



I. THE RIGHTS OF SHAREHOLDERS

The corporate governance framework should protect shareholders' rights.

№	OECD Principle	Current legislation of Ukraine
A.	<p>Basic shareholder rights include the right to:</p> <p>1) secure methods of ownership registration;</p>	<p>Maintaining registers of securities owners includes accounting for and storing for a certain period, information about owners of registered securities and transactions resulting in the making of changes to the register of owners of registered securities.¹</p> <p>Depository accounting is accounting for securities in accounts of securities owners with keepers or accounting in securities accounts maintained by the depository for keepers and issuers.²</p> <p>Ownership to securities is confirmed by a certificate and should securities be immobilized or issued in a non-documentary form – a statement from the securities account, which the keeper is obliged to provide to the owner of securities.³</p> <p>Changes to the register of transfer of ownership to registered securities based on civil agreements are made by the registrar based on the following documents:</p> <ol style="list-style-type: none"> 1) transfer order; 2) owner's securities certificate; 3) an original or notarized copy of the civil agreement supporting the transfer of ownership to securities; 4) documents confirming the powers of third parties to act on behalf of the registered person.⁴ <p>The register system should be maintained in such manner as to enable the restoration of the lost data regarding registered persons, securities belonging to them and circumstances of making changes to the register.⁵</p>



<p>4) participate and vote in general shareholder meetings;</p> <p>5) elect members of the board;</p> <p>6) share in the profits of the corporation.</p>	<p>Company participants shall be entitled to obtain information about company's operations. On demand of a participant, the company shall be obliged to provide him with annual balance sheets and reports of the company on its operations as well as minutes of meetings for reading.¹⁴</p> <p>The Company CEO shall organize the maintenance of minutes of Management meetings. The book of minutes must be provided to the shareholders any time. Certified excerpts from the book of minutes shall be provided to the shareholders on their demand.¹⁵</p> <p>Company participants shall be entitled to participate in managing company's affairs in accordance with the procedure determined in the company constituent documents, except for cases provided by law.¹⁶</p> <p>An owner of the security has the right to participate in management of the company (except for owners of preferred shares).¹⁷</p> <p>All shareholders irrespective of the number and class of their shares have the right to participate in the General Shareholders' Meeting.¹⁸</p> <p>General Shareholders' Meeting has the power to: 1) elect and recall members of the company board of directors; 2) elect and recall members of the executive body and the audit committee.¹⁹</p> <p>Company participants have the right to share in company profits and obtain their portion (dividends). Persons who are participants in the company as of the beginning of the period, for which dividends are being paid, shall be entitled to obtain a portion of the profits (dividends).²⁰</p> <p>The owner of a share has the right to obtain a portion of the company profits.²¹</p>
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		<p>The exclusive power of the general shareholders' meeting includes approving the procedure on profits distribution, the term and procedure to pay a portion of the profits (dividends).²²</p>
<p>B.</p>	<p>Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as:</p> <p>1) amendments to the statutes, or articles of incorporation or similar governing documents of the company;</p> <p>2) the authorisation of additional shares;</p>	<p>Before convening the general shareholders' meeting, the shareholders must be provided with an opportunity to read the documents related to the meeting's agenda.²³</p> <p>General shareholders' meeting has an exclusive competence to make changes to the company charter.²⁴</p> <p>General shareholders' meeting adopts decisions by a ¾ majority of votes of the shareholders participating.²⁵</p> <p>If the agenda includes an issue of changing the company charter fund, the following information should be published together with the agenda:</p> <ul style="list-style-type: none"> a) reasons, manner and the minimum amount of increasing or decreasing the charter fund; b) draft changes to the company charter related to increasing or decreasing the charter fund; c) information about the number of shares issued additionally or canceled and their total value; d) information about the new par value of the shares; e) shareholders' rights on additional issue or cancellation of shares; f) dates of the beginning and end of subscription to the additionally issued shares or of their cancellation; g) procedure on reimbursing the owners of the shares for the losses related to changes in the charter fund.²⁶ <p>Resolution to issue shares is made by the founders of the company or the general</p>



	<p>3) extraordinary transactions that in effect result in the sale of the company.</p>	<p>shareholders' meeting of the company.²⁷</p> <p>The company charter fund increase by no more than 1/3 may be authorized by a resolution of management provided that it is stipulated in the charter.²⁸</p> <p>Powers of the general shareholders' meeting include approving agreements for the amount exceeding that specified in the company charter.²⁹</p> <p>Within two days, the issuer shall be obligated to send information about obtaining a loan or issuing shares in the amount exceeding 50 per cent of the charter capital or the sum of issuers fixed and current assets to the stock exchange and the registration authority and also to publish such information in the official newspaper of the stock exchange.³⁰</p>
<p>C.</p>	<p>Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</p>	<p>All shareholders irrespective of the number and class of shares owned by them shall have the right to participate in the general shareholders' meeting. Entitled to participate in the general shareholders' meeting will be the persons owing shares as of the day when the general meeting is held (except for the constituent meeting).³¹</p> <p>Powers of the general shareholders' meeting shall include approving rules of order and other bylaws of the company.³²</p>
<p>1.</p>	<p>Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings,</p>	<p>Holders of registered shares shall be notified of the general shareholders' meeting personally in a manner stipulated by the charter. Besides, a general notice shall be published in the local press at the location of the company and in one of official newspapers of the Verkhovna Rada of Ukraine, of the Cabinet of Ministers of Ukraine or the Securities and Stock Market State Commission, indicating the time and venue of holding the meeting and its agenda. The notice must be given not later than 45 days in advance of calling the general shareholders' meeting.³³</p>



	as well as full and timely information regarding the issues to be decided at the meeting.	<p>Decisions to make changes in the agenda should be communicated to all the shareholders not later than 10 days before the meeting and in accordance with the procedure stipulated by the charter.³⁴</p> <p>Before convening the general shareholders' meeting, the shareholders should be provided with an opportunity to read the documents relating to the meeting agenda.³⁵</p>
2.	<p>Opportunity should be provided for shareholders to ask questions of the board and</p> <p>to place items on the agenda at general meetings, subject to reasonable limitations.</p>	<p>Powers of the general shareholders' meeting shall include approving the annual results of company operations.³⁶</p> <p>Any shareholder shall be entitled to make proposals concerning the agenda of the general shareholders' meeting not later than 30 days in advance of their calling. A resolution to include these proposals in the agenda shall be made by the company executive body. Proposals from the shareholders owning more than 10 per cent of the shares shall be included in the agenda in an obligatory fashion.³⁷</p>
3.	Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.	<p>Shareholder's delegating his authority to another person shall be done in accordance with law. A power of attorney to participate in and vote at the general shareholders' meeting may be attested by the registrar or management of the company.³⁸</p> <p>The voting rights may be delegated by a shareholder to another natural or legal person by proxy issued in accordance with the requirements of law or under a commission agreement.³⁹</p>
D.	Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.	<p>The section of the issuer's annual report "Issuer Background" shall include information on persons owning 5% and more shares of the issuer.⁴⁰</p> <p>Legal entities who are in the business of maintaining registers of owners of</p>



		registered securities and are depositaries shall be obligated to provide the Securities and Stock Market State Commission with information about owners of 10% and more of issuers' shares or holders of shares. ⁴¹
E.	Markets for corporate control should be allowed to function in an efficient and transparent manner.	no
1.	<p>The rules and procedures governing the acquisition of corporate control in the capital markets,</p> <p>and extraordinary transactions such as mergers, and</p> <p>sales of substantial portions of corporate assets,</p> <p>should be clearly articulated and disclosed so that investors understand their rights and recourse.</p>	<p>Preliminary approval of the Antimonopoly Committee shall be mandatory in the following cases: 1) direct or indirect, one-time or repeated purchase or obtaining into administration of the shares, which ensures reaching or exceeding 25% of votes in the company highest governance body, 2) acquiring control over one or several companies in a different way.⁴²</p> <p>Actions undertaken by companies on share issues during reorganization by merger:</p> <p>1) higher body of each company's making the decision to approve the draft merger agreement (the texts of the draft agreements approved by higher bodies of each reorganized company should be identical</p> <p>2) securing approval of the Antimonopoly Committee of Ukraine for merger of companies (in cases stipulated by current legislation);</p> <p>3) assessment and purchasing of shares from the shareholders by the company which is being reorganized.⁴³</p> <p>It shall not be allowed to decrease the charter fund, if company creditors object to it.⁴⁴</p> <p>Powers of the general shareholders' meeting include approving agreements for the amount exceeding that indicated in the company charter.⁴⁵</p> <p>Within two days, the issuer shall be obligated to send information about changes in its operations that impact the value of securities or the amount of yield on those to the stock exchange and the registration authority and to publish this information in the official newspaper of the stock exchange. Namely,</p>



- a) changes in rights to securities;
- b) staff changes;
- c) attachment of issuer's bank accounts;
- d) commencement of receivership procedures (a set of measures aimed at reaching financial soundness of the issuer);
- e) reorganization, interruption or termination of issuer's operations;
- f) perishing of not less than 10 per cent of issuer's property as a result of force majeure circumstances;
- g) advancing a claim against the issuer for the amount exceeding 10 per cent of the chartered fund or the sum of issuer's fixed and current assets;
- h) obtaining a loan or issue of securities in the amount exceeding 50 per cent of the charter fund or the sum of issuer's fixed and current assets.⁴⁶

Within three days of its appointment, the liquidation committee shall publish information about the company in one of official (nationwide and local) publications indicating the deadline to submit creditor claims, assess the available company assets, identifies its debtors and creditors and settle accounts with those, takes measures to repay company debts to third parties and its participants, compiles the liquidation balance sheet and submits it to the company highest body or the body that appointed the liquidation committee.⁴⁷

Reorganization of companies having payables should be subject to requirements of debts transfer stipulated by Art. 201 and 202 of the Civil Code.⁴⁸

Debtor's transfer of his debt to another person shall be allowed only subject to the creditor's consent.⁴⁹

The company shall sell its products and assets at prices determined independently or in accordance with an agreement, and in cases stipulated by Ukrainian statutes – at State prices. Accounts with foreign partners shall be settled at contract prices that are formed in accordance with terms and prices of the world market.⁵⁰

Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.



		<p>Taxpayer's losses incurred in connection with the sale of goods (work, services) or their exchange at prices that are lower than ordinary prices to such taxpayer's related persons shall not be tax deductible.⁵¹</p> <p>Ordinary price is the price of selling goods (work, services) that may be obtained in the event of their sale to persons not related to the seller under ordinary business conditions.⁵²</p>
2.	Anti-take-over devices should not be used to shield management from accountability.	no
F.	Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights.	no

¹ Law of Ukraine "On National Depository System and Specifics of Electronic Circulation of Securities in Ukraine" of 10 December 1997, № 710/97-VR, para. 4 page. 9.

² Provision on depository activity approved by Resolution # 61 of Securities and Stock Market State Commission of 26 May 1998, para 1.2., section 5.

³ Law of Ukraine "On National Depository System and Specifics of Electronic Circulation of Securities in Ukraine" of 10 December 1997, № 710/97-VR, para. 4 page. 5.

⁴ Provision on procedure to maintain registers of owners of registered securities approved by Resolution # 60 of Securities and Stock Market State Commission of 26 May 1998, para 7.16.

⁵ *ibid.*, para. 3.2.

⁶ Provision on depository activity approved by Resolution # 61 of Securities and Stock Market State Commission of 26 May 1998, #61, para 5.11.6.

⁷ Provision on procedure to maintain registers of owners of registered securities approved by Resolution # 60 of Securities and Stock Market State Commission of 26 May 1998, № 60, para 7.9., section 4.

⁸ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 10, para. в).

⁹ Law of Ukraine "On Securities and Stock Market" of 18 June 1991, № 1201-XII, Art. 1, section 4.

¹⁰ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 28, section. 2.

¹¹ State privatization program for 2000 - 2002, approved by the Law of Ukraine "On State Privatization Program" of 18 May 2000, № 1723-III, para 143.

¹² Law of Ukraine "On Securities and Stock Market" of 18 June 1991, № 1201-XII, Art. 24, sections 1 and 2.

¹³ *ibid.*, Art. 25, section. 1.

¹⁴ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 10, para. р).

¹⁵ *ibid.*, Art. 48, para 2.



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- ¹⁶ *ibid.*, Art. 10, para. a).
- ¹⁷ Law of Ukraine "On Securities and Stock Market" of 18 June 1991, № 1201-XII, Art. 5, section 1.
- ¹⁸ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 41, section 1.
- ¹⁹ *ibid.*, Art. 41, section. 5, para в) and r).
- ²⁰ *ibid.*, Art. 10, para. в).
- ²¹ Law of Ukraine "On Securities and Stock Market" of 18 June 1991, № 1201-XII, Art. 5, section 1.
- ²² Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 41, section 5, para. д), sec. 6
- ²³ *ibid.*, Art. 43, para 3.
- ²⁴ *ibid.*, Art. 41, sec. 5, para. б), sec. 6.
- ²⁵ *ibid.*, Art. 42, sec. 1.
- ²⁶ *ibid.*, Art. 40.
- ²⁷ Law of Ukraine "On Securities and Stock Market" of 18 June 1991, № 1201-XII, Art. 6, sec. 1.
- ²⁸ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 38, sec. 4.
- ²⁹ *ibid.*, Art. 41, sec. 5, para i).
- ³⁰ Law of Ukraine "On Securities and Stock Market" of 18 June 1991, № 1201-XII, Art. 25, sec. 1, para ж).
- ³¹ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 41, sec. 1 and 2.
- ³² *ibid.*, ст. 41, ч. 5, п. ж).
- ³³ *ibid.*, ст. 43, ч. 1 .
- ³⁴ *ibid.*, ст. 43, ч. 2.
- ³⁵ *ibid.*, ст. 43, ч. 3.
- ³⁶ *ibid.*, ст. 41, ч. 5, п. д).
- ³⁷ *ibid.*, ст. 43, ч. 2.
- ³⁸ *ibid.*, ст. 41, ч. 3.
- ³⁹ State privatization program for 2000 - 2002, approved by the Law of Ukraine "On State Privatization Program" of 18 May 2000, № 1723-III, para 139.
- ⁴⁰ Provision on providing regular information by open joint stock companies and companies-issuers of bonds, approved by Resolution of the Securities and Stock Market State Commission of 9 June 1998, # 72 (as revised by Resolution № 3), Annex. 5, of the Securities and Stock Market State Commission of 17 January 2000).
- ⁴¹ Resolution № 72, para 1, of the Securities and Stock Market State Commission "On Protection of Investors' Rights in the Securities Market" of 7 June 2000.
- ⁴² Provision on control over economic concentration approved by executive order of the Antimonopoly Committee of Ukraine of 25 May 1998 № 31-р), para 4.10. and 4.16.
- ⁴³ Provision on procedure to register share issues on reorganization of companies, approved by Resolution № 221, para 2.2, of the Securities and Stock Market State Commission of 30 December 1998
- ⁴⁴ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 16, sec. 3.
- ⁴⁵ *ibid.*, ст. 41, ч. 5, п. і).
- ⁴⁶ Law of Ukraine "On Securities and Stock Market" of 18 June 1991, № 1201-XII, Art. 25, section 1.
- ⁴⁷ Law of Ukraine "On Business Companies" of 19 September 1991, № 1576-XII, Art. 20, para 2.
- ⁴⁸ Provision on procedure to register share issues on reorganization of companies, approved by Resolution № 221, para 1.6, of the Securities and Stock Market State Commission of 30 December 1998
- ⁴⁹ Civil Code of Ukraine, Art. 201.
- ⁵⁰ Law of Ukraine "On Companies in Ukraine" of 27 March 1991, № 887-XII, Art. 23, para 1.
- ⁵¹ Law of Ukraine "On Corporate Profit Tax" of 28 December 1994, № 334/94-VR, para 5.3.9., sec 2.



⁵² *ibid.*, para. 1.20., sec. 1.

