Comments are welcome: please provide comments to cignag@ebrd.com

European Bank
for Reconstruction and Development

Corporate Governance in Transition Economies

Ukraine Country Report

December 2017

Prepared by:
Gian Piero Cigna
Pavle Djuric
Yarina Kobel
Alina Sigheartau

With the assistance of:
Nestor Advisors

This Report does not constitute legal advice. Readers are advised to seek appropriate legal advice before entering into any transaction, making any determination or taking any action related to matters discussed herein.

Disclaimer

The contents of this publication reflect the opinions of individual authors and do not necessarily reflect the views of the EBRD.

The report is based on information available at the end of April 2015[1].

If you believe that the information has changed or is incorrect, please contact Gian Piero Cigna at cignag@ebrd.com

* * *

The team is grateful for the assistance provided by all parties involved in this exercise. In particular, the team would like to acknowledge the precious assistance offered by the law firms Vasil Kisil & Partners, CMS Cameron McKenna LLC, Sayenko Kharenko, Baker & McKenzie, Clifford Chance LLC, Avellum Partners, and Asters and the auditing firm Baker Tilly and Deloitte.

Finally, the Legal Transition team would like to express its thanks and appreciation to Gabrielle Cordeiro and David Risser from Nestor Advisors Ltd for the assistance provided in relation to the analysis of countries and the drafting of the reports.

This Report – along with all other country reports prepared within this initiative – is available at: http://www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html

Foreword

As part of its Legal Transition Programme, the European Bank for Reconstruction and Development ("EBRD") has been assessing the state of legal transition in its countries of operations. These assessments provide an analysis of the progress of reform and identify gaps and future reform needs, as well as strengths and opportunities.

In 2012, the Legal Transition team within the EBRD Office of the General Counsel (LTT) developed with the Assistance of Nestor Advisors a methodology for assessing corporate governance frameworks and the governance practices in the EBRD countries of operations. This assessment was implemented in 2014-2015 (the "Assessment").

The Assessment aims at measuring the state of play (status, gaps between local laws/regulations and international standards, effectiveness of implementation) in the area of corporate governance.

The Assessment is meant to provide for (i) a comparative analysis of both the quality and effectiveness of national corporate governance legislation (including voluntary codes); (ii) a basis to assess key corporate governance practices of companies against the national legislation; (iii) an understanding whether the legal framework is coupled with proper enforcement mechanisms (e.g., sanctions) and/or with authorities able to ensure proper implementation; (iv) a support to highlight which are the major weaknesses that should be tackled by companies and legislators for improving the national corporate governance framework; and (v) a tool which will enable the EBRD to establish "reference points" enabling comparison across countries.

This country report is part of a series of 34 country reports. A general report synthesising all countries will close the Assessment.

[1] In April 2015, The Law of Ukraine "On Introduction of Amendments to Certain Legislative Acts of Ukraine Regarding Protection of Investors' Rights" was adopted, introducing several important changes in the corporate governance framework. Even though the law has become effective in May 2016 (after the cut-off date of the report), its novelties were taken into consideration, where appropriate information was available.

Methodology

This Assessment is based on a methodology designed to measure the quality of legislation in relation to best practices requirements and the effectiveness of its implementation as evidenced by companies' disclosure, also taking into consideration the capacity of the institutional framework (e.g., courts, regulators) to sustain quality governance. The analytical grid developed for assessing the governance framework is based on international recognised best-practice benchmarks (e.g., OECD Corporate Governance Principles, Development Financial Institutions, EBRD, IFC and World Bank ROSC governance methodologies). The methodology is applied identically across all the countries reviewed. The process for gathering, analysing and reporting information is applied identically for each of the countries assessed, which allows comparing countries to each other across a long a set of benchmarking points.

For the purpose of the Assessment, the corporate governance framework and the practices were divided in five key areas: (i) Structure and Functioning of the Board; (ii) Transparency and Disclosure of company information; (iii) Internal Control; (iv) Rights of Shareholders; and (v) Stakeholders and Institutions. Each of these key areas is further divided in sections (for instance, the area "Structure and Functioning of the Board" is divided in five sections: Board composition; Gender diversity at the board; Independent directors; Board effectiveness; and Responsibilities of the board). Each section is further divided in subsections (for instance, the section "Independent Directors" is divided in three subsections: "Requirement to have independent directors"; "Definition of Independence"; and "Disclosed practices").

The assessment started by sending a questionnaire to law firms, audit firms, national regulator(s), ten largest (listed) companies, and stock exchange(s) in each country. Questions were different according to the respondents, which were asked to provide information on the legislation and on how they believe the legislation is implemented.

Responses were assigned to the corresponding subsection(s) and validated by the EBRD corporate governance specialists by looking at the applicable framework and at the disclosure offered by the ten largest (listed) companies in each country. In this respect, the working hypothesis was that the ten largest listed companies are those offering the best disclosure in each country. As such, we presumed that when certain practices were not disclosed by them, they were unlikely to be disclosed by smaller or unlisted companies. The ten largest companies were identified according to their market capitalisation. When a country did not have a stock exchange, there were less than ten listed issuers or there were no data on capitalisation of issuers, the ten largest companies were identified according to their revenues and size of the labour force. In case the largest companies were mostly of one sector (e.g., financial institutions), then the sample of ten companies was corrected to reflect other sectors of the economy.

The validation of responses was undertaken by the corporate governance specialists within the Legal Transition Team through desktop research. This research was conducted both on legislation and on the practices disclosed by the largest (listed) companies (e.g., companies' websites, annual reports, stock exchanges database etc.). In addition, the relevant reports by international financial institutions (e.g., IMF, World Bank, IFC, Transparency International, etc.) were analysed and taken into consideration. Answers received by respondents that were not grounded by specific references to legislation or consistent with the disclosed practices were not taken into consideration.

Following the validation process, each subsection was compiled by adding specific references to legislation and practices. Conclusions were then formulated for each subsection, each rated as per their adherence to international governance standards. The score ranges from 1 (very weak) to 5 (strong). The rating for each section was then calculated by averaging the ratings of the subsections.

Because understanding corporate governance requires a "holistic perspective", where each component needs to have a place in the overall picture – pretty much like a puzzle - in case one of the subsection was rated "weak" or "very weak", the resulting average was decreased by 0.2; in case more than one subsection was rated “weak” or “very weak”, the resulting average was decreased by 0.5. This is because if just one component is not fitting well with the others, then all others are weakened. Similarly, the overall strength diminishes if there are more weak components.

Conversely, in order for the framework to be strong, all components need to be well fitting with each other. Hence, in case all subsections were scored “moderately strong” or “strong”, then the resulting average was increased by 0.5. However, this “positive” adjustment was used with some care as the assessment looked at the top ten largest companies in the country, hence findings tended to be often overly optimistic.

Key areas were then rated according to the same criteria.

The ratings are presented through the colours detailed in the box below and they demonstrate the adequacy or need of reform in respect to each governance area and section.

Rating:

“Strong to very strong” (DARK GREEN) - The corporate governance framework / related practices of companies are fit-for-purpose and consistent with best practice.

“Moderately strong” (LIGHT GREEN) - Most of the corporate governance framework / related practices of companies are fit-for-purpose but further reform is needed on some aspects.

“Fair” (YELLOW) - The corporate governance framework / related practices of companies present some elements of good practice, but there are a few critical issues suggesting that overall the system should be assessed with a view of reform.

“Weak” (ORANGE) - The corporate governance framework / related practices of companies may present few elements of good practice, but overall the system is in need of reform.

“Very weak” (RED) - The corporate governance framework / related practices of companies present significant risks and the system is in need of significant reform.

We believe corporate governance cannot be captured and measured simply by numerical values. Hence, alongside the “quantitative” assessment obtained according to the methodology described above, a “qualitative” assessment was also undertaken, by classifying our findings for each section as “strengths” and “weaknesses”. Because understanding corporate governance requires a “holistic perspective”, when the “quantitative” assessment was finalised, the assessment team compared it with the “qualitative” assessment, and when any inconsistency (i.e. material weaknesses or strengths) was noticed, the average scores of the sections were adjusted by up to ±0.5.

A preliminary version of the Assessment was made public for consultation. The comments and corrections received during the process were analysed by the corporate governance specialists. When confirmed, the corrections were reflected in the final ratings and in this Assessment.

Overview

Legislative framework

The primary sources of corporate governance legislation in Ukraine are the Law on Joint Stock Companies; the Law on Banks and Banking Activity; the Law on Accounting and Financial Reporting in Ukraine, the Law on State Regulation of the Securities Market in Ukraine; the Civil Code; and the Law on Financial Services and State Regulation of Financial Service Market.

The Ukrainian Corporate Governance Principles (i.e., the Ukrainian Corporate Governance Code) were first released by the National Commission on Securities and Stock Market in 2003 and then revised in 2008 and 2014. They are based on the OECD Principles of Corporate Governance and consist of six main chapters with Basic Principles and annotations, defining and explaining the Basic Principles. The Principles are addressed to public joint stock companies, whose shares are traded on the stock market. Compliance with the Principles is a mandatory listing requirement in accordance with the NCSSM Regulation No. 1688, but in practice there is no evidence that they are taken as a reference. The Principles recommend companies to voluntarily apply their recommendations in their operations, include Principles' provisions into their by-laws; and disclose information on the observance of the Principles in their annual report, or explain the reasons for not following the recommendations provided in the Principles (so-called "*comply or explain*" approach).

Structure and functioning of the board

Joint stock companies (JSCs) with ten or more shareholders must be organized under a two-tier system and establish a supervisory board. JSCs with less than ten shareholders can choose between the two-tier system and a one tier system in which the responsibilities of the supervisory board are exercised by the general shareholders' meeting.

The requirement for a board size of minimum 5 members has been recently reintroduced in the company law, while the banking law already contained this requirement. Boards seem to be well-sized, with an average of 7 members, which allows for diversity and mix of skills, however, gender diversity on the board is limited. Since 2016, legal entities can no longer serve as board members.

The law does not provide for any specific qualification requirements for board members of companies, while such requirements are in place for banks' board members. The Ukrainian Corporate Governance Principles (the "Principles") provide some recommendations in this respect, but unfortunately, there is no evidence that the Principles are taken as a reference. Seven of the ten largest listed companies disclose the name, education and work experience of board members. However, it was not possible to fully understand if the boards of the ten largest listed companies are fit-for-purpose as only a few companies disclose complete information about the education and qualifications of their board members. When looking at the specific expertise in the fields of auditing, accounting, internal control and risk management, it appears that only three out of the ten largest listed companies have board members with such qualifications.

Banks, public joint stock companies and state owned enterprises are required to have independent directors on their board. A definition of independence was recently introduced in the law. The definition – as the one included in the Principles - focuses only "negative" non-affiliation criteria and fails to address what it is expected from independent directors in practice (i.e., objectivity of mind and character). For listed companies, the Principles recommend that at least 1/4 of the supervisory board members are independent and that the majority of the members of the nomination, remuneration and audit committees are independent. None of the ten largest listed companies discloses having any independent directors on their supervisory boards or committees. Further, it was not possible to clearly understand how many companies have created board committees, as none of the ten largest companies discloses this information.

The law does not explicitly assign to boards of companies some key functions such as approving corporate strategy and annual budget, as well as determining the company's risk profile. These responsibilities are retained by the general shareholders' meeting who is also given the right to decide on any issue falling within the competence of the supervisory boards, which means it can ultimately overturn board's decisions. This is a major shortcoming. The banking law is much clearer in assigning strategic tasks to the supervisory board (so-called "*bank council*"), but it is not clear if also in banks the general shareholders' meeting is allowed to decide on issues falling within the board's "exclusive" competence.

There is no consolidated practice of board evaluation, and there is a limited use of the corporate secretary function. When it comes to frequency of board meetings and activities there is no uniformity: in some cases the board met even three times a month. In other cases, no meeting has taken place for three years. Disclosure on committees is very limited; hence, it is difficult to assess their effectiveness.

The liability of board members, related party transactions and conflicts of interests are regulated by law.

Transparency and Disclosure

The law requires companies to prepare and disclose their annual reports, which should include both financial and non-financial information. All ten largest listed companies comply with this requirement; however, non-financial information is often patchy and incomplete. The Electronic System for Comprehensive Information Disclosure has improved transparency, but further efforts are needed. In particular, disclosure on board committees, frequency of meetings of board committees, beneficial ownership and transaction in company shares by insiders is very limited.

Albeit the Principles – by their own wording - recommend listed companies to apply them on a "*comply or explain*" bases, there are no mandatory requirement to this end and no company among the ten largest listed companies in Ukraine includes a "*comply or explain*" statement in their annual reports.

Reporting to the markets and shareholders is regulated by law and appears to be well implemented. Financial statements of public companies must be prepared in line with IFRS, audited by independent auditors and made public. All ten largest listed companies comply with these requirements.

Only banks are required to disclose information on non-auditing services provided by their external auditor. There are no similar requirements for other companies. The two banks among the ten largest listed companies reported that their external auditors did not provide any non-auditing services.

Internal Control

Only banks are required to create an internal audit function. Banks are also required to have a risk management unit, but it is not clear if the same requirement applies to the compliance function.

Starting from May 2016, public companies and companies where the state holds (directly or indirectly) 50 per cent of the share capital are required to establish an audit committee. These committees must consist exclusively or predominantly of independent members of the supervisory board and must be chaired by them. There are no specific qualification requirements for members of the audit committee. Previously, establishing board committees was not obligatory; public disclosure on this is generally very poor. Large companies are also required to have a revision commission, appointed by and reporting to the general shareholders' meeting. We have doubts about the effectiveness of this body.

There is no requirement to rotate external auditors. The provision of non-auditing services to companies by the external auditor is restricted, but the restriction is limited to consulting services. Only banks are required to disclose information on non-auditing services provided by their external auditor.

Ukraine has recently adopted a new law on corruption prevention, which partially regulates whistle-blowing.

Less than half of the ten largest listed companies have adopted a code of ethics, despite the Principles' recommendations to have one.

Related party transactions and conflicts of interest appear to be regulated by law, but not comprehensively. The lack of availability of derivative action makes it difficult for shareholders to seek redress in case of breach of the law. It appears that no material sanctions have been imposed for breaching the rules on disclosure of conflicts of interest and related party transactions.

Rights of Shareholders

Shareholders representing 10% of the company's shares can call a general shareholders' meeting (GSM). The law requires companies to notify the GSM agenda to shareholders at least 30 calendar days in advance of the meeting and to post this information on the company's website. Shareholders have the right to submit proposals to the GSM agenda. Shareholders are not entitled to pre-emptive rights in public offering. Instead, the Law on JSCs provides for such a right only in case of private placement of shares. Supermajority is required to approve major corporate decisions.

Cumulative voting is provided for electing members of the supervisory board and it seems to be used in practice. The concept of derivative suits has only recently been introduced into Ukrainian legislation. So far, there has been no reported case law in this area.

Public joint stock companies are required by law to disclose annual reports including financial statements in line with IFRS. All ten largest listed companies comply with this provision.

Self-dealing and insider trading are regulated by law; however, there is no evidence of their enforcement and some important issues remain unregulated, compared to best international practices.

Registration of shares must be maintained by an independent registry institution. The law provides that free transferability of shares cannot be restricted. However, the Securities Commission can restrict it in exceptional situations. Significant shareholding variations must be disclosed. Shareholders can enter into shareholders agreements only if articles of association allow for this. There is no requirement to disclose them.

Stakeholders and Institutions

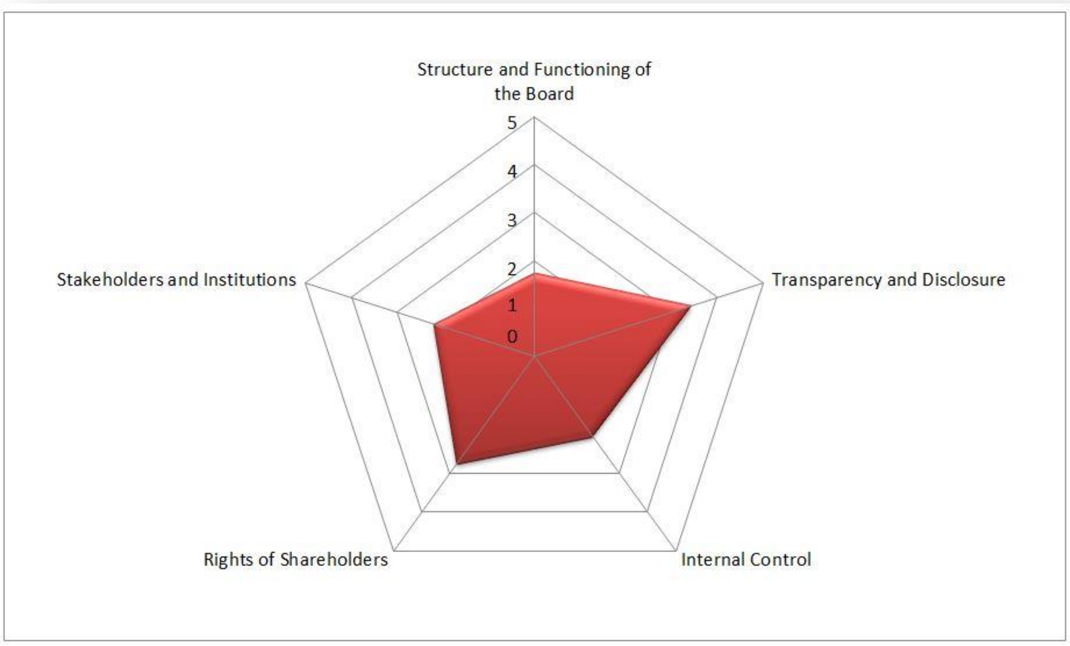
There are nine local stock exchanges in Ukraine. The three largest exchanges by equity trading volume are the Ukrainian Stock Exchange (USE), the PFTS Stock Exchange (PTFS) and the Perspektiva Stock Exchange (PSE). Though the market capitalisation and liquidity levels among these exchanges vary, none of them have a segment which requires adherence to higher governance standards. Further, high ownership concentration is not complemented by corporate governance practices that ensure minority shareholder protection.

Compliance with the Principles is a mandatory listing requirement in accordance with the NCSSM Regulation No. 1688, but in practice there is no evidence that they are taken as a reference. None of the ten largest listed companies in Ukraine included a “*comply or explain*” statement in their latest annual reports.

Although corporate governance trends in the country are actively monitored by the National Securities and Stock Market Commission, it is not clear whether there is a body in charge of actively monitoring the Principles’ implementation.

A few significant inconsistencies were found in laws and regulations and indicators by international organisations show a framework where corruption, competitiveness and investor protection are still perceived as critical problems.

Corporate Governance Legislation and Practices in Ukraine



Source: EBRD, Corporate Governance Assessment 2016

Note: The extremity of each axis represents an ideal score, i.e., corresponding to the standards set forth in best practices and international standards (e.g., OECD Corporate Governance Principles). The fuller the ‘web’, the closer the corporate governance legislation and practices of the country approximates best practices.

Key: Very weak: 1 / Weak: 2 / Fair: 3 / Moderately Strong: 4 / Strong to very strong: 5

Key Areas and Rating	***Strengths and Weaknesses***
1. Structure and Functioning of the Board *Weak*	*Joint stock companies (JSCs) with ten or more shareholders must be organized under a two-tier system and establish a supervisory board. JSCs with less than ten shareholders can choose between the two-tier system and a one tier system in which the responsibilities of the supervisory board are exercised by the general shareholders' meeting.* *The requirement for a board size of minimum 5 members has been recently reintroduced in the company law, while the banking law already contained this requirement. Boards seem to be well-sized, with an average of 7 members, which allows for diversity and mix of skills, however, gender diversity on the board is limited. There is now increasing evidence showing that companies with a diverse board tend to perform better. Since 2016, legal entities can no longer serve as board members.* *The law does not provide for any specific qualification requirements for board members of companies, while such requirements are in place for bank board members. The Ukrainian Corporate Governance Principles (the "Principles") however provide some recommendations in this respect. Unfortunately, there is no evidence that the Principles are taken as a reference. Seven of the ten largest listed companies disclose the name, education and work experience of board members. However, it was not possible to fully understand if the boards of the ten largest listed companies are fit-for-purpose as only a few companies disclose complete information about the education and qualifications of their board members. When looking at the specific expertise in the fields of auditing, accounting, internal control and risk management, it appears that only three out of the ten largest listed companies have board members with such qualifications.* *Banks, public joint stock companies and state owned enterprises are required to have independent directors on their board. A definition of independence was recently introduced in the law. The definition – as the one included in the Principles - focuses only "negative" non-affiliation criteria and fails to address what it is expected from independent directors in practice (i.e., objectivity of mind and character). For listed companies, the Principles recommend that at least 1/4 of the supervisory board members are independent and that the majority of the members of the nomination, remuneration and audit committees are independent. None of the ten largest listed companies discloses having any independent directors on their supervisory boards or committees. Further, it was not possible to clearly understand how many companies have created board committees, as none of the ten largest companies discloses this information.* *The law does not explicitly assign to boards of companies some key functions such as approving corporate strategy and annual budget, as well as determining the company's risk profile. These responsibilities are retained by the general shareholders' meeting who is also given the right to decide on any issue falling within the competence of the supervisory boards, which means it can ultimately overturn board's decisions. This is a major shortcoming. The banking law is much clearer in assigning strategic tasks to the supervisory board (so-called "bank council"), but it is not clear if also in banks the general shareholders' meeting is allowed to decide on issues falling within the board's "exclusive" competence.* *There is no consolidated practice of board evaluation, and there is a limited use of the corporate secretary function. When it comes to frequency of board meetings and activities there is no uniformity: in some cases the board met even three times a month. In other cases, no meeting has taken place for three years in a row. Disclosure on committees is very limited; hence, it is difficult to assess their effectiveness.* *The liability of board members, related party transactions and conflicts of interests are regulated by law.*
1.1. Board Composition *Weak*	***Strengths:*** • *Joint stock companies (JSCs) with ten or more shareholders are required to be organized under a two-tier system and to establish a supervisory board. JSCs with less than ten shareholders can choose between a two-tier system or a one-tier system where the responsibilities of the supervisory board are exercised by the general shareholders' meeting. When created, the supervisory board has by law the exclusive authority for appointing and dismissing the members of the management body and its chairperson or the CEO/General Director.* • *In the past few years there were no legal requirements with regards to board size. However, it seems that the*

<table>
<tr><th>Key Areas and Rating</th><th>Strengths and Weaknesses</th></tr>
<tr><td></td><td>

recent legislative amendments have reintroduced a requirement which was in force from 2009 to 2011 and have set the number of supervisory board members of public companies (i.e., companies that may carry out both public and private placement of shares, which are not necessarily publicly traded) to a minimum of five members, which is a requirement already applicable to bank supervisory boards (so-called "bank councils"). The boards of six out of the ten largest listed companies have between 4 and 11 members, with an average of 7 members, which is a size that seems to be fit-for-purpose and that allows diversity and mix of skills.

- *Public companies and companies where the state holds (directly or indirectly) 50 per cent of the share capital are required to have at least two independent directors in their supervisory boards starting from May 2016. Additionally, these companies are required to establish an audit committee, as well as a remuneration committee and a nomination committee (it appears that the latter two can be combined). These committees must consist exclusively or predominantly of independent members of the supervisory board and must be chaired by one of them.*
- *The banking law requires that at least one quarter of supervisory board is composed of independent members.*
- *The Law on JSCs states that supervisory boards may set up permanent and temporary committees consisting of its members for the review and the preparation of issues that fall within their competence. Audit committees and company information policy committee may be established. The committees shall be chaired by members of the supervisory board elected on the basis of a proposal of a shareholder that does not control activities of the company.*
- *It appears that from May 2016, legal entities can no longer serve as board members. We believe this is a good step forward, as legal entity participation in the board often raises concerns about weakening the board members' fiduciary duties and can undermine the ability of the board to perform its functions in an effective and professional manner.*
- *In banks, managers and supervisory board members are required to have an education in economics, law or management and relevant work experience.*

Weaknesses:

- *The law does not provide for any specific qualification requirements for board members of companies. The Principles state that "the members of the supervisory board should have the knowledge, qualifications and experience appropriate for accomplishing the company's mission and pursuing its strategy", however the Principles do not seem to be taken as reference.*
- *It was not possible to clearly understand how many companies have created board committees, as none of the ten largest companies discloses this information.*
- *It seems that the requirement for an audit committee has not yet been implemented in the banking legislation, where this committee is still optional (the only mandatory committees seem to be the credit committee and the asset and liability management committee – which are executive committee - and it is not clear which body is in charge of appointing their members).*
- *The law requires JSCs with less than 100 shareholders to establish either an auditor's position or appoint a revision commission. JSCs with more than 100 shareholders must establish a revision commission. The revision commission is appointed by the general shareholders' meeting for verification of financial and economic activities of the company. It seems that the banking law also requires state banks to establish a revision commission, but this is optional for privately owned banks. We have doubts about the effectiveness of this body.*
- *Seven of the ten largest listed companies disclose the name, education and work experience of board members as well as their positions held currently and in the past. However, it was not possible to fully understand if the boards of the ten largest listed companies are fit-for-purpose as only few companies disclose complete information about the education and qualifications of their board members. When looking at the specific expertise in the fields of auditing, accounting, internal control and risk management, it appears that only three out of the ten largest listed companies have board members with such qualifications.*
- *The Principles recommend that "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." None of the ten largest listed companies discloses whether they have independent directors on their supervisory boards or committees.*
- *Three companies in our sample had supervisory boards which consisted of only one member, who was a legal entity. We expect this practice to cease following the recent legislative amendments.*
- *It seems that the 2015 legislative amendments prescribe that the supervisory board can only consist of shareholders or shareholders' representatives and independent directors. We believe that referring to members of the supervisory board as "shareholders' representatives" might weaken the concept of fiduciary duties, as they should represent the company and all shareholders and not only the shareholder(s) that have appointed them. The risk of misinterpretation is somewhat mitigated by the rule set forth by the 2015 legislative amendments whereby any and all members of the supervisory board should act in the best interests of the company.*

</td></tr>
<tr><td>

1.2. Gender Diversity at the Board (7.27%)

Very weak

</td><td>

Weaknesses:

- *All ten largest companies disclose the names of their directors; two companies count one female director and one company counts two females among its board members. Among these companies, female representation averages 21%.*
- *In total, there are 4 women out of 55 board members.*
- *When counting all the ten companies in our sample, the average of female directors per board falls to 7.27%.*

</td></tr>
</table>

<table>
<tr><th>Key Areas and Rating</th><th>Strengths and Weaknesses</th></tr>
<tr><td>1.3. Independent Directors
Very weak</td><td>Strengths:
• It seems that legislative amendments from 2015 have introduced a requirement for public companies and majority-state-owned companies to have at least two independent directors in their supervisory boards. Amendments to the law also include a definition of independence. According to provisions of the new law, audit, remuneration and nomination committees – which have also become mandatory for the mentioned companies – must consist only or predominantly of independent members of the supervisory board, and must be chaired by these members.
• The banking law requires that at least one quarter of supervisory board is composed of independent members.
• The Principles recommend that at least one fourth of the supervisory board members should be independent and that the majority of the members of the nomination and remuneration committee and of the audit committee should be independent. The Principles further recommend that the number of the independent directors is disclosed in the annual report
Weaknesses:
• None of the ten largest listed companies disclose whether they have independent directors on their supervisory boards or their committees. We expect this disclosure to develop following the recent legislative amendments.
• We are not convinced that the minimum number of independent directors required in public companies and state owned enterprises (two directors) coupled with the requirement to have at least three committees (albeit the remuneration and nomination committees can be combined) made of independent directors is proportionate. Independent directors need to be qualified according to the functions and responsibilities of the committee and those qualified for the audit committee might not be necessarily qualified for the other committees. This might cause overburdening the two independent directors with excessive duties and undermining their capacity to exercise qualified and independent judgement.
• The definitions of independence can be found in the Principles, and more recently in the amendments to the Law on JSCs. Even though the definition in the legislation is more comprehensive than the one contained in the Principles, it focuses only on “non-affiliation” criteria. It should be pointed out that the concepts of “non-affiliation” and “independence” are different. While non-affiliation can be established by negative criteria only, independence necessarily needs objectivity of mind and character, which is a positive character that should be demonstrated, disclosed and explained in practice.</td></tr>
<tr><td>1.4. Board Effectiveness
Weak</td><td>Strengths:
• Both the law and the Principles envisage the possibility of establishing the position of a company secretary. Five out of the ten largest companies have a corporate secretary.
• The Law on JSCs states that the frequency of the board meetings should be prescribed by the charter and they should take place at least once per quarter. The Principles state that “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.”
• All ten largest listed companies disclose the number of their board meetings, however in a number of cases, it is clear that the board is dysfunctional (see below).
Weaknesses:
• It appears that the frequency of supervisory board meetings in the ten largest listed companies ranges from 9 to 30. In the latter case, it can be an indication that the board is suffering from “information overload” and that it is very much involved in operational matters. One company reported no board meetings in the last three years. Interestingly, this is a one-person-board made up of a legal entity.
• There is no consolidated practice of board evaluation. The Principles recommend that 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.” None of the ten largest companies disclosed performing a board evaluation.
• It was not possible to clearly understand how many among the ten largest listed companies have created board committees, as none of the ten largest companies disclosed this information. Seven among the ten largest listed companies reported on their websites/annual reports having established a “revision commission”, which sometime is called “audit committee”. When looking at ESCRIN (i.e., the Electronic System for Comprehensive Information Disclosure, which is a publicly accessible free internet database), it was clear that 5 companies declared not having an audit committee at the board level, but the other 5 companies simply did not answer the question in ESCRIN. The audit committee and the revision commission are very different and should not be confused. The revision commission is an advisory body for shareholders, while the audit committee is a strategic board committee, at the top of the company’s lines of defence. The revision commission is not made of board members; it is accountable to shareholders and reports to them once a year. Instead, the audit committee is a board committee (made of board members), reporting to the board on a regular basis. While the reporting to shareholders is necessarily “ex post” on the activities undertaken in the previous year, the reporting of the audit committee concerns key issues of the board agenda and on which the board must take a position.
• Although the Law on JSCs requires the disclosure of revision commission decisions on the website of public joint stock companies, no company disclosed any information about the board committees’ or revision commission’s meetings.</td></tr>
</table>

<table>
<tr><th>Key Areas and Rating</th><th>Strengths and Weaknesses</th></tr>
<tr><td>1.5. Responsibilities of the Board
Weak</td><td>Strengths:
• When created, the supervisory board is granted by law the exclusive authority for appointing and dismissing the members of the management body and its chairperson or the CEO/General Director. The board approves their contracts and sets their remuneration, oversees and approves significant related party transactions, and deals with a detailed list of issues defined by the law.
• The Principles recommend the board to perform strategy planning, review strategy implementation, approve risks policy and oversee the activities of the management body; however, the Principles suffer from little or no implementation.
• The banking law is clear in assigning strategic tasks to the supervisory board (called “bank council”), however it appears that the general shareholders’ meeting is allowed – as it is the case for other companies - to decide on issues falling within the board’s exclusive competence.
• The law requires the officers of the company to “act in the interests of the company” and imposes a duty on officers to compensate the company for any losses inflicted by them on the company.
• The liability of board members, conflicts of interests and related party transactions (see below) are regulated by law.
Weaknesses:
• The law provides that matters within the exclusive power of the supervisory board may be decided by the general shareholders’ meeting (GSM). Hence, the GSM might deprive the supervisory board of this authority. This is a major shortcoming.
• The law does not explicitly assign to boards of companies some key tasks such as approving the corporate strategy and annual budget, as well as determining the company’s risk profile. Indeed, it seems a common practice for the GSM of the ten largest listed companies to decide on the company’s strategy.
• The duty of care is not clearly detailed in legislation. The duty of loyalty is mentioned in the law (although not in great detail), but the case law that could define the standard in greater detail is very limited. Further, the fact that certain directors are named “shareholders’ representatives” casts some doubts on its implementation in practice.
• According to the law the general shareholders’ meeting is in charge of adopting the corporate governance code of the company. This is not a weakness per se and indeed can be considered a strength, if shareholders could rely on the code as a source of rights and obligations. However, it seems that there is no case law referring to the companies’ corporate governance code.</td></tr>
</table>

Key Areas and Rating	***Strengths and Weaknesses***
2. Transparency and Disclosure *Fair*	*The law requires companies to prepare and disclose their annual reports, which should include both financial and non-financial information. All ten largest listed companies comply with this requirement; however, non-financial information is often patchy and incomplete. The Electronic System for Comprehensive Information Disclosure has improved transparency, but further efforts are needed. In particular, disclosure on board committees, frequency of meetings of board committees, beneficial ownership and transaction in company shares by insiders is very limited.* *Albeit the Principles – by their own wording - recommend listed companies to apply them on a "comply or explain" bases, there are no mandatory requirement to this end and no company among the ten largest listed companies in Ukraine includes a "comply or explain" statement in their annual reports.* *Reporting to the markets and shareholders is regulated by law and appears to be well implemented. Financial statements of public companies must be prepared in line with IFRS, audited by independent auditors and made public. All ten largest listed companies comply with these requirements.* *Only banks are required to disclose information on non-auditing services provided by their external auditor. There are no similar requirements for other companies. The two banks among the ten largest listed companies reported that their external auditors did not provide any non-auditing services.*
2.1. Non-Financial Information Disclosure *Weak/Fair*	***Strengths:*** • *Issuers of listed stocks and bonds are required to post annual report and financial documentation to the publicly accessible free internet database called the Electronic System for Comprehensive Information Disclosure (ESCRIN). The system allows easy access to annual reports and financial statements and nearly all listed companies in Ukraine publish their annual reports and financial statements.* • *In seven among the ten largest listed companies, the websites are kept up-to-date with the most recent announcement being less than 2 months old. In eight companies, the information on capital, number of shares and major shareholders is kept up-to-date.* • *Joint stock companies are required to make available to shareholders and public joint stock companies are required to post on their websites their updated articles of association. Seven out of the ten largest listed companies seem to comply with requirement.* • *Listed companies are required to disclose the names of their board members and further information such as their ownership of company's shares education and work experience. Seven out of the ten listed companies disclose the name, education and work experience of board members on their website.* • *The law requires companies to disclose, within two working days, the name of shareholders holding 10 % or more of stock and any change in their shareholdings. The Principles go further and recommend companies to disclose direct and indirect shareholding in the company of 5 % and more.* • *Most companies have the information on capital, shares, and major shareholders kept up-to-date.* • *Public joint stock companies are required to make publicly available the minutes of the general shareholders' meetings (GSM) on their websites and all ten largest listed companies comply with this requirement.* ***Weaknesses:*** • *Compliance with the Principles is a mandatory listing requirement in accordance with the NCSSM Regulation No. 1688, but this requirement does not seem to be enforced. Companies are recommended to adopt the Principles on a day-to-day basis and to disclose information on the observance of the Principles in their annual report, or explaining the reasons for not following the Principles' recommendations. No company among the ten largest listed companies in Ukraine includes a "comply or explain" statement in their annual reports.* • *According to the Securities Commission, 5,960 companies out of 16,239 companies (36.7%) in 2014 included a corporate governance report in their annual reports. Among the ten largest listed companies only two of them, both banks, included a corporate governance reports in their annual reports. This is required by the Law of Ukraine on Financial Services. The reports in question provide only basic information on the organization and composition of key corporate bodies and fail to provide a greater insight into the functioning of corporate governance arrangements and their effectiveness in practice.* • *It was not possible to clearly understand how many among the ten largest listed companies created board committees, as none of the ten largest companies disclose the committees' composition, independence, activities, and frequency of meetings.* • *Nine out of the ten largest listed companies disclose foreign legal entities as their significant shareholders, which are often incorporated in preferential tax regimes jurisdictions. This does not clearly disclose who the beneficial owners are. This is a critical challenge, which also directly affects the possibility to understand who the related parties to a company and to a particular transaction/loan are. Although there are doubts as to quality and accuracy of the disclosure, the Law on the State Registration of Legal Entities has been already amended (prior to cut-off date of this Report) to require the disclosure of UBOs (ultimate beneficial owners) in the Companies' Register.*

Key Areas and Rating	**Strengths and Weaknesses**
	• *None of the ten largest listed companies discloses transactions involving the company's shares carried out by supervisory and management board members.* • *Less than half of the ten largest listed companies have adopted a code of ethics, even though the Principles call for its adoption.*
2.2. Financial Information Disclosure *Strong*	***Strengths:*** • *Public joint stock companies are required to prepare annual reports including financial statements in line with IFRS and to disclose them. Companies are further obliged by law to include in their annual reports/financial statements the auditor's opinion on their financial statements.* • *All ten largest listed companies comply with these requirements.*
2.3. Reporting to the Market and to Shareholders *Fair*	***Strengths:*** • *Joint stock companies are required to make minutes of their general shareholders' meetings (GSM) publicly available on their websites and all largest listed companies comply with this requirement.* • *Listed companies are required to make timely disclosures when significant price sensitive events occur and at the start of the insolvency or restructuring proceedings.* • *The Securities Commission seems to be active in monitoring compliance by companies and in sanctioning companies breaching the disclosure requirements (for example, see: http://nssmc.gov.ua/press/news/nssmc_8_resolutions_on_sanctions_were_approved_during_last_week). The most common breach regarding non-disclosure is the delay in filing annual reporting. Breaches and fines are disclosed to the public.* ***Weaknesses:*** • *Companies are not required to disclose their compliance with the Principles. No company among the ten largest listed companies in Ukraine includes a "comply or explain" statement in their annual reports.* • *Board members, senior managers or controlling shareholders are not required to disclose transactions in their company's shares. Transactions involving the companies' shares by board members, senior managers and controlling shareholders are not routinely available on companies' websites.*
2.4. Disclosure on the External Audit *Fair*	***Strengths:*** • *Public joint stock companies are required to appoint independent external auditors and to disclose their name and opinion. All ten largest listed companies complied with this requirement.* • *All ten companies have included a separate section in their annual reports with information on their external auditor and posted their external audit reports on their websites.* • *Auditors are prohibited from providing consultancy services to audited entities, however there are no restrictions on provision of other non-auditing services.* ***Weaknesses:*** • *The law requires auditors to be independent but in practice it is not clear who should run the "independence test". If this test is to be conducted by the supervisory board, then we have concern about its objectivity as in Ukraine it is the supervisory board that decides on the appointment and remuneration of the auditor. Even more concerning is the fact that – if the supervisory board is not established – the management board appoints the auditor.* • *Only banks are required to disclose information on non-auditing services provided by their external auditor, while there are no similar requirements for other companies. The two banks among the ten largest listed companies reported that their external auditors did not provide any non-auditing services.*

<table>
<tr><th>Key Areas and Rating</th><th>Strengths and Weaknesses</th></tr>
<tr><td>3. Internal Control
Weak</td><td>Only banks are required to create an internal audit function. Banks are also required to have a risk management unit, but it is not clear if the same requirement applies to the compliance function.

Starting from May 2016, public companies and companies where the state holds (directly or indirectly) 50 per cent of the share capital are required to establish an audit committee. These committees must consist exclusively or predominantly of independent members of the supervisory board and must be chaired by them. It appears that there are no specific qualification requirements for members of the audit committee. Previously, establishing board committees was not obligatory, and the disclosure in this area is generally very poor. Large companies are also required to have a revision commission, appointed by and reporting to the general shareholders' meeting. We have doubts about the effectiveness of this body.

There is no requirement to rotate external auditors. The provision of non-auditing services to companies by the external auditor is restricted, but the restriction is limited to consulting services. Only banks are required to disclose information on non-auditing services provided by their external auditor.

Ukraine has recently adopted a new law on corruption prevention, which partially regulates whistle-blowing.

Less than half of the ten largest listed companies have adopted a code of ethics, despite the Principles' recommendations to have one.

Related party transactions and conflicts of interest appear to be regulated by law, but not comprehensively. The lack of availability of derivative action makes it difficult for shareholders to seek redress in case of breach of the law. It appears that no material sanctions have been imposed for breaching the rules on disclosure of conflicts of interest and related party transactions.</td></tr>
<tr><td>3.1. Quality of the Internal Control Framework
Fair</td><td>Strengths:
• The Principles recommend establishing an internal audit function as a part of the company's internal control framework. Even though this function is not obligatory, the Law on JSCs prescribes that when established, the head of internal audit function must be appointed by the supervisory board and report to the supervisory board member who chairs the audit committee.
• Banks are required by law to establish internal audit departments.
• Banks are required to establish a separate risk management unit, but it is not clear if the same requirement applies to the compliance function.
• Starting from May 2016, establishing an audit committee has become mandatory for public companies and companies where the state holds (directly or indirectly) 50 per cent of the share capital. Audit committee must consist exclusively or predominantly of independent members of the supervisory board and must be chaired by them.
• Ukraine has recently adopted a new law on corruption prevention, which partially regulates the whistle-blower area.
• Institute of internal auditors operates in the country.
Weaknesses:
• There is no requirement for internal audit function in listed companies.
• Banks are not required to establish an audit committee.
• Less than half of the ten largest listed companies have adopted a code of ethics, despite the Principles' recommendations to have one.</td></tr>
<tr><td>3.2. Quality of Internal and External Audit
Fair</td><td>Strengths:
• The law recommends establishing a position of internal auditor, in order to support the activities of the audit committee. The internal auditor (the internal audit function) is be appointed by the supervisory board and reports and be subordinated directly to the member of the supervisory board who chairs the audit committee.
• Banks are required by law to establish internal audit departments.
• Public joint stock companies are required to appoint an independent external auditor and to disclose its name. All ten largest listed companies comply with these provisions. A significant majority of these companies is audited by international audit firms.
• Auditors are prohibited from providing consultancy services to audited entities, however there are no similar restrictions on other non-auditing services.
Weaknesses:
• The law does not prescribe a mandatory internal audit function for listed companies, and only half of the ten largest listed companies declared having established internal audit departments. Both largest banks within</td></tr>
</table>

Key Areas and Rating	***Strengths and Weaknesses***
	the list of the ten largest listed companies set up internal audit departments. • *By law, the supervisory board is responsible for appointing the external auditor and setting its remuneration. When the supervisory body is not established, the management body is in charge of the appointment of the external auditor. Both solutions are not in line with the best practices, according to which external auditor should be appointed and accountable to the general shareholders' meeting (GSM).* • *The law requires the auditor to be independent, but in practice it is not clear who should run the "independence test".* • *Only banks are required to disclose information on non-auditing services provided by their external auditor. The two banks among the ten largest listed companies reported that their external auditors did not provide any non-auditing services.* • *There are no specifications in the law or in the Principles referring to the rotation of the external audit.*
3.3. Functioning and Independence of the Audit Committee *Very weak*	***Strengths:*** • *Starting from May 2016, establishing an audit committee has become mandatory for public companies and companies where the state holds (directly or indirectly) 50 per cent of the share capital. Audit committee must consist exclusively or predominantly of independent members of the supervisory board and must be chaired by them.* • *The Principles recommend that the majority of the audit committee (when created) should be independent.* ***Weaknesses:*** • *There is no legal requirement for other companies to set up audit committees at the board level. The Law on JSCs refers to that as an option, stating that supervisory boards may set up audit committees. If created, the committee shall be headed by members of the supervisory board elected at the suggestion of the shareholder who does not control operations of this company. The disclosure in this area is poor.* • *The Law on JSCs states that "the position of an examiner shall be instituted (or the examining commission shall be elected) in joint stock companies with up to 100 holders of ordinary shares of the company; the examining commission only may be elected in joint stock companies with more than 100 holders of ordinary shares of the company". This seems to be a revision commission, as its members are appointed by the general shareholders' meeting (GSM) for verification of financial and economic activities of the company. Seven among the ten largest listed companies reported having established a revision commission. We have doubts about this body's ability to ensure fit-for-purpose internal control systems and external auditing services.* • *It was not possible to understand how many of the ten largest listed companies have established audit committees: when looking at Electronic System for Comprehensive Information Disclosure (ESCRIN), it was clear that five companies declared not having an audit committee at the board level and the other five companies did not answer the question.* • *None of the ten largest listed companies disclose whether they have independent directors on their supervisory boards and committees.*
3.4. Control over Related Party Transactions and Conflict of Interest[2] *Weak*	***Strengths:*** • *Related person interested in the performance of a transaction must disclose such interest to the company, and the transaction can be prohibited by the supervisory board, provided it is not on an arm's length basis and it is deemed to violate interests of the company.* • *Significant related party transactions need to be disclosed in the company financial statement, as per IFRS.* • *All ten largest listed companies include reference to related party transactions in their financial statements; however, information is often aggregate and not necessarily complete.* • *Transactions made by companies, which are not based on fair market values can be invalidated by court if the interested party fails to disclose its interest. Since 2016, the claim can also be filed by shareholders (i.e., derivative action). There is yet no case law on this issue.* ***Weaknesses:*** • *According to the Principles, the main functions of the supervisory board include, inter alia, "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"; however, these functions are not clearly assigned to the board by the law and the Principles do not seem to be taken as a reference.* • *No material sanctions have been imposed for breaching the rules on disclosure of conflicts of interest. In addition, limited penalties have been imposed by the courts or regulators in cases of misuse of corporate assets or of unauthorised/undisclosed related party transactions over the last 10 years.*

[2] In May 2016, significant changes were introduced to the rules on the approval of related party transactions. While acknowledging these legislative novelties, they occurred after the cut-off date of the report and have not been taken into account in this assessment.

<table>
<tr><th>Key Areas and Rating</th><th>Strengths and Weaknesses</th></tr>
<tr><td>4. Rights of Shareholders
Fair</td><td>Shareholders representing 10% of the company's shares can call a general shareholders' meeting (GSM). The law requires companies to notify the GSM agenda to shareholders at least 30 calendar days in advance of the meeting and to post this information on the company's website. Shareholders have the right to submit proposals to the GSM agenda. Shareholders are not entitled to pre-emptive rights in public offering. Instead, the Law on JSCs provides for such a right only in case of private placement of shares. Supermajority is required to approve major corporate decisions.

Cumulative voting is provided for electing members of the supervisory board and it seems to be used in practice. The concept of derivative suits has only recently been introduced into Ukrainian legislation. So far, there has been no reported case law in this area.

Public joint stock companies are required by law to disclose annual reports including financial statements in line with IFRS. All ten largest listed companies comply with this provision.

Self-dealing and insider trading are regulated by law; however, there is no evidence of their enforcement and some important issues remain unregulated, compared to best international practices.

Registration of shares must be maintained by an independent registry institution. The law provides that free transferability of shares cannot be restricted. However, the Securities Commission can restrict it in exceptional situations. Significant shareholding variations must be disclosed. Shareholders can enter into shareholders agreements only if articles of association allow for this. There is no requirement to disclose them.</td></tr>
<tr><td>4.1. General Shareholders' Meeting (GSM)
Fair/Moderately strong</td><td>Strengths:
• Shareholders owing at least 10% of the company's shares are entitled to call a general shareholders' meeting (GSM).
• The law requires companies to notify the agenda of the general shareholders' meeting to shareholders at least 30 calendar days in advance of the meeting and to post this information on the company's website. Eight out of the ten largest listed companies posted the notifications on their GSM on their websites, including details on where to access the documents relevant for the meeting.
• Shareholders have the right to submit proposals to the GSM agenda. If the proposal is made by shareholder(s) holding at least 5% of the shares, the proposal must be placed on the meeting's agenda.
Weaknesses:
• The law does not explicitly grant to shareholders the right to ask questions at the GSM.
• Electronic voting is not possible while voting by post is allowed for companies with less than 25 shareholders.
• No company provides information in their annual reports or websites on voting rights (differential voting rights for different classes) and their exercise by shareholders.</td></tr>
<tr><td>4.2. Protection against Insider Trading and Self-dealing
Weak</td><td>Strengths:
• Insider trading is forbidden and can be punished with fines or restrictions to perform some activities or hold certain positions up to three years.
• It appears that under the law, if the company plans to buy or sell assets or services from any shareholder, director, officer, employee, agent or representative (or any persons or company related to above), the board of directors must ensure that the price to be paid by the company for such assets or services is fair. Transactions made by companies, which are not based on fair market values, can be made invalid and action can be taken against the relevant parties. However, our respondents state that there is no clear and consistent case law and judicial practice on this.
Weaknesses:
• According to a recent IMF Report, Insider trading legislation is not comprehensive and is missing some crucial elements when benchmarked against best international practices (e.g. obligation to establish insider lists, prohibition of use of inside information by cancelling or modifying an order).
• It was not possible to understand how many insider trading cases have been initiated or concluded in Ukraine, as the annual report by the Securities Commission does not include this information.
• Board members, senior managers or controlling shareholders are not required to disclose transactions in their company's shares. Transactions involving the companies' shares by board members, senior managers and controlling shareholders are not routinely available on companies' websites.</td></tr>
<tr><td>4.3. Minority Shareholders Protection and Shareholders' Access to Information
Fair</td><td>Strengths:
• Public joint stock companies are required by law to disclose annual reports including financial statements in line with IFRS. All ten largest companies comply with this provision.
• A qualified majority of 75% of votes of the shareholders present at the GSM is required to increase/decrease the capital of a company; to amend the articles of association; and to decide issues regarding merger, take-over, reorganisation and winding up or voluntary liquidation of the company. Minority shareholders may</td></tr>
</table>

Key Areas and Rating	Strengths and Weaknesses
	block major corporate decisions with a 25%+1 vote. • The law provides rules on cumulative voting for the election of the members of company's bodies. This practice seems to be widely used by companies. In their annual reports, all ten largest listed companies point out that their bodies were elected by cumulative voting. • Shareholders have general inspection rights. • Shares grant to shareholders the same rights. Voting at the GSM is carried out in line with the "one-share, one-vote" principle, except for cumulative voting. • The new law "Introducing Changes to Certain Legislative Acts of Ukraine Concerning Protection of the Rights of Investors" introduced the concept of shareholder derivative suit into the Ukrainian legal system. The law has become effective on 1 May 2016. So far, there has been no reported case law on this matter. **Weaknesses:** • Shareholders are not entitled to pre-emptive rights in public offering. Instead, the Law on JSCs provides for such a right only in case of private placement of shares. Over the last 5 years there have been several cases of dilution of shares somehow related to the lack of pre-emptive rights. • Some key corporate governance information is not disclosed.
4.4. Registration of Shareholdings *Moderately strong*	**Strengths:** • The law provides that free transferability of shares cannot be restricted. However, the Securities Commission can restrict it in exceptional situations. • Registration of all shares is maintained by the National Depository institution of Ukraine, which is a central depository institution, managing the registration and operations of all securities in Ukraine. • The Law on JSCs requires any person willing to acquire significant shareholdings in a listed company to notify the company, the Securities Commission, the stock exchange and include a note in the Official Gazette about the intention to buy shares no later than 30 days before the purchase date. The law provides sanctions in case of non-disclosure. The annual reports of all ten largest listed companies include information on changes of shareholdings of company officers. **Weaknesses:** • Shareholders can enter into shareholders agreements only if articles of association allow for this. There is no requirement to disclose them. Enforcement of shareholders agreements has been restricted by courts.

Key Areas and Rating	Strengths and Weaknesses
5. Stakeholders and Institutions *Weak*	*There are nine local stock exchanges in Ukraine. The three largest exchanges by equity trading volume are the Ukrainian Stock Exchange (USE), the PFTS Stock Exchange (PTFS) and the Perspektiva Stock Exchange (PSE). Though the market capitalisation and liquidity levels among these exchanges vary, none of them have a segment which requires adherence to higher governance standards. Further, high ownership concentration is not complemented by corporate governance practices that ensure minority shareholder protection.* *Compliance with the Principles is a mandatory listing requirement in accordance with the NCSSM Regulation No. 1688, but this requirement does not seem to be enforced. None of the ten largest listed companies in Ukraine included a "comply or explain" statement in their latest annual reports.* *Although corporate governance trends in the country are actively monitored by the National Securities and Stock Market Commission, it is not clear whether there is a body in charge of actively monitoring the Principles' implementation.* *A few significant inconsistencies were found in laws and regulations and indicators by international organisations show a framework where corruption, competitiveness and investor protection are still perceived as critical problems.*
5.1. Corporate Governance Structure and Institutions *Fair*	***Strengths:*** • *The National Securities and Stock Market Commission is the state regulator responsible for supervising the stock market and activities of JSCs. The Commission has published its annual report (http://www.nssmc.gov.ua/activities/annual), which includes a chapter on corporate governance developments in but these contain mainly aggregated data on the overall number of companies having a supervisory board, audit committee, internal audit, own corporate governance code etc. There is no mention of the Principles in the context of analysing "comply or explain" statements.* • *Although stock exchanges' websites do not contain complete information on listed companies, the Securities Commission does disclose companies' regulatory submissions online via ESCRIN.* • *International audit and law firms have a material presence in the country.* • *There seems to be one institution providing courses for company directors.* ***Weaknesses:*** • *There are nine local stock exchanges in Ukraine. The three largest exchanges by equity trading volume are the Ukrainian Stock Exchange (USE), the PFTS Stock Exchange (PTFS) and the Perspektiva Stock Exchange (PSE). None of them have a listing which requires adherence to higher governance standards.* • *High ownership concentration is not complemented by corporate governance practices that ensure minority shareholder protection.* • *International rating agencies are not active within the country; less than half of the ten largest listed companies were rated by international agencies.* • *Rulings of regulatory agencies are documented and publicly available, but not easily accessible.*
5.2. Corporate Governance Code *Weak*	***Strengths:*** • *The Ukrainian Corporate Governance Principles are based upon the OECD Principles of Corporate Governance.* ***Weaknesses:*** • *The Principles were first developed by the Securities Commission in 2003, and were later revised in 2008 and 2014. Since then, the Principles have not been revised.* • *The Principles are intended for open joint stock companies traded on the stock market. It operates merely as a recommendation and it is designed to be optional. Companies should follow the Principles by voluntarily applying them and disclosing information on the observance of them in the annual reports, or explaining the reasons for not following their recommendations. Compliance with the Principles is a mandatory listing requirement in accordance with the NCSSM Regulation No. 1688, but in practice there is no evidence that they are taken as a reference.* • *Among the ten largest listed companies only the two banks included a corporate governance reports (though not "comply or explain" statements) in their annual reports. This is required by the Law of Ukraine on Financial Services. The reports in question provide only basic information on the organization and composition of key corporate bodies and fail to provide a greater insight into the functioning of corporate governance arrangements and their effectiveness in practice.* • *There is no case law referring to the Principles.*

Key Areas and Rating	Strengths and Weaknesses
5.3. Institutional Environment *Weak*	***Strengths:*** • *Case law is easily accessible at the State Register of Court Decision's website. According to the 2015 EBRD Assessment on Accessibility of Court Decisions, the ease of access by both parties and the public was rated with an overall score of 8/10. However, practitioners report that some decisions are not aggregated in a timely manner.* ***Weaknesses:*** • *Although, the Securities Commission had undoubtedly an important role in adopting and reviewing the Principles, it does not seem to be active in monitoring their implementation. We are not aware of any monitoring report been published.* • *A number of inconsistencies were found in laws and regulations.* • *Indicators provided by international organisations reveal that the current framework is in need of reform, as corruption, competitiveness and investor protection seem to be critical problems in the country.*