to provide for an appropriate incentive mechanism. It is recommended structuring compensation into fixed and variable components, the latter

being directly linked to the performance of the supervisory board member concerned and the company as a whole.

3.1.14. The position of corporate secretary should be introduced, with an objective to provide efficient organizational and information support to the governing bodies of the company, and to keep shareholders and stakeholders informed about the company's status.

The corporate secretary is an officer of the company appointed by and reporting to the supervisory board. The duties of the corporate secretary include:

- ensuring the preparation and organization of annual shareholder meetings and meetings of the supervisory board and the executive board;
- ensuring the provision of timely and accurate information about the company to company bodies and shareholders;
- maintaining company documents, including the company archive;
- maintaining communication with shareholders, including clarification of shareholder rights for shareholders and examination of shareholders' claims about violation of their rights; and,
- providing his/her opinion to company bodies and developing proposals for harmonizing company by-laws with the Principles of Corporate Governance of Ukraine.

To establish an efficient document circulation process and to closely follow the procedure for organizing the work of the company's governing bodies, the corporate secretary's terms of reference should include acting as secretary during the general shareholders' meeting and the meetings of the supervisory board and executive board.

The corporate secretary should possess the skills necessary for the position, enjoy the confidence of shareholders and have an excellent reputation.

3.2. The executive board

3.2.1 The executive board manages the day-to-day activities of the company and reports to the supervisory board and the general shareholders' meeting.

The executive board conducts the day-to-day management of the company and, therefore, is responsible for achieving the goals and implementing the strategy and policies of the company.

3.2.2 The executive board develops and coordinates with the supervisory board a draft annual budget and a draft company strategy, independently prepares and approves the workplans and operating objectives of the company, and ensures their implementation.

Because it has unlimited access to information about the company, its resources and capacities, the executive board should participate in the development of the annual budget and strategy of the company, especially since it will have ultimate responsibility for their implementation. When drawing up the budget and the strategy, the executive board should work closely with the supervisory board, which gives final approval for these documents.

In managing the day-to-day operations of the company, the executive board should make decisions, execute contracts, and perform other acts aimed at achieving the company's objectives on behalf of the company independently and within the limits established by applicable legislation and company by-laws. The supervisory board should not intrude into the day-to-day activities of the company.

Whenever it is necessary to launch new activities, the executive board should come forth with a proposal to make changes to the charter to extend (or amend) the scope of the company's activity, which would be put to a vote at the general shareholders' meeting.

3.2.3 The executive board should ensure the conformity of the company's activity to the provisions of applicable legislation, and the resolutions of the general meeting and the supervisory board.

In addition to securing the conformity of the company's activities to the provisions of applicable legislation, decisions of the general shareholders' meetings and the supervisory board, the executive board should exercise the day-to-day management of the company in accordance with generally accepted governance standards, including:

- all activities of the executive board shall be based on principles of economic expediency and aimed at increasing shareholder value; and,
- when carrying out its activities, the executive board should be aware that it bears social responsibility for the activity of the company.

3.2.4 Companies are recommended to form a collegial executive board. The chief executive officer (CEO) and members of the executive board are elected and dismissed by the general shareholders' meeting on the recommendation of the supervisory board.

The company should have a human resources policy for electing the chair and members of the executive board, the responsibility for the development and implementation of which should rest with the supervisory board or the committee for nominations and compensation. The supervisory board should establish specific requirements for candidates for the positions of CEO and other members of the executive board with regard to the specifics of the company's line of business, identify persons within and outside the company who meet those requirements, and advise the general shareholders' meeting on electing a candidate to the position of chair or another position on the executive board.

3.2.5. Members of the executive board should have the knowledge, skills, and experience necessary for the proper performance of their duties.

The composition of the executive board is an important factor in the success of the company. Individuals elected to the executive board should possess excellent professional skills and the qualifications necessary for managing the day-to-day activities of the company and have the ability to work as part of a team. Specific requirements for candidates for the positions of the chair and others members of the executive board are established by the supervisory board or the committee for nominations and compensation.

The procedure for the formation and operation of the executive board should be outlined in detail in company by-laws.

3.2.6 The amount and form of compensation for members of the executive board are determined by the supervisory board (on a motion by the committee for nomination and compensation). The amount of compensation for members of the executive board should be linked to the company's performance. Information about the total amount and form of compensation of members of the executive board and the number of shares they own should be disclosed in the annual report.

When determining the compensation policy in respect to members of the executive board, care should be taken to ensure that compensation is the only means of providing incentive for members of the executive board to perform their official duties diligently.

3.2.7 At the request of the supervisory board, but at least once every three months, the executive board should provide the supervisory board, in writing, with a report on financial and economic status of the company and the extent to which set goals and targets were achieved. In addition, the executive board should provide members of the supervisory board, at their request, with the timely, complete, and accurate information necessary for the supervisory board to discharge its duties properly. Based on year-end results, the executive board should report to the general shareholders' meeting on its activities and the overall state of the company.

Reports and other related documentation should be submitted, in writing, to members of the supervisory board at least a week before the regular meeting for consideration and a comprehensive assessment. In the event of a discrepancy between the actual state of business development and targets set earlier, the executive board should state so in the report and provide an explanation for any discrepancies. Attendance at meetings of the supervisory board at which the report of the executive board is to be discussed is mandatory for members of the executive board.

The executive board should inform the supervisory board in a timely fashion and in full about extraordinary events. Information provided to the supervisory board should be accurate and complete.

3.2.8 The supervisory board regularly evaluates the performance of the executive board as a whole and its members separately.

A fair criteria for evaluating the performance of the executive board are the results of the financial and business activity of the company and the extent to which the company has achieved its targets and strategy. Performance evaluation of members of the executive board should take into account each member's individual input into the company's activity, his/her managerial skills, company loyalty, and so forth. Performance evaluation criteria are set by the supervisory board or the committee for nominations and compensation.

A formal performance evaluation of the executive board and its members should be conducted annually; however, in practice, the supervisory board should evaluate the executive board on an on-going basis during board meetings.

Serious deficiencies and errors in the performance of official duties should serve as grounds for imposing sanctions on members of the executive board, including dismissal.

3.3. Loyalty and liability

3.3.1 Officers of the governing bodies of the company should act with due diligence and care in the best interests of the company.

The duty to act with due diligence and care in the best interests of the company implies that, when performing their official duties set forth in applicable legislation and the by-laws of the company, company officers should exercise caution and care, as may be expected from any sensible person in such a situation.

The duty to act in the best interests of the company implies that a company officer should use his or her official position and related benefits solely in the interests of the company.

Officers of the governing bodies should not act in contravention or in defiance of the interests of the company. Company officers may not accept reward (directly or indirectly) for influencing the process of decision-making by company bodies, use company property for their own interest or that of third parties if it is not in the best interests of the company, disclose confidential information, etc.

In performing their mandate, company officers should act strictly within the limits of their powers and, when representing the company before third parties, act in such a way so as not to damage their own business reputation, the reputation of other company officers or the company as a whole.

3.3.2 Company officers should disclose information about a conflict of interest which may exist or arise in connection with any transaction (decision). The charter and by-laws of the company should set forth an appropriate procedure for making transactions in which company officers may have a conflict of interest. This procedure should provide for the following:

- a) a person who has a conflict of interest in relation to a particular transaction made by the company should inform the supervisory board of the conflict of interest in a timely manner;**
- b) the transaction should be approved by the majority of members of the supervisory board;**
- c) the person who has a conflict of interest may not take part in the discussion of or voting on such a transaction; and,**
- d) transactions in which company officers have conflicts of interest should be made on fair terms and at fair market prices.**

A conflict of interest is a clash between personal interests of the company officer or his/her related parties and his/her official (professional) duty to act in the best interests of the company. A company officer may have a conflict of interest in a particular transaction if the officer or his/her related party is a party to the transaction with the company, participates in the transaction as a representative or intermediary, receives compensation from the company or from a party to the transaction, etc.

Establishing a proper procedure for making decisions and/or approving transactions in which company officers have a conflict of interest and the observance of such a procedure by all company officers should contribute to a fair, transparent, and equitable process of making

decisions (approving transactions) in the interests of all shareholders and the company. The terms and price of such a transaction should be fair, i.e. equivalent to those on which such a transaction would be made on an open and competitive market by parties that are well-informed about the subject of the transaction and are independent from each other, and acting under no pressure to execute the transaction in their own interests.

3.3.3. Company officers should not use opportunities of the company for personal gain.

“Opportunities of the company” should be interpreted as any business relations of the company, property and non-property rights owned by the company, business proposals made to the company by third parties, and so forth. An example of this type of violation is the use of a business proposal, which was intended for the company and became known to a company officer due to his/her position within the company, for personal gain.

3.3.4 During their term in office, company officers cannot establish or participate in (as owner or co-owner) companies which compete with the company, and cannot otherwise compete with the company by any other means. Members of the executive board should not combine the performance of their mandate for the company with any other business activity, except with the approval of the supervisory board.

3.3.5 The company’s policy regarding loans to company officers should be clearly set out in company by-laws. A decision to provide a loan to an officer of the company is subject to approval by the supervisory board. Information about such loans should be disclosed to company shareholders.

3.3.6 Company officers should compensate the company for damage caused to the company as a result of their failure to perform or improper performance of their duty to act with due diligence in the best interests of the company; civil law and labor contracts between the company and the company officers should include necessary provisions about company officers’ liability.

Civil law and labor contracts made between the company and company officers should provide for an effective means of imposing liability for failure to perform or improper performance of their duty to act with due diligence in the best interests of the company, and for damage caused as a result of such misconduct.

At the same time, when deciding each case, the company should take into account the element of normal business risk involved in making important decisions. To avoid the risk of making company officers afraid to make important decisions, the company should consider purchasing liability insurance for company officers.

4. Information Disclosure and Transparency

The company should disclose full and accurate information on all matters of importance concerning the company in a timely fashion and by convenient means, with an aim to provide users of such information, including shareholders, creditors, potential investors, etc., with an opportunity to make informed decisions.

Transparency and proper disclosure of information is an essential condition for good corporate governance. A level playing field governed by universally understood “ground rules” is instrumental in increasing the efficiency of the company, contributing to the protection of shareholder rights, and attracting domestic and foreign investment.

Thanks to accessible, timely, accurate and complete information, shareholders and potential investors are able to monitor the company’s performance effectively, evaluate the quality of the company’s management practices, make an informed decision whether to buy or sell securities, and vote at the general shareholders’ meeting. Secondly, disclosure of information about the company increases investor confidence and the inflow of capital. Thirdly, information disclosure is also critically important for increasing the efficiency of the company, as complete and true information enables management to review the company’s performance and to develop further development strategies.

4.1. Information disclosed by the company should be relevant and complete.

Relevant information shall be defined as such which, if withheld or misrepresented, may affect the decisions made by users of such information. Bearing this in mind, the company should take into account the interests and needs of information users when determining information relevance, and, not limiting itself to the standards of existing legislation, disclose detailed and relevant information which may have an impact on the way users make informed decisions.

Information disclosed by the company should be complete, i.e. contain all data about the actual and potential consequences of operations and events which may affect decisions made on the basis of such information. In disclosing information, the company should not limit itself only to facts which have already occurred but also provide forecasts of the future performance and financial situation of the company.

4.1.1. Relevant information which should be regularly disclosed by the company includes information about:

a) business objectives and strategy;

The company should disclose its objectives and business strategy. The company’s objectives may include achieving certain financial targets, expanding the range of goods and services produced/provided by the company, entering new markets, etc. The company should indicate when it anticipates to achieve its objectives. In addition to commercial objectives, companies are recommended to disclose information about its human resources, social, environmental policies, and so forth. Such information may be useful for investors and other users of information to evaluate the means by which the company achieves its goals and implements its strategy.

b) financial and operational results

The financial results of the company are of critical importance for making investment decisions. Therefore, the company should publicize audited financial statements for the last

three years, including the balance sheet, profit and loss statement, cash flow statement, owner's equity statement and notes to the statements verified by an auditor; an estimate of changes in the composition and structure of assets for the last three years; an assessment of current and projected asset liquidity; an analysis of the company's profitability, etc. In addition to annual reports, the company should also disclose quarterly financial statements.

c) the ownership and control structure of the company

Official disclosure of information about the real owners of the company, who own large blocks of shares, is an important element of the company's transparency. Shareholders (investors) need to know the identify of their main business partners. Also, such information is critical for a shareholder to take his/her own position on exercising his/her voting rights at the general shareholders' meeting, track and confirm transactions with related parties, and to protect shareholder rights in a takeover situation. The company should disclose information about persons holding 5 % or more of company shares. International best practice requires disclosure of information not only about the actual, but also the ultimate owners of large stakes in public companies. This should become the norm in Ukraine in the near future.

d) officers of the company's governing bodies and the amount of their compensation

The company should disclose information about the officers of the company's governing bodies so as to provide an opportunity to assess their experience, qualifications, independence, compensation, and contribution to increasing the overall well-being of the company. This should include information about stock owned by company officers, the amount of compensation paid to every officer, and so forth.

e) major risk factors influencing the company's operations

The company should also disclose information on the major risk factors which may affect the financial situation and performance of the company in the future and which may be predicted with a sufficient degree of accuracy. These may include factors related to the performance of a specific industry, financial markets, interest rates, and factors affecting a specific company, such as availability of raw materials, sales markets, potential environmental liability, and so forth.

f) observance of corporate governance principles

An indicator of the state of corporate governance in a company and the company's readiness to demonstrate the observance of shareholder rights is the implementation of the principles of good corporate governance. In view of this, the company should include into its annual report information about the observance of the recommendations of the Principles of Corporate Governance of Ukraine during the reporting period. If the recommendations of the Principles are not observed, the company should provide a substantial explanation for non-observance.

4.1.2 In addition to regular information, the company should immediately disclose special information about major events and changes which may affect the company, the value of its securities and/or earnings on them.

Relevant facts that the company should disclose as special information (separately from information the disclosure of which is required under the law) include information about:

- increasing/decreasing the company's charter capital;

- bond issuances;
- repurchases of shares by the company;
- major changes in the structure of paid-in capital (ex. the appearance of a shareholder owning 10, 25, 40, 50, 60, 75% or more of the charter capital in the company's register/depository accounting system);
- entering into a one-time agreement if the value of goods or services, which are the subject thereof, exceeds 10 % of the company's value as of the date of execution thereof;
- any court or arbitration proceedings, including those related to bankruptcy, property management, and so forth, against the company or third parties that may have or recently had a strong influence on the financial situation or profitability of the company;
- replacement of the company's registrar or depository; and,
- listing/delisting of the company's securities, etc.

The company should disclose special information within two days of the commencement of the respective event or change.

4.2. The company should disclose true information to create a fair picture of its actual financial situation and performance.

The company should disclose true information, i.e. that contains no mistakes or distortions that may affect the decision of an information user. Inaccurate information may result in bad decisions and cause damage to the company and information users.

The accuracy and quality of information may be ensured by applying high reporting and information disclosure standards. Therefore, the company should draw up and publicize regular financial information (annual and quarterly reports) in accordance with the international accounting standards formulated by the International Accounting Standards Committee. The use of international standards improves the users' understanding of the financial state of the company and, on the basis of comparable information, enables them to compare different investment options.

The accuracy of information is also ensured by an independent external audit and internal control of the preparation and disclosure of financial information. The company should conduct an annual external audit based on year-end financial results to ensure a fair assessment and to confirm the accuracy and completeness of the company's financial statements.

The company should establish an efficient procedure for internally monitoring the accuracy of information disclosed by the company, whereby the executive board bears responsibility for the accuracy of accounting, financial and non-financial information disclosed by the company, the audit committee ensures proper control of the financial and business activity of the company, and the supervisory board ensures control over the accuracy of information disclosed by the company and the execution of an independent and quality external audit.

Annual and quarterly reports, including other financial documents of the company, prior to publication and/or presentation to the general shareholders' meeting, should be submitted to the supervisory board for review and recommendations.

4.3. The company should disclose information in a timely fashion.

The most accurate information is useless if provided too late. Therefore, information disclosed by the company should be provided to users within such time limits that will ensure that it is used for the intended purpose.

The company should publicize its annual report not later than three months after the end of the financial reporting year. Information included in quarterly reports should be disclosed not later than 2 months after the end of a reporting quarter

Information about any changes in the company's financial and business activity occurring between any two regular disclosure periods that may affect the value of its securities and/or the amount of earnings on them should be disclosed immediately within two days of the commencement of such an event.

The company should disclose information on the issuance of securities and the general shareholders' meeting in a timely fashion. Information on the issuance of securities should be disclosed not later than 30 days before the start of the placement of securities. Shareholders should be informed about the general shareholders' meeting not later than 45 days before the date of the meeting.

The company should promptly provide public information about its activities at the request of a stakeholder. Such information should be provided within 10 working days from the receipt of the request.

4.4. The company should provide equal access to publicly available information, regardless of its amount, content, format and the time of disclosure, for all users of such information.

In disclosing information, the company should treat all users fairly and provide them with equal access to information, meeting the information needs of all groups of users fairly and without prejudice.

The company's regulations for providing documents should contain no provisions (in general or in relation to a certain category of information users) limiting the users' access to public information about the company, including copies of statutory documents, resolutions of the general shareholders' meeting, documents about the privatization of the company (including sale of shares, confirmation of the state's right to a stake in the company and the procedure for managing the stake), annual and quarterly reports, list of shareholders owning 5% of company shares or more.

4.5. To disclose information, the company should use convenient communication means which ensure equal, timely, and inexpensive access to information.

To publicize information, the company should use a variety of information distribution means, including publications in print and other mass media, distribution through securities trading organizers and information agencies which disseminate information on the Ukrainian stock market. The company should also communicate directly with stakeholders both at their request and on its own initiative.

The company should make use of modern means of communication, including the Internet. It should use its web site to publicize annual and quarterly reports, auditor reports, special

information, information about the issuance of securities, information pertaining to the general shareholders' meeting (notice of the general meeting, minutes, etc.) etc.

The company should provide access to information at a minimum cost to the user. If information is provided for a fee, the amount of such a fee should not exceed the cost of making copies of the documents and sending them to the user by mail. The procedure for providing information for a fee should be set forth in company by-laws.

To facilitate the participation of foreign investors in corporate governance and to create a favorable environment for attracting foreign investment, the company should disclose important information in the Ukrainian and English (or other foreign) languages.

4.6. The company should have a clearly formulated communications policy for disclosing information about the company by making it available to all those interested in receiving such information in an amount sufficient for making an informed decision. The company's communications policy should be set with regard to the company's needs for the protection of confidential and secret information.

The general principles of the company's communications policy should be outlined in the company's by-laws and must be approved by the supervisory board of the company.

The company's communications policy should regulate the key aspects of the company's communications work, including the amount of information to be disclosed; the procedure for providing information at the request of interested parties; restrictions on the disclosure of information, including the procedure for specifying which information constitutes a commercial secret or confidential information; how it should be kept, and access to such information; the terms of reference of company bodies and authorized representatives of such bodies in relation to preparing, disclosing and keeping information; and, overseeing the implementation of the company's communications policy.

The communications policy of the company should be lawful and aimed at disclosing complete, accurate and timely information in the form prescribed by the applicable legislation of Ukraine. At the same time, the company's communications policy should not be limited to the scope of existing legislation, but should also provide for the disclosure of additional information. The policy should also incorporate the right of the company to have confidential information and should outline a reliable system to protect such information. The company should disclose additional information to shareholders both by means set out in existing legislation and by other means of disclosing information including the regular disclosure of information about the financial and business situation and results of the activity of the company in a quarter in the form of a quarterly report.

The supervisory board should take full responsibility for the disclosure of information about the company, essentially acting as a guarantor of an effective system of information disclosure in the company. The executive board should be responsible for implementing the company's adopted communications policy. However, the company should appoint an individual with the task of organizing the process of information disclosure. The terms of reference of such an individual should include ensuring access to public information. It is recommended to assign these tasks to the corporate secretary of the company.

5. Overseeing the Financial and Business Activity of the Company

To protect the rights and legitimate interests of shareholders, the company should provide for comprehensive, independent, impartial, and professional oversight of its financial and business activity.

The company can expect to win investor confidence and to attract outside capital only if it has an effective system in place for monitoring its activities. The existence of such a system reassures investors that their investments are carefully spent for the development of the company and well protected against potential misuse.

The issue of control is extremely important for corporations. It arises out of the necessity to separate management from ownership. In a situation where the company's paid-in capital is dispersed among a large number of minority shareholders and where it is owned by one group of people and governed by another, the company ought to ensure effective control over the activities of individuals who manage investments received by the company, and to protect property interests of investors against potential abuse.

5.1. The company should provide for the oversight of its financial and business activity by an independent external auditor (audit firm) and by means of internal control.

Bodies - structural divisions of the company - that exercise internal control include:

- supervisory board (audit committee of the supervisory board);
- audit commission; and
- internal audit service.¹

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

5.1.1 The company's internal control system should provide for the strategic, operating, and on-going oversight of its financial and business activity.

a) The supervisory board (audit committee of the supervisory board) should ensure the operation of a proper control system and the strategic oversight of the financial and business activity of the company.

In order to perform the above functions efficiently, the mandate of the supervisory board should include the power to:

- verify the accuracy of annual and quarterly reports before they are made public and/or are submitted for the consideration of the general shareholders' meeting;

¹ For the purposes of this document, the standing body of the company responsible for monitoring its financial and business activities is conditionally defined as an internal audit service. Companies are allowed to use different terms to refer to such a body (e.g. controlling service, control and audit service, etc.).

- detect flaws in the oversight system, and develop proposals and recommendations for its improvement;
- appoint and/or dismiss internal auditors;
- approve an external auditor, and oversee the efficiency, impartiality, and independence of the auditor and of his or her financial relations with the company; and,
- oversee the elimination of deficiencies identified by the audit commission, internal audit service, and the external auditor during the audit.

b) The audit commission should exercise the operating oversight of the financial and business activity of the company through regular and extraordinary inspections.

The audit commission conducts regular inspections, based on annual financial and business results, with an aim to submit its opinion about annual reports and balance sheets to the general shareholders' meetings.

The audit commission should conduct extraordinary inspections on its own initiative, by decision of the general shareholders' meeting, by decision of the supervisory board, and at the request of shareholders owning more than 10% of votes in the aggregate.

In performing its duties, the audit committee should insist on calling an extraordinary general shareholders' meeting in the case of:

- a threat to fundamental interests of the company; and/or,
- evidence of official misconduct by officers of the company.

c) The internal audit service should exercise the on-going control of the financial and business activity of the company.

The internal audit service should be put in charge of detecting and preventing illegal practices obstructing the legitimate and efficient use of the company's assets and funds. Internal audit should have the power to:

- monitor the operation and organization of the accounting system;
- verify the consistency of accounting data with the actual status of assets and ensure their rational utilization;
- conduct an evaluation of financial and operating activities; and,
- prepare reviews of the efficiency of the company's operations, and provide recommendations for further improving the company's performance.

5.1.2 The company should arrange for annual audits by an external auditor appointed by the supervisory board or the general shareholders' meeting. The audits should be conducted in accordance with international auditing standards.

The company should arrange for annual audits of publicly available financial statements, reports, and other information related to the company's financial and business activity. To ensure good quality and impartiality, audits should be conducted in accordance with international auditing standards established by the International Federation of Accountants (IFAC).

5.2. Persons overseeing the financial and business activity of the company should be independent from the executive board of the company, large shareholders, or other persons who may have a personal interest in the results of oversight.

The independence of the external auditor is a critical condition for the impartial and efficient oversight of the financial and business activity of the company. The supervisory board has an important role to play in ensuring the independence of the external auditor. Among other things, the supervisory board approves the candidacy of the external auditor and sets the terms of his/her contract, including the amount of his/her compensation. It also ensures and verifies whether the auditor meets the independence requirements set forth in applicable legislation. In addition, the external auditor (or audit firm) performing the audit of the company's financial documentation should not provide other non-audit services to the company at the same time. It is recommended to change the external auditor once every three years.

To ensure the independence of the supervisory board (audit committee of the supervisory board), it should be composed of independent members (see Clauses 3.1.5 and 3.1.9 of these Principles). Other tools for ensuring the independence of members of the supervisory board (audit committee) and the audit commission include:

- providing that members of the supervisory board and audit committee may be elected and dismissed only by the general shareholders' meeting, and that the general shareholders' meeting should approve the terms and provisions of civil law contracts with officers of these company bodies and the amount of their compensation;
- prohibiting the election of individuals with personal and/or family ties to the financial controller and/or members of the executive board to the supervisory board and the audit committee;
- prohibiting the election of employees of the company, its subsidiaries, affiliates and representative offices and owners of more than 10 % of the company's shares to the audit committee.

The company should assure the independence of members of the internal audit service by making the internal audit service report directly to the supervisory board. The supervisory board should have the power to appoint and/or dismiss the internal audit employees and to approve the by-law governing the procedure for its formation and operation. Internal audit employees should not be assigned tasks related to assuming direct material liability for cash and material values.

5.3. The company should ensure the impartial and professional oversight of its financial and business activity.

The company should ensure that the financial and business activity of the company is overseen by honest, unbiased and impartial individuals performing their duties in a transparent manner. A guarantee of the quality of the oversight of the financial and business activity of the company is the professional competence of the individuals conducting it.

The supervisory board should create adequate conditions for an impartial external audit, making sure no pressure is put on the auditor by stakeholders and that the auditor observes the Code of professional ethics of auditors of Ukraine in the performance of his/her duties. The supervisory board should ensure that the external audit is performed by an auditor or an audit firm with an excellent reputation.

To assure an impartial internal audit, the company should establish requirements for candidates for the supervisory board, audit commission, and internal control that contribute to electing/appointing to these bodies individuals of high moral standards and with an excellent reputation. In doing so, it should be taken into account that a record of crimes against property, official or business misconduct is a factor impairing reputation. To ensure a high standard of professional qualifications of such individuals, the company should set appropriate requirements in the by-laws. Such individuals should have a background in accounting and finance and some experience in the field, so that they can perform their duties properly.

5.4. Persons overseeing the financial and business activity of the company should report to the supervisory board and/or shareholders about the results of such inspections. An external auditor should attend the general shareholders' meeting, with an aim to answer shareholders' questions about financial reports and the auditor's opinion.

Reports on oversight activities should be submitted to the supervisory board and the executive board within one day of their preparation for consideration, and feedback on the results of the oversight should be provided at the next meeting of the supervisory board (audit committee of the supervisory board) or the executive board.

The audit commission should report on the results of audits conducted at the general shareholders' meeting and the supervisory board at the first board meeting after the completion of an audit. The audit commission's report is made in writing and should include information about regular and emergency audits conducted and the commission's conclusions, with reference to the appropriate documents and necessary explanations, confirmation of the accuracy of the annual report and necessary explanations to it, and a recommendation for approval by the general shareholders' meeting. In addition to being submitted in writing, the audit committee report should be presented orally at the general shareholders' meeting and to the supervisory board of the company by the chair of the audit committee or by the deputy chairs.

The supervisory board of the company should evaluate the financial and business oversight system, and develop and provide recommendations for improvements to system at the general shareholders' meeting.

The external auditor should attend the annual general meeting to answer shareholders' questions about the auditor's report.

6. Stakeholders

The company should respect the rights and take into account the legitimate interests of stakeholders (persons having a legitimate interest in the activity of the company) and encourage active co-operation with them to add value, create jobs, and ensure the financial stability of the company.

The long-term economic success of a company is the result of the collective efforts of investors, company managers, and other stakeholders. Cooperation with stakeholders and the ability to take their interests into account in the process of corporate governance increases the company's financial stability and competitiveness, facilitates the accomplishment of its long-term objectives and improves its business reputation.

Stakeholders should be defined as persons having a legitimate interest in the activity of the company, who depend on the company to some extent or can influence its activity. Stakeholders include, first and foremost, the company's employees (shareholders and non-shareholders of the company), creditors, buyers, people in the neighborhood where the company is located, government agencies and local non-governmental organizations.

6.1. The company should ensure the observance of the rights of stakeholders granted by the law.

In conducting its business, the company should not violate the rights of stakeholders guaranteed in applicable legislation (labor laws, civil law, laws on environmental protection, etc.).

In addition, the company should take into account the interests of stakeholders in making decisions or acting in a manner that may in one way or another affect them. This includes situations such as the implementation of social and environmental programs, job creation, forming, increasing or decreasing the charter capital of the company, repurchase of shares by the company, and reorganization and liquidation of the company.

The body in charge of ensuring interaction between the company and stakeholders is the supervisory board and its committees. Other governing bodies of the company should also respect and protect the interests of stakeholders in the course of their activity.

6.2. The company should provide stakeholders with access to information about the company necessary for effective cooperation.

The communications policy of a joint stock company should be formulated with regard to the right of stakeholders to obtain complete and accurate information about the company.

Stakeholders should have the opportunity to obtain timely information about the financial state and performance of the company, the governance structure of the company and important facts concerning its financial and business activities, and so forth. The company should make a list of documents available to stakeholders for examination (the list should include such documents as the charter and by-laws of the company), and the procedure for examining them.

6.3. The company should encourage employees to become actively involved in the process of corporate governance and motivate them to work efficiently for the benefit of the company.

One of the long-term objectives of the company is to create jobs and to protect the interests of employees. To this end, the company should provide its employees with adequate and safe working conditions and a level of compensation commensurate with work performed and providing necessary incentives.

To increase employee motivation to work hard for the benefit of the company, corporate governance practices may provide for a procedure whereby company bodies consult with employees when deciding on certain issues, inform employees about resolutions adopted by the company which may affect their interests, and include employee membership on the supervisory board, board committees, and so forth.

In addition, corporate governance practices may include the distribution of company shares and a portion of the company's income among employees of the company and other incentive mechanisms motivating the employees to work efficiently for the benefit of the company.