

QUESTION	ANSWER	CITATION	COMMENT
The Responsibilities of the Board			
<i>Regulatory Framework</i>			
Please provide accurate historical description and analysis of the evolution and content of the regulatory framework			
1. What are the principal normative acts and other sources of guidelines that make up the corporate-governance framework for Board responsibilities and structure?	The Law on Business Companies (the “Company Law”)		
1.1. Laws	the Company Law	<p>Article 46 of the Company Law:</p> <p>“Board of the Joint Stock Company (Supervisory Board)</p> <p>A joint stock company may create a board (supervisory board) from among the shareholders, to represent the shareholders’ interests between convocations of general meetings, which acts within the competence established by the company’s charter, and which supervises and regulates the activity of the company’s management board</p> <p>Representatives of the trade union or other body</p>	The composition, functions, responsibilities and rights of the Board are stipulated very generally in the Company Law. Article 46 is essentially the sole legislative norm devoted to the meaning of the “supervisory board” in Ukrainian law

		<p>designated by the labour collective which signed the collective agreement on behalf of the labour collective shall attend the meetings of the joint stock company's board (supervisory board) with the right of an advisory vote.</p> <p>In any joint stock company numbering over 50 shareholders establishment of the board (supervisory board) is mandatory. The charter or the general meeting of shareholders may delegate to the board (supervisory board) specified functions which are within the competence of the general meeting.</p> <p>Matters attributed to the exclusive competence of the board (supervisory board) by the charter may not be delegated to the company's executive body.</p> <p>Members of the board (supervisory board) may not be members of the executive body or the audit committee."</p>	
1.2. Regulations			
1.3. Other normative acts	<p>Decision of the State Commission on Securities and Stock Market of Ukraine (the "Securities Commission") "On Approval of the Recommendations as to the best practices of corporate governance for Joint Stock Companies" (the "Decision") of 25 June 2002.</p>		<p>Securities Commission recommendations made in the Decision include, by way of example: (a) disclosure of compensation to board members, (b) precise definition in charter of duties of the board and decision-making authority, (c) authorising boards to independently convene extraordinary shareholders' meetings, (d) authorising boards to supervise disclosure of</p>

	<p>Letter of the State Property Fund of Ukraine “On Procedure of Establishment and Approval of Supervisory Boards in Joint Stock Companies established in the process of privatisation” of 21 April 1998.</p> <p>Presidential Decree “On Additional Measures toward Development of the Stock Market” (the “Decree”) of 26 March 2001.</p> <p>Presidential Decree “On Measures to Promote Corporate Governance in Joint Stock Companies” (the “Decree of the President #280/2002”) of 21 March 2002.</p>		information by the company, et al.
1.4. Exchange Rules	N/A		
1.5. Codes of Conduct	The Decision recommends that companies have internal codes of conduct for boards.	Art.4.5.2 of the Decision: “It is advisable for a company to have a separate internal document that regulates issues connected to the activity of the supervisory board”.	
1.6. Other	<p>The Decree of the President # 280/2002 authorised the Cabinet of the Ministers of Ukraine to develop and submit for consideration to the Parliament of Ukraine draft legislation directed toward improvement of corporate management and protection of shareholders’ rights including adoption of cumulative voting procedures for establishment of supervisory boards of joint stock companies to ensure that minority shareholders are represented on the board.</p> <p>The State Commission on Securities and Stock Exchange of Ukraine, State Property Fund of Ukraine, the Antimonopoly Committee of Ukraine and law protective organs to strengthen co-operation with purpose of prevention and stopping violations of rights of shareholders.</p>		

	<p>The State Commission on Securities and Stock Exchange of Ukraine should secure development and input of national principles (code) of corporate management in the joint stock companies.</p> <p>The Supreme Court of Ukraine and the Higher Commercial Court of Ukraine are recommended to generalise the judicial practice of application of legislation as to the issue of corporate management in the joint stock companies.</p>		
2. How is the term "director" defined?	This term is not statutorily defined		In Ukraine the term "director" generally refers to a member of the Management, and not to a member of the Supervisory Board (the latter being referred to as a "Member of the Board")
3. Does the regulatory framework stipulate positive qualifications for a person to be appointed as a director? If yes, what are these qualifications?	The regulatory framework does not stipulate positive qualifications for appointment the members of the board.		The Decision recommends that the members of a supervisory board have appropriate qualifications, e.g. education; professional experience; accounting, business, management, or finance backgrounds; strategic planning experience, etc. These recommendations, however, apply primarily to open joint stock companies (publicly traded companies) and to closed joint stock companies (privately-held stock companies) with widely dispersed shareholders, and do not, in any event, have the force of law.
4. Does it stipulate conditions under which a person cannot be appointed as a director? If yes, what are these conditions?	The following categories of individuals cannot occupy positions as board members of a company: members of the Cabinet of Ministers of Ukraine, heads of the central and others bodies of state executive power, military servicemen, executive officers of the prosecutor's office, courts, state security, internal affairs (militia), state notary, and	Art. 23 of the Company Law: "...The following categories of individuals cannot be executive officers of the bodies of a company (including members of the supervisory board): members of the Cabinet of Ministers of	

	<p>also executive officers of the state authorities, except where such executive officers are authorised to manage the state's shareholding in a company and represent the state's interests on the board of the company.</p> <p>Persons having a criminal record (prior conviction in a court of law) involving theft, bribery, embezzlement and other mercenary crimes cannot occupy a board position in a company engaged in the same type of activity for which they were convicted.</p>	<p>Ukraine, heads of the central and others bodies of state executive power, military servicemen, executive officers of the prosecutor's office, courts, state security, internal affairs (militia), state notary, and also executive officers of the state authorities, except where such executive officers are authorised to manage the state's shareholding in a company, and represent the state's interests on the board (supervisory board) or audit committee of the company.</p> <p>Persons who are prohibited by the court to be engaged in certain activity cannot be executive officers of companies conducting such type of activity. Persons having not expunged previous convictions for theft, bribery, embezzlement and other mercenary crimes cannot occupy leading positions in the company or positions connected with material responsibility...".</p>	
5. What is the required board structure?	There is no particular structure stipulated for the board.		
6. Does your company law prescribe a unitary or dual board structure consisting of a supervisory and a	Ukraine generally follows the German corporate model for joint stock companies involving a dual-board structure – a	The Company Law (art. 46):..."Members of the board of a company (supervisory	Unlike in Germany, workers are not automatically represented on the supervisory board, although workers' representatives have

management board/director?	supervisory board and a management board (director). Members of the supervisory board may not be members of the management board or audit committee.	board) cannot be members of the executive body and audit committee.”	the right to attend supervisory board meetings.
7. If the company law prescribes a dual board structure, or if this is common practice in the articles of association, please respond to the following questions:			
7.1.Is a dual board structure compulsory or not?	For joint stock companies having more than 50 shareholders it is compulsory to have a supervisory board and, therefore, compulsory to have a dual board structure. For other joint stock companies the supervisory board is optional.	Art. 46 of the Company Law: “...The establishment of the board (supervisory board) is compulsory for a joint stock company numbering more than 50 shareholders...”	
7.2.If not compulsory, can the use of a dual board structure be established in the articles of association?	for joint stock companies – yes		
7.3.If so, is this option commonly used?	Yes		
7.4.What are the duties of the supervisory board?	The duties of the Supervisory Board are not clearly stipulated in the Company Law. The Company Law provides only that the board represents the interests of shareholders between shareholders’ meetings, and, within the limits of its competence as determined in the company’s charter, controls and regulates activity of the management.		Supervisory boards are elected by shareholders and play a key role in corporate governance. They serve as a company’s highest governing body between shareholders’ meetings. They exercise the powers vested in them by the Company Law, a company’s charter, and as delegated by the shareholders’ meeting. Supervisory boards oversee managers and defend the interests of the company and its shareholders. They generally approve the company’s strategy, budgets and material contracts, identify risks that the company faces and ensure that these risks are properly managed, and ensure that the company has good internal controls and information management systems that provide a timely, clear picture of the company’s operations. Supervisory boards also oversee communications with shareholders, consider

			complaints of shareholders dissatisfied with management decisions, and (usually) set compensation of top officers.
7.5.What are the duties of the management board?	Management board is the highest executive body of a company, which performs the day-to-day operations of the company and carries out the decisions of the shareholders' meetings and the supervisory board. Management boards resolve all matters of the company, except those that are within the competence of the shareholders' meeting and supervisory board. The management board acts on behalf of the company within the limits defined in the Company Law and the charter.		The chairman of the Management Board acts on behalf of a company without a power of attorney. Other members of the Management Board may be also authorised to represent the company without a power of attorney.
8. Are there any legal requirements as to the composition of the board(s). If yes what are these requirements:			
8.1. in terms of size?	none		
8.2.in terms of qualifications?	none		Supervisory Boards in Ukraine are not always qualified to perform all of the functions described above. Sometimes members do not possess the knowledge or skills necessary to properly supervise management, set strategy, identify risks, and so on.
8.3.in terms of seats designated to specific shareholders or constituents, including labour representatives?	none		see comments to questions 6 and 36
9. Does the legislation prescribe the use of independent directors?	none		
9.1.If yes, how is independence defined?	not applicable		
9.2.What are the exact provisions regarding their appointment?	not applicable		
9.2.Is a concrete number or percentage of independent directors	not applicable		

required?			
10. Is a distinction made between non-executive directors and independent directors? If yes, please describe.	not applicable		
11. Is there a limit as to how many boards an individual can be represented on?	Only in respect of the boards (supervisory board and management) within a single company, i.e., members of the supervisory board cannot be members of the management board or audit committee of a company. However, there are no limits as to serving on boards of different companies.		
12. What are the rules and procedures for			
12.1. nominating,	Board members are nominated by the shareholders		
12.2. electing and	elected by the shareholders' meeting	“Competence of the general (shareholders’) meeting includes:...election and removal of the members of the supervisory board of a company” (Art. 41, par.5 (c) of the Company Law)	
12.3. removing board members?	shareholders' meeting removes members of the supervisory board		
13. Does the regulatory framework stipulate a maximum election term?	No		
14. For how long are board members generally elected?	This depends on the charter of a company and/or decision of the shareholders' meeting. Usual practice is for board members to be elected for 3-5 years.		
15. Are all board members re-elected at the same time or are staggered terms allowed?	The legislation does not regulate this issue. Therefore, this is determined on a company-specific basis as stipulated by the charter or		

	shareholders' meeting decision. Hence, staggered terms are allowed.		
16. Does the regulatory framework specify the role of the Chairman? If so, what are the main duties of the Chairman?	Usual practice is for the Chairman to lead the work of the Supervisory Board. Chairman is elected or appointed in accordance with the charter of the company. Usually charters of companies specify that the Chairman at meetings of the supervisory board has a casting vote.		No special duties of the Chairman are stipulated by the regulatory framework.
17. Does it require the separation of Chairman and Chief Executive Officer?	Ukrainian legislation has no concept of "Chief Executive Officer", although the term "CEO" typically would correspond to the Chairman of the management board. In this case, the Chairman of the management board may not simultaneously be the Chairman of the supervisory board.		
18. Does the regulatory framework prescribe the formation of any special purpose committees within the board:			
18.1. audit committees?	Audit Committee is a separate body of the Company appointed by the shareholders' meeting		
18.2. remuneration committees?	No		Compensation of Board members is typically established by the shareholders' meeting
18.3. or nomination committees?	No		
19. If so, what are the requirements for such special purpose committees?	not applicable		
19.1. audit committees?	Audit Committee must consist of not less than 3 persons		
19.2. remuneration committees?	not applicable		
19.3. or nomination committees?	not applicable		
20. And what are their respective functions:			
20.1. audit committees?	An audit committee, which is elected from among the shareholders (their		

	<p>representatives) provides control over financial-economic activity of the management.</p> <p>The members of this committee simultaneously cannot be members of the management or supervisory board or be other executive officers of a company.</p> <p>Verifications of financial-economic activity of the management may be conducted by the order of the shareholders' meeting or supervisory board, on the audit committee's own initiative, or on the request of shareholders owning in aggregate more than 10 percent of voting shares. The audit committee has the right to request the submission of all necessary documents for its inspection and solicit personal explanations from the management and other officers of the company.</p> <p>The audit committee submits the results of its reviews to the shareholders' meeting. The shareholders' meeting may not approve the company's annual balance sheet in the absence of final reports from the audit committee.</p> <p>The members of the audit committee are obligated to demand calling of an extraordinary shareholders' meeting if they determine that a serious threat to the interests of the company has arisen.</p>		
20.2. remuneration committees?	not applicable		
20.3. or nomination committees?	not applicable		
21. For example, are there provisions	none		

concerning the size of board remuneration and the possibility to offer stock options to board members?			
22. How is the form and level of board remuneration decided?	Generally, the supervisory board members do not receive salaries, but are reimbursed for expenses related to their participation in meetings of the board and fulfilment of their obligations as board members. The form and level of such remuneration usually is decided by the shareholders' meeting.		
23. Is this done by the general meeting or through other procedures?	usually by the shareholders' meeting		
24. To whom is the board primarily responsible?	to the shareholders' meeting		
25. Is it clearly stipulated that the board's duty is to serve in the interest of all shareholders?	It is clearly stipulated that the board represents the interests of the shareholders between shareholders' meeting	Art.46 of the Company Law (see question 1.1)	
26. What is the's field of competence and how is it expressed in the regulatory framework?	The company's charter may stipulate delegation to the supervisory board of certain functions, which are otherwise within the competence of the shareholders' meeting. The chairman of the management board is responsible for running the company's day-to-day business.	see response to question 1.1 and citation in response to question 28	
(For example: "The board is responsible for the organisation of the company and management of its affairs, while the managing director is responsible for the day-to-day business").		The Company law: Art. 46 – supervisory board and Art. 47 – management board	
27 Is the division of power between the board and the management clearly specified in the regulatory	Yes, the Company Law specifies division of authorities between the supervisory board and the management, by clearly describing		

framework? If yes, how?	authorities, compositions, procedure of taking decision, subordination etc of each governing body of the company.		
28. What are the general board responsibilities?	<p>The general board responsibility is to represent interests of shareholders between shareholders' meetings. In addition the shareholders' meeting may authorise the board to perform certain of its functions, which are not within exclusive competence of the shareholders' meeting.</p>	<p>Article 41 of the Company Law provides that the following decisions may be delegated by the shareholders' meeting to the supervisory board:</p> <ol style="list-style-type: none"> 1) determination of the main directions of operations of the company, approval of its plans and reports on their fulfilment; 2) election and removal of members of the supervisory board; 3) election and removal of members of the executive body (management), and the audit committee; 4) decisions regarding pursuant of financial claims against officers and other employees of the company; 5) approval of rules of procedure and other internal regulations of the company, determination of structural organisation of the company; 6) decisions for the company to redeem its outstanding shares; 7) determination of terms and conditions for remuneration of officers of the company, its 	

		subsidiaries, branches and representative offices; 8) approval of agreements (transactions) for the value exceeding amounts set out in the charter of the company; 9) appointment of a share registrar.	
28.1. Are boards responsible for the appointment of the key executive positions of the company?	<p>As a legal matter, no; however the company's charter or shareholders' meeting may authorise the supervisory board to do this.</p> <p>The chairman of the management board may appoint the key officers of the company, appointment of which does not require approval of the shareholders' meeting or supervisory board</p>		
28.2. Are boards responsible for supervising and reviewing their performance and remuneration?	The law is not explicit in this regard. However, if the charter provides so, then yes.		
28.3. Are boards required to periodically report to shareholders the status of the company affairs?	Such a requirement is not explicit in the Company Law. Generally, the company's charter stipulates a requirement of periodic reporting to the shareholders' meeting on the status of the company's affairs		
29. Does the regulatory framework specify the fiduciary duties of the board?	The concept of "fiduciary duty" or the "care/prudence duty" before a company or its shareholders is not legislatively defined.		
30. Are specific duties of the board prescribed vis-à-vis:			
30.1. the shareholders?	to represent interests of shareholders between the shareholders' meetings		
30.2. the company as such or	to control and regulate activity of the management board		
30.3. or society at large?	No		

31. Does the regulatory framework prescribe specific duties of skill? If yes, please describe.	as to the members of the supervisory board – No		
32. Or fiduciary duties? If yes, please describe.	No		
33. Are any administrative duties of directors specified? If yes, please describe.	The board members' duties in this respect are to control and regulate activity of the management body. Certain administrative functions may be attributed to the supervisory board by the company's charter. The legislation does not specify other administrative duties of the board members.		
34. Are there any provisions on consequences of breach of duty?	No		Typically, internal corporate documents provide that (a) members of the supervisory board are personally responsible for execution of the decisions of the company shareholders' meetings unless such decisions are illegal or contradict the company's charter; (b) in case of failure in fulfilment or improper fulfilment of their duties bear disciplinary, administrative or other responsibility in accordance with the applicable legislation; (c) members of the supervisory board bear material responsibility for damage caused by them to the company.
35. Are:			
35.1.Criminal	No		
35.2.Administrative or	Theoretically, yes. In addition, the Decree of the President # 280/2002 contemplates establishment of administrative responsibility on executive officers of a company for violation of rights of shareholders.		
35.3.Civil liabilities for breach of duty imposed?	Theoretically, yes		
36. Are there legal provisions	Not obligatory. For instance, minority		The Decision recommends that 10-20%

mandating the representation of stakeholders on boards? If yes, please describe.	shareholders are not required to be, and often are not, represented on the board However, the chairman and members of the board must be comprised only from among the shareholders (including legal entities, which are represented on the board by proxy)		shareholders (depending on size of board) have a mandated representative on the board
37. How is the directors access to information regulated:			
37.1. Do directors have the explicit right to inspect corporate accounts?	The Company Law does not explicitly regulate this issue. However, as the board represents the interests of the shareholders, in practice members of the board can inspect corporate accounts		
37.2. What other rights are specified in this respect?	Board members may be delegated certain rights, which are within the competence of the shareholders' meeting. (Competence of the shareholders' meeting is described below)	See response to question 28 above	
38. What are the requirements in terms of board meetings?	There are no special requirements as to the regularity or quorum at the board meetings. However, the company's charter typically will stipulate such requirements. However, it should be noted that the State Property Fund of Ukraine for companies with the state shareholdings recommends that board meetings be held each quarter.		
<i>Practical viewpoint on Boards</i>			
Please respond and illustrate by using case studies, brief examples and board statistics, as available.			
39. How important is the board in	In practice, most open joint stock and large		Pursuant to applicable law the board of a joint-

<p>corporate governance in your country?</p>	<p>closed joint stock companies are governed to some extent by their corporate boards, notwithstanding the scant legislative framework in respect of the functions and responsibilities of the board. Virtually all foreign investors in joint stock companies will insist on having an active role on the board.</p>		<p>stock company is responsible for representation of interests of shareholders between shareholders' meetings, and also for management and control over activity of the management board.</p> <p>The role of the board in any particular company and efficiency of its activity depend to a certain extent on which authorities have been delegated to the board by the charter of such company.</p> <p>The charter of the company must expressly determine authorities and list matters, attributed to exclusive competence of the board.</p> <p>The following issues are within the competence of the board may not be delegated to the management board::</p> <ul style="list-style-type: none"> • approval of internal policies of the company, except those, which are within exclusive competence of the shareholders' meeting; • determination of terms of compensation of members of the management board; • approval of decision on resale or distribution among employees of the company's own shares; • decisions regarding the bringing of legal claims against Company officers; • approval of certain contracts, agreements, payments, instruments, or a series of related or similar contracts, agreements, payments, instruments; • designation of the Company's independent external auditor; <p>It is advisable also to give to the board a right</p>
--	---	--	--

		<p>independently to convene extraordinary shareholders' meeting in case of refusal of management to convene the shareholders' meeting at the request of the board.</p> <p>Effectiveness of implementation of the duties of the board depends on the rights and obligations given to it.</p> <p>The board members should have free access to the information on the company, and also have the ability to retain, if necessary, specialists within different industries with payment of their services at company cost.</p> <p>The board also should provide control over disclosure of information on the company.</p> <p>Board may become that body, which will consider the complaints of shareholders involving managers or other executive officers of the company that violate the rights of shareholders.</p> <p>Regardless of which authorities are attributed to the board, it must act in the best interests of the company and its shareholders as well as other interested persons such as employees, creditors, consumers, suppliers, local agencies to that extent to which it meets interests of shareholders and secures welfare and growth of value of the company.</p> <p>It is possible to expect from the board the effective representation of interests of shareholders in case internal documents of the company stipulate, among other provisions, procedures for the work of board, procedure of election and functions of the chairman of the board, procedure of convocation and conduct of the meetings, their regularity, quorum for</p>
--	--	--

			<p>taking decisions, issues of co-operation with the management board.</p> <p>In the company's charter it is advisable to set out the procedure for approval of decisions at board meetings.</p>
40. Is the existing legal framework successfully put into practice?	Yes, the majority of joint stock companies have put the legislative framework for boards into practice. Nonetheless, the legal framework is not sufficiently developed on the issue of board governance, e.g., there is only one article in the Company Law concerning the supervisory board.		
41. Are board members enabled to carry out their duties in a professional and informed manner?	In principal, yes, there are no obstacles to do it in such manner		
42. Do boards fulfil their strategy setting and monitoring functions properly?	In most companies – Yes		
43. Do the boards and board members operate in a transparent fashion, consistent with the intentions of the Assembly General Meeting?	in most companies – Yes		
44. The latter question also targets the nomination and remuneration of directors?	Yes		
45. Are boards truly independent from management and major or controlling shareholders?	Boards are not always independent from management and, oftentimes, are controlled by majority shareholders.		
46. Is cumulative voting used and does it have an impact on enhancing board independence?	In theory, cumulative voting may be used; however, the practice is not common in Ukraine. The Decree of the President #280/2002 provides that it is necessary for	The Decree of the President # 280/2002 provides: “...To acknowledge as	

	protection of the rights of minority shareholders to use cumulative voting for establishment of the supervisory board.	necessary further perfection of legal bases of corporate management in the joint stock companies, which would secure: 1) effective defence of rights and legal interests of shareholders through: provision of possibility of representation of minority shareholders in a supervisory board of a joint stock company by the establishment of procedures of the cumulative voting during forming of that board;...”	
47. Do boards play an effective role with respect to conflicts of interest, related party or major transactions?	If a company’s charter requires the board to approve major or related party transactions, then the Board plays some role in this regard. In practice, however, it is the management’s role, with general directors oftentimes being given broad authority to enter into most contracts, except those exceeding a certain value.		
48. Do companies have a sufficient number of independent directors?	There is no concept of “independent directors” in Ukraine		
49. Do board committees exist and if so, do they fulfil their role?	Not applicable		
50. Are they instrumental in enhancing board effectiveness?	not applicable		
51. Do they have sufficient power and resources at their disposal?	not applicable		
52. Do board members possess adequate qualities and competencies?	This may vary from company to company	The Decision provides that “...the role of the supervisory	

		<p>board in a company and efficiency of its activity depend to a certain extent on powers attributed according to the company's charter.</p> <p>4.2. The charter of a joint-stock company should expressly determine powers of the board and list of issues, attributed to its exclusive competence.</p> <p>4.2.1. It is advisable to attribute to the exclusive competence of the board such issues, which cannot be decided by the executive body:</p> <ul style="list-style-type: none">a) approval of internal policies of the company, except those which by the charter are attributed to exclusive competence of the shareholders' meeting;b) determination of terms of payment of members of executive body;c) approval of decisions about resale or distribution among employees of shares repurchased by the company;d) decisions regarding the bringing of legal claims against members of the company's executive body;e) approval of decisions about the conclusion by the company of certain agreements;f) designation of the company's auditor (auditing firm) and approval of terms of	
--	--	---	--

		<p>agreement, with auditors;;</p> <p>g) estimation of contributions of shareholders to company's charter fund, if such contributions are in other than monetary form.</p> <p>4.2.2. It is advisable also to attribute to the board a right independently to convene extraordinary shareholders' meeting in the case of refusal of executive body to convene meeting at the board's request.</p> <p>4.3. For the effective implementation of the powers attributed to the board members the rights and duties imposed on them have great importance.</p> <p>For the proper implementation of their functions and acceptance of grounded decisions the board should have access to information on a company, and also the ability to hire as necessary specialists of different fields of knowledge with compensation of their services at the company's cost.</p> <p>Duties of the board also should include control over disclosure of information by the company.</p> <p>Board may become that entity, which considers the complaints of shareholders on action of executive body,</p>	
--	--	---	--

		<p>registrar or executive officers of the company that violate the rights of the shareholders.</p> <p>4.4. Regardless of which powers are attributed to the board, it must act in the best interests of the company and its shareholders and take into account interests of other interested persons, including employees, creditors, consumers, suppliers, local organs of state power in order to meet interests of the shareholders and secure welfare and growth of value of the company...</p> <p>4.6. General shareholders' meeting can determine the requirements relating to the board members. Such requirements may include requirements that the board members have proper education and length of work, knowledge in a field of bookkeeping and finances, experience in sphere of business or management, knowledge of industry, in which the company is engaged, experience in strategic planning, etc."</p>	
<p>53. How do companies identify, select and recruit competent directors?</p>	<p>Directors (members of the board) are nominated by the shareholders, and elected by the shareholders' meeting. There is no special policy or rules for identifying,</p>		

	selecting and recruiting the competent directors. Typically, a representative of each 25%, 50% or 75% shareholder will be appointed by the shareholders' meeting.		
54. Are board members adequately compensated?	They are compensated only for the expenses incurred by them during actual execution of their duties as board members. They do not receive salaries in the normal course. Adequacy of reimbursement may vary from company to company		
55. Are there education and training programmes for directors?	We are not aware of such programmes although there are initiatives currently in Parliament to create such training programmes.		
56. What are the perceived needs in this respect?	To increase knowledge and skills of the board members. An intensive and sustained effort is thus needed to train the board members throughout Ukraine and give them the tools they need. Good corporate governance will require that the boards begin to play a larger role		
57. What role do the bilateral and multilateral donors play in assisting such needs?	USAID, IFC and World Bank support adoption of a Joint Stock Company Law, which would more fully regulate corporate governance issues. IFC is sponsoring a corporate governance projects in Ukraine		
58. What is the profile of board directors? Are there any statistics in terms of their spread among:	There are no publicly available statistics in terms of board members/directors, although some of the NGOs operating in Kyiv may have conducted research and published reports on this topic (e.g. FMI Corporate Governance Project, IFC Corporate Governance Project).		
58.1.Financial professionals			
58.2.Legal professionals			

58.3.Retired industry leaders			
58.4.Retired senior government officials			
58.5.Other			
59. Do professional associations exist and what is their role in enhancing professionalism and board ethics?	Roundtables sponsored by such organisations as the Ukrainian Institute for Stock Market Development, IFC, and others.		
60. Please provide statistics, as available, or describe trends, regarding:			
60.1.Average size of boards of directors?	from 3 to 10		
60.2.Average number of executive board members.	The Ukrainian regulatory framework does not distinguish between executive and non-executive (independent) board members.		
60.3.Average number of non-executive (independent) board members?	such category does not exist		
60.4.Number of companies with:			
- audit committee	All		
- compensation/remuneration committee	Not applicable		
- nomination committee	Not applicable		
- other committees	Not applicable		
60.5.Average size of committees:			
- audit committee	from 3 to 5		
- compensation/remuneration committee	Not applicable		
- nomination committees	Not applicable		
- other committees	Not applicable		
60.6. Attendance of directors meetings?	all or majority		

60.7. Average number of directors meetings per year?	1 – 4		
60.8. Average board remuneration?	depends on the company; remuneration is provided only for expenses connected with performance of duties as board members		
60.9. Number of companies with board training programmes?	information is not available		
Stakeholders			
Please provide a description of the regulatory framework together with some empirical illustrations			
61. Please describe which legal acts define the role and rights of shareholders and in what respective terms:	The Law “On Business Companies” (“Company Law”); Law of Ukraine “On Enterprises”; Law of Ukraine “On Entrepreneurship”; Law of Ukraine “On Securities and Stock Exchange”		
61.1. Company Law	Enterprises, institutions, organisations, and private individuals in Ukraine (including foreign nationals, stateless persons, foreign legal entities and international organisations, unless otherwise provided by Ukrainian law), may be shareholders, founders and/or participants of Ukrainian companies. The state as represented by its specialised body, the State Property Fund, may be a founder/holder of shares in companies. Ukrainian law envisages a number of provisions applicable to certain individuals and legal entities, restricting their rights to be founders/owners of companies in Ukraine. As a general matter, minors and government officials may not be founders of companies,	Article 10 of the Company Law: “Rights of participants of a company. The participants of the company have the following rights: a) to participate in the management of the company’s affairs in accordance with procedures specified in its constituent documents, with exceptions provided by this Law; b) to participate in the distribution of the company’s	

	<p>and their rights to own shares are subject to restrictions. Special Ukrainian legislation restricts the rights of state-owned enterprises to found and/or participate in companies.</p> <p>Under Ukrainian law, shareholders of joint stock companies have the following rights:</p> <p>1) to participate in the management of a company's affairs in accordance with procedures specified in its constituent and internal documents. Primarily, this shareholder right is exercised through participation in general shareholders' meetings (the "shareholders' meetings"), which rights consist of:</p> <ul style="list-style-type: none"> • a right to be notified in due course of the time and date of the Shareholders' meeting; • a right to submit proposals for the agenda of the shareholders' meeting; • a right to review documents relating to the agenda of the shareholders' meeting prior to the date of the shareholders' meeting; • a right to vote at shareholders' meetings; • a right to elect members, or to be elected as a member, of the company's governing bodies (the management board, the supervisory board, and the audit committee); • a right to delegate the authority to attend and vote at shareholders' meetings to another person; • a right to review minutes of shareholders' meetings, company documents, records etc. <p>2) to participate in the distribution of the company's profits, and to receive dividends;</p>	<p>profits, and to receive dividends;</p> <p>c) to withdraw from the company in the established manner;</p> <p>d) to obtain information on the company's activity. At a participant's request the company must provide him for familiarity the annual balance sheets, reports of the company on its activity, minutes of the meetings.</p> <p>Participants may have other rights stipulated by the legislation and statutory documents of the company".</p>	
--	--	---	--

- 3) a right of first refusal (pre-emptive right) to buy shares additionally issued by the company;
- 4) to sell any or all of their shares to any person or entity, for any price, without the consent of the company or other shareholders;
- 5) to withdraw from the company in the established manner (through disposal of all the shares, their redemption by the company);
- 6) to obtain information about the company's activity (information pertaining to annual balances, reports on the company's operations, minutes of shareholders' meetings etc.); and
- 7) to obtain a portion of the company's assets in the event of liquidation of the company.

Also, Ukrainian law allows a considerable degree of discretion with respect to matters of corporate governance to shareholders, who may prescribe required corporate procedures and determine other rights in the constituent documents, by-laws, and other corporate documentation of the company.

Pursuant to Ukrainian law, owners of shares in open joint stock companies may freely sell, transfer, pledge, assign, bequeath, or otherwise dispose of any and all of their shares, for the benefit of any persons or entities, and for any price, subject to certain limitations as prescribed by Ukrainian law. (For instance, persons acquiring shareholdings in a company exceeding 25%, 50% of the company's charter fund must obtain prior approval for the transaction from the Antimonopoly Committee of Ukraine if certain thresholds are met).

	<p>Shareholders exercise their decision-making powers at shareholders' meetings. The shareholders' meeting is the highest governing body of a joint stock company, and is authorised to deliberate and decide on any matters relating to or involving the company. Ukrainian legislation reserves to the shareholders meeting the following specific powers:</p> <ol style="list-style-type: none">10) determination of the main directions of operations of the company, approval of its plans and reports on their fulfilment;11) amendments to the charter of the company;12) election and removal of members of the supervisory board;13) election and removal of members of the executive body (management), and the audit committee;14) approval of annual results of the company's activity, approval of reports and conclusions of the audit committee, approval of profit distribution and loss coverage procedures;15) establishment, reorganisation and liquidation of subsidiaries, branches and representative offices, and approval of their charters and by-laws;16) decisions regarding pursuant of financial claims against officers and other employees of the company;17) approval of rules of procedure and other internal regulations of the company, determination of structural organisation of the company;18) decisions for the company to redeem its outstanding shares;19) determination of terms and conditions for remuneration of officers of the company, its subsidiaries, branches and		
--	--	--	--

	<p>representative offices;</p> <p>20) approval of agreements (transactions) for the value exceeding amounts set out in the charter of the company;</p> <p>21) termination of the company's activities, appointment of the liquidation commission, and approval of the liquidation balance sheet; and</p> <p>22) appointment of a share registrar.</p> <p>Authorities listed in Items 2, 5, 6, 12, and 13 belong to the <i>exclusive competence</i> of the shareholders' meeting, and may not be delegated to the company's other governing bodies. The charter of the company may provide for other matters to be referred to the competence of the shareholders' meeting.</p> <p>The Company Law provides that the following fundamental corporate changes affecting the company as a whole shall require a qualified majority of 75% of shareholders participating in a duly convened shareholders' meeting:</p> <p>a) to amend the charter of the company; b) to terminate activities of the company; c) to establish and terminate subsidiaries, branches and representative offices of the company.</p> <p>Other decisions are taken by simple majority vote of shareholders participating in a meeting, in the presence of a quorum. A quorum is established by the presence in person or by proxy of more than 60% of shares entitled to vote.</p> <p>Shareholders may have other rights, contemplated by legislation and constituent documents of a company.</p>		
61.2.labour law	not applicable		

61.3.environmental law	not applicable		
61.4.contract law	The Decree of the President # 280/2002 contemplates establishment of special rules and procedures for a company to enter into agreements (contracts) that may significantly impact the company's financial condition, and to prohibit the entering into of the contracts that are contrary to the company's interests.		
61.5.insolvency law	<p>The Decree of the President # 280/2002 provides that, in order to better protect the shareholders' rights, it is necessary to secure participation of shareholders in the process of conducting proceedings on the bankruptcy and/or reorganisation of a company.</p> <p>Resolution of the Cabinet of Ministers of Ukraine "On Approval of Measures on Performance of Priority Directions of Development of Corporate Management in Joint Stock Companies" dated 18 January 2003 contemplates preparation of amendments to the Law of Ukraine "On Restoration of Solvency of the Debtor or Declaring It Bankrupt" to specifically provide for the participation of shareholders in legal proceedings relating to bankruptcy of their company.</p>		
61.6.other	<p>The Law "On Securities and Stock Exchange"</p> <p>Further, Decree No. 280/2002 instructs the Cabinet of Ministers to prepare draft legislation to better protect shareholders' rights, in particular to:</p> <ul style="list-style-type: none"> ▪ impose administrative liability on executive officers of a company for violations of shareholder rights ▪ improve the procedures for preparation and conduct of shareholders' meetings 	<p>The Law "On Securities and Stock Exchange":</p> <p>Article 5:</p> <p>"The owner of shares has the right to a portion of the profits of a joint-stock company (dividends), to participate in the management of the company (except for owners of privileged shares), and also other rights contemplated by this Law, other legislative acts</p>	

	<ul style="list-style-type: none"> ▪ improve a company’s internal controls in order to protect shareholder interests in company activities ▪ establish a system of monitoring violations of shareholder rights ▪ strengthen state control over compliance by joint stock companies and market participants with shareholder rights ▪ increase transparency and disclosure of company information ▪ broaden those authorities that belong to the exclusive competence of the shareholders meeting ▪ delineate the procedures for delegating specific authorities from the shareholders’ meeting to other governing bodies of a company ▪ further strengthen the supervisory board’s role in representing and protecting shareholders <p>The above Decree also recommends:</p> <ul style="list-style-type: none"> ▪ increased co-operation among the State Commission on Securities and Stock Market (“Securities Commission”), State Property Fund, Antimonopoly Committee, and law enforcement for the purpose of preventing violations of shareholders’ rights; ▪ development and establishment of national principles (code) of corporate management in joint stock companies by the Securities Commission; • consistency in the judicial practice of interpreting and applying Ukrainian legislation on issues of corporate management by the Supreme Court of 	<p>of Ukraine, and also by the charter of the joint-stock company. “</p>	
--	---	--	--

	Ukraine and the Higher Commercial Court of Ukraine.		
62. What concrete provisions ensure the (proper) protection of stakeholder rights:	<p>Ukraine has undertaken legislative and regulatory efforts to ensure adequate safeguards and protections of shareholder rights, especially in light of the fact that the vast majority of shareholders in Ukraine lack sophistication and professional advisory support, and can easily be defrauded and abused in transactions involving securities.</p> <p>Ukraine has enacted a number of laws and regulations establishing a corporate governance framework, which constantly develops to accommodate needs presented by modern Ukrainian corporate practices. Notably, joint stock companies are capable of reinforcing their “internal” corporate governance structure with additional safeguards for shareholders’ rights that may be embodied in their constituent documents and by-laws. As a practical matter, companies who are granted a fair amount of discretion in structuring their corporate governance policies face a risk that some safeguards contained therein may be challenged on the ground that they are not adequately supported by, or are inconsistent with, applicable corporate law in Ukraine.</p> <p>Generally, remedies available to shareholders seeking redress may be divided into three groups: corporate, administrative and judicial:</p> <p><u>Corporate remedies:</u> shareholders may seek protection of their rights at general shareholders’ meetings, and/or by applying</p>		<p>Shareholders of a company may appeal to the company’s supervisory board for protection of their interests and rights. While Ukrainian law does not list specific authorities of supervisory boards for joint stock companies, the companies’ charters delegate, as a general matter, broad authorities to these governing bodies. For instance, the supervisory board is oftentimes authorised by the charter to investigate cases of abuse and violations committed by company officers and to determine whether to bring financial claims against such company officers.</p> <p>Audit committees which, pursuant to law, must be established in all joint stock companies also may be used by shareholders to indirectly protect financial interests arising from their shareholder rights. Thus, shareholders holding in the aggregate more than 10% of the company shares may request the audit committee to audit financial and business operations of the company’s management. In conducting audits and investigations, the audit committee has significant authority and must be provided, upon its request, with all files, accounting and other documentation, and personal explanations of company officers. The Audit Committee is obligated to demand convocation of an extraordinary shareholders’ meeting in the event of a threat to essential interests of the company or uncovering of abuses committed by the company’s officers.</p>

	<p>to the company board (supervisory board). Usually, constituent documents and by-laws of companies specify procedures that are to be followed by shareholders seeking to avail themselves of corporate remedies.</p> <p><u>Administrative remedies</u>: shareholders may resort to government authorities to vindicate their shareholder rights. Such government authorities include:</p> <ul style="list-style-type: none"> • the Securities Commission and its regional offices; • law enforcement agencies, including prosecutors' offices in Ukraine, in the event of criminal offences involving companies and securities. <p><u>Judicial remedies</u> (see below)</p>		
62.1.in the company law	not applicable		
62.2.in the labour law	not applicable		
62.3.in the environmental law	not applicable		
62.4.in the contract law	not applicable		
62.5.in the insolvency law	not applicable		
62.6.in the other legal acts	Civil Code of Ukraine	<p>Pursuant to Article 6 of the Civil Code, rights are protected under the prescribed procedures by courts, commercial courts or arbitration tribunals by virtue of:</p> <ul style="list-style-type: none"> ▪ recognition of rights of the affected party; ▪ reinstatement of the affected party to the position he would have held had his rights not been violated, and 	

		<p>suppression of actions violating the right;</p> <ul style="list-style-type: none"> ▪ specific performance of the obligation; ▪ compensation of moral damages; ▪ rescission or change of a transaction; ▪ award of damages and, if provided by law or contract, of liquidated damages, penalties, fines. 	
<p>63. Is judicial redress provided for by the existing legal framework? If yes, by which laws and in what terms?</p>	<p>As to judicial remedies: shareholders may bring action in civil court or commercial court to obtain redress for violations of their rights pursuant to civil and criminal procedural laws. Ukrainian law does not contain any special rules or procedures applicable specifically to shareholder suits.</p>	<p>Article 6 of Civil Code (see above)</p>	<p>Although all of these remedies are available to aggrieved shareholders, as a practical matter not all remedies are effective in particular situations given the specifics of shareholder rights. The following civil remedies may apply in particular situations:</p> <ol style="list-style-type: none"> 1) recognition of rights of an affected shareholder -- violations of shareholders' pre-emptive rights, rights of access to information and records, rights to dividends, etc. 2) reinstatement of the affected party to the position such party would have held had its rights not been violated, and suppression of actions violating the rights -- contracts, abuses by company officers, etc., reimbursement of losses suffered by companies, etc. 3) specific performance -- enforcement of shareholders' pre-emptive rights to purchase additionally issued shares, rights of access to information and records, rights to dividends, contracts and agreements.

		<p>4) compensation of moral damages -- this remedy is used in all sorts of actions brought by shareholders who wish, in addition to damages relating to “property” interests at stake, to obtain compensation of moral damages suffered as a result of the violation.</p> <p>5) rescission of transactions -- termination of transactions (agreements, contracts) affecting the shareholder and other rights, e.g., a shareholder may file suit to terminate (rescind) an asset sale agreement for a value requiring prior shareholder approval.</p> <p>6) award of damages and, if applicable, liquidated damages -- various violations of shareholder and other rights.</p> <p>Shareholders seeking redress may appeal to the following authorities:</p> <ul style="list-style-type: none">▪ The Securities Commission and its regional offices;▪ Law enforcement agencies, including prosecutors’ offices, if criminal charges are brought against company officers and employees;▪ Civil courts and commercial courts. <p>Law enforcement agencies, including prosecutors’ offices, are vested with authorities to investigate and prosecute criminal cases involving violations of securities laws. The authorities of the law enforcement agencies and prosecutors’ offices are regulated in detail by criminal law statutes in Ukraine.</p> <p>Finally, aggrieved shareholders may file actions in civil courts and/or commercial</p>
--	--	--

			courts. The remedies available to shareholders have been described above. Ukrainian courts have broad judicial powers, including, <i>inter alia</i> , powers to summon parties and witnesses, and examine and cross-examine witnesses, demand and review evidence, render decrees, orders and judgements, review cases on appeal etc.
64. Is redress by means of mediation and arbitration provided for in the current legislation on stakeholders?	Ukrainian law does not specifically envisage any arbitration procedures to resolve disputes arising between shareholders and their companies. However, shareholders entering into various shareholder agreements, as well as founders of joint stock companies entering into founders' agreements, may include arbitration clauses therein, and agree to submit disputes arising out of or in connection with such agreements to arbitration, including arbitration in international tribunals.		
65. Do internal redress procedures for employee rights exist and if yes, please describe?	The Labour Code of Ukraine and other labour legislation, and collective labour agreements, provide expansive rights on the part of employees. For instance, the Labour Code severely limits the grounds on which employees may be dismissed and stipulates the procedures for doing so. In practice, it is very difficult for an employer to terminate an employee's employment except in certain cases, e.g., gross violations, prolonged absence without cause, drunkenness, etc.		
66. Could you provide examples of cases related to stakeholder right violation?	The most frequent violations of shareholder rights involve violations of shareholders' meeting procedures, rights to company-related information and dividends, abuse by company officers, illegal disposal of assets, wrongful dilution of shareholdings through		

illegal capital increases, and failure to pay out dividends.

Violations of shareholders' meeting procedures

Failure to provide adequate notice of a shareholders' meeting to shareholders.

This violation occurs frequently in Ukrainian corporate practice. Ukrainian law contains a requirement that a joint stock company must provide notice of a shareholders' meeting personally to the owners of registered shares, and publish a shareholders' meeting notice, with an agenda thereof, in an official newspaper, no later than 45 days prior to the shareholders' meeting. It should be noted that very often such violations are committed by joint stock companies that have been established as a result of privatisation, with their shares having been distributed among a large number of individual shareholders whose numbers total from several hundreds to several thousands. Usually, these companies have huge operating debts and balance on the verge of bankruptcy. As a consequence, they cannot afford mailing and other expenses relating to notices of shareholders' meetings, and knowingly breach the "notice" requirement.

Failure to provide an agenda and documents relating to a shareholders' meeting to shareholders.

By law, a company is required to provide to its shareholders an agenda and documents related thereto prior to the shareholders' meeting. This requirement is often violated;

however, the law does not provide aggrieved shareholders with adequate remedies and, as a practical matter, they stand little, if any, chance in court or otherwise to secure the invalidation of decisions adopted by a duly convened shareholders' meeting on grounds of failure to provide adequate notice of the meeting's agenda.

Failure to provide notice of changes in the agenda of a shareholders' meeting to shareholders.

Not infrequently it happens that the agenda of a shareholders' meeting is changed after the 45-day notice and newspaper publications have been issued. In such case, a company is required to provide all shareholders with notice of the change as specified in its charter not later than 10 days prior to the shareholders' meeting. This requirement occasionally is breached by companies.

Ungrounded denial of registration to shareholders or their proxies who have arrived at a shareholders' meeting

As a general requirement, shareholders or their proxies who have arrived to attend a Shareholders' meeting must be registered on the day of the meeting by the company's management or an independent registrar pursuant to the share registry (for owners of registered shares), or pursuant to presented share certificates and extracts from securities accounts (for holders of bearer shares). This requirement may be manipulated by the management or an interested party to deny registration to certain shareholders (proxies), in order to tamper with the results of voting.

Theoretically, an affected shareholder (proxy) may challenge the denial of registration as ungrounded, and seek invalidation of the shareholders' meeting's decisions in court. However, Ukrainian law does not contemplate any remedies for an aggrieved shareholder to seek temporary relief and/or request the court to enjoin the holding of the shareholders' meeting until the shareholder's claim has been adjudicated. After the shareholders' meeting, the shareholder's chances of succeeding in de facto challenging the adopted decisions are insignificant, if there was a quorum (60% + 1) at the shareholders' meeting.

Rights to Company-Related Information and Dividends.

Denial of access to company information and records to shareholders

By law, companies are required to provide information and copies of company documents and records to shareholders upon their request. For numerous reasons, such as unwillingness to reveal allegedly confidential or sensitive information, or attempts to conceal information that would disclose abuses by company officers etc., shareholders are denied the requested information, documents and records. Interested shareholders may apply to the company's supervisory board or bring action in court to vindicate their right of access to and review of the company's information and records.

Violation of rights of shareholders to dividends

Pursuant to Ukrainian law, dividends are distributed by a joint stock company once per year following the decision of, and the approval of the audit committee's report by, the shareholders' meeting. The complexity of corporate finances and drawbacks of corporate accounting, audit and financial reporting systems ensure plenty of opportunities for manipulation of the company's finances so that a portion of profits that could be potentially paid out as dividends to shareholders is directed to other uses, e.g., to cover losses (not infrequently artificially caused by management), pay off debts to entities related to management, etc.

Abuse by Company Officers

Insufficient shareholder control and organisation, as well as lack of financial and corporate sophistication by a large number of shareholders create fertile soil for abuse by company officers. Ukrainian law sets forth only general requirements for company officers who are obligated to protect interests of the company and its shareholders, and to observe the requirements of law. No express provision is legislatively mandated imposing some sort of a care/prudence duty or a loyalty duty on company officers. Consequently, company officers, who formally comply with the law, and are not bound by any standard of care/prudence, loyalty or similar duty, may engage in various "conflict of interest" practices.

Asset stripping and self dealing, related party transactions, insider trading and share

dilution

All of these practices are not directly prohibited by Ukrainian law, and shareholders as a practical matter have no cause of action to challenge deals involving asset stripping, self dealing, related party transactions, insider trading and share dilution practices, on the basis that formally such deals are in conformity with law and appear to be “arm’s length” deals.

Wrongful Disposition of Assets

Disposition of assets by companies in breach of shareholder rights are a common violation in Ukraine. Although the Company Law effectively provides that charters of joint stock companies may set forth thresholds on the value of agreements and asset disposition transactions which, when exceeded, require shareholder approval, this safeguard is frequently bypassed or omitted. For instance, the value of assets may be understated or diminished through the use of various accounting methods and practices, or written off the company’s books etc. In addition, a company’s assets may be transferred into ‘free use’ (e.g., to related parties), leased for token consideration, donated, exchanged, pledged etc. In such cases, deals may be structured in such a way as to appear “arm’s-length”, to not exceed the prescribed maximum thresholds applicable to the value of agreements (transactions), and consequently to not trigger the ‘shareholder approval’ requirement. Shareholders have rather limited means at their disposal to challenge such deals involving the ambiguous

	disposition of assets, as in most cases the deals are prepared and closed in strict compliance with law and, as a practical matter, shareholders have little, if any, chance to discover or obtain from the company any evidence to prove any wrongdoing.		
67. Could you provide examples of cases of legal redress related to such violations or lack thereof?	<p><i>Obolon:</i> Shareholder action currently pending in Ukrainian court involving alleged violations of a shareholder's pre-emptive rights in connection with transfers of shares in a Ukrainian brewery.</p> <p><i>Dniproshina:</i> Management approved a share offering to increase the statutory fund by 33%. Shares were placed at nominal value (UAH 9.16) to the company's founders and a selected investor at a time when shares were trading over the counter for more than UAH 60. Other shareholders were precluded from purchasing shares in the offering. After this share dilutive placement to insiders, the price of the company's shares plunged and liquidity dried up. When it occurred in 1997, this corporate governance scandal negatively impacted the perception of the Ukrainian securities market and the reputation of the Securities Commission.</p>		
68. Do performance enhancing mechanisms exist for stakeholder participation in corporate governance, such as:			
68.1.employee participation in corporate boards,	Not specifically		
68.2.employee stock ownership plans or other profit sharing	Not specifically		

mechanisms,			
68.3. creditor involvement in governance in the context of insolvency proceedings?	Creditors, through creditor committees, take major decisions concerning corporate governance in conclusion of agreements relating to a company undergoing insolvency proceedings	Law "On Restoration of Solvency of the Debtor or Declaring It Bankrupt"	Decree of the President # 280/2002 specifically mentions the need of increased protection of creditors' rights in the process of a company's reorganisation.
69. How are the stakeholder rights applied in practice?	<p>In practice, shareholders desiring to protect their rights through corporate, administrative and judicial remedies face various problems:</p> <p><i>Corporate remedies:</i> Ukrainian law does not establish clear procedures nor does it mandate that such procedures be spelled out in the constituent documents of a company, under which an aggrieved shareholder could appeal to the company's supervisory board for redress. Moreover, Ukrainian law does not impose a positive obligation on the board to redress the wrongdoing caused to a shareholder if such redress is within the board's competence. Further, the law does not contemplate any specific sanctions for the breach by members of a company's supervisory board and/or management of their duties before the shareholders, including sanctions for the breach of the fiduciary duty. Moreover, the concept of "fiduciary duty" or the "care/prudence duty" before shareholders is not legislatively defined.</p> <p><i>Administrative remedies:</i> Ukrainian law does not expressly stipulate those situations where shareholders would have standing to appeal to the Securities Commission, except for cases involving the registration of shareholders at shareholders' meetings. In addition, while the Securities Commission</p>		<p>Shareholders may appeal to the Securities Commission and its regional offices, in order to bring to light violations of securities laws committed by joint stock companies, securities traders and other entities. However, the Securities Commission does not have authority to adjudicate cases involving complaints filed by individual shareholders, which is the prerogative of courts.</p> <p>The Securities Commission and its regional offices are vested with broad regulatory and enforcement authorities in the securities area, including among others :</p> <ul style="list-style-type: none"> ▪ Control and supervision of compliance with securities laws and regulations; ▪ Suspension and/or termination of special licenses (permits) issued by the Securities Commission to securities traders and issuers (i.e., joint stock companies); ▪ Action in case of issuance or circulation of shares in violation of securities law; ▪ Control over the securities market; ▪ Audits and inspections of issuers (i.e., joint stock companies), securities traders, securities exchanges and self-regulatory organisations; ▪ Furnishing of information and records to law enforcement agencies with respect to facts of offences punishable by criminal and administrative sanctions;

	<p>has broad powers regarding securities regulation and control, it lacks the specific authority to accept and adjudicate cases involving securities filed by individual shareholders or other interested persons.</p> <p><i>Judicial remedies:</i> Judicial remedies are the most effective means for shareholders to protect their rights in Ukraine. In this regard two practical points should be noted. Firstly, shareholder and other rights need to be expanded and further detailed to ensure maximum protection through judicial remedies. Lack of adequate legislative definitions of violations in the corporate law area (such as self-dealing) result in the infrequent application of judicial remedies for certain actions or practices infringing on rights of shareholders. Secondly, Ukrainian courts are backlogged with cases, and oftentimes it takes months for a shareholder to have his case reviewed by the court, not to mention the time required to obtain relief. Moreover, the law provides no judicial procedures under which courts would be authorised to intervene and grant temporary (injunctive) relief to shareholders, in order to prevent violations which are difficult to remedy, for instance to delay the holding of a shareholders' meeting, if certain shareholders are unreasonably denied registration or otherwise precluded from attending and voting at the shareholders' meeting. Thus, if such shareholders' meeting has a 60% + 1 quorum and complied with all formalities, the aggrieved shareholders practically have no chance to have any decisions adopted by the meeting subsequently annulled.</p>		<ul style="list-style-type: none"> ▪ Furnishing of information and records to the Antimonopoly Committee in the event of uncovering of antimonopoly law violations; ▪ Imposition of administrative fines, penalties and other sanctions for violation of applicable law on securities traders, up to cancellation of licenses.

70. Does the corporate governance framework recognise the rights of stakeholders as established by law?	As a general matter, yes, although at the basic level the law does not adequately define shareholders' rights or permit shareholders adequate redress for violations of their rights.		
71. What are the main current pitfalls in addressing their rights by the corporate governance framework?	Lack of legislation explicitly defining violations of shareholders rights and remedies therefor		Parliament has adopted a new Commercial Code, which recently was signed by the President. A law on joint stock companies is under consideration in Parliament
72. At this stage of development of the corporate sector, which are the most important stakeholder groups in your country?	Ukrainian financial-industrial groups, investment funds, banks, international financial institutions		
73. Are institutional investors important stakeholders in the corporate governance landscape of your country?	Yes		
74. Is there a practice by boards of disclosing how the interest of stakeholders are being protected?	No, although Decree # 280/2002 contemplates strengthening the role of the board in representing and protecting shareholder interests.		