

III. THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

№	OECD Principle	Current legislation
A.	<p>The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.</p>	<p>Decisions on social and economic issues concerning activities of the company are developed and adopted by its governance bodies with the participation of company personnel and bodies authorized by the latter¹.</p> <p>Transfer by a debtor of his debt to another person shall be allowed only upon consent by the creditor².</p> <p>Reorganization of joint stock companies having payables should be done with due regard to requirements of debts transfer³.</p> <p>It shall not be allowed to decrease the charter fund, if there are objections by company creditors⁴.</p> <p>On liquidation of the company, the contribution of a member of company personnel shall be paid to the latter in the monetary form or in the form of securities, after creditors' claims have been satisfied Assets that remain after creditors and company personnel's claims have been satisfied, shall be used upon direction of the owners (other shareholders)⁵.</p> <p>Claims to return contributions of company personnel to the chartered</p>



		fund shall be considered creditor claims and shall be fifth in line to be satisfied ⁶ .
B.	If their interests are protected by law, the stakeholders should be able to use effective remedies in the event of violation of their rights.	<p>To safeguard creditors' property interests the ruling of an arbitration court to start bankruptcy proceedings or the preliminary ruling shall indicate that a receiver is appointed to administer company assets⁷. Creditors have the right to propose a candidate for the receiver⁸. After appointing the receiver, debtor's governance bodies shall not be entitled to resolve on:</p> <ul style="list-style-type: none"> reorganization (merger, acquisition, division, spin off, transformation) and liquidation of the debtor; establishment of legal entities or participation in other legal entities; establishment of branches and representations; payment of dividends; issue of securities by the debtor; withdrawal from the debtor's participants of a legal entity, purchasing from the shareholders of the debtor's shares issued previously⁹. <p>A decision to participate in associations, unions, holding companies, industry and financial groups or other groups of legal entities shall be made by debtor's governance bodies upon consent of the receiver¹⁰. Manager or debtor's governance body with approval of the receiver shall enter into agreements on:</p> <ul style="list-style-type: none"> transfer of real property into lease, pledge, contributing the said property to the chartered fund of a business company or disposing of such property in other manner; obtaining and issuing loans, guarantees, ceding claims, transferring debts and transferring debtor's property into trusteeship; disposing of other debtor's property whose book value exceeds 1% of the book value of debtor's assets¹¹. <p>Appointment of a receiver shall not justify termination of authority of</p>



		the debtor's manager or management body ¹² . Authority of debtor's manager or debtor's governance bodies vested in them in accordance with law or constituent documents may be terminated, if they do not take measures to preserve debtor's assets, create obstacles for the receiver or commit other violations of law. In such event, following a petition of the creditor committee, the receiver will be appointed temporarily to discharge functions of the debtor's manager in accordance with a ruling of a court of arbitration, before a new debtor's manager is appointed in accordance with the procedure established by law and debtor's constituent documents ¹³ .
C.	The corporate governance framework must allow for participation of stakeholders in measures to enhance the effectiveness of company operations.	The charter of any company in Ukraine shall define the competence and powers of company personnel and their elected bodies and the body entitled to represent company personnel (company personnel council, company council, trade union committee, etc.) ¹⁴ . Aggregate taxable income received during the taxable period shall not include the income used at the source of their obtaining for purchasing shares and the amounts invested in reconstruction and expansion of production of business entities ¹⁵ .
Г.	If the stakeholders participate in the corporate governance process, they should have access to relevant information.	No special legislation. General rules – see “Disclosure and Transparency.”

¹ Para 3 Art. 14 of the Law of Ukraine “On Companies in Ukraine”

² Chapter 1 Art.201 of the Civil Code of Ukraine

³ Provision on procedure to register share issues and information about the issue on reorganization of companies, approved by Resolution № 221 of the Securities and Stock Market State Commission of 30 December 1998.

⁴ Art. 16 of Law of Ukraine “ On business companies”

⁵ Art. 36 of Law of Ukraine “On Companies in Ukraine”

⁶ Section 1, Art. 31 of Law of Ukraine “On Renewing Debtor's Solvency or Recognizing it as Bankrupt”



⁷ Section 1, Art. 13 of Law of Ukraine “On Renewing Debtor’s Solvency or Recognizing it as Bankrupt”

8 Section 2 Art 13 of Law of Ukraine “On Renewing Debtor’s Solvency or Recognizing it as Bankrupt”

9 Section 11 Art 13 Law of Ukraine “On Renewing Debtor’s Solvency or Recognizing it as Bankrupt”

10 Section 12 Art. 13 Law of Ukraine “On Renewing Debtor’s Solvency or Recognizing it as Bankrupt”

11 Section 13 Art. 13 Law of Ukraine “On Renewing Debtor’s Solvency or Recognizing it as Bankrupt”

12 Section 15 Art 13 Law of Ukraine “On Renewing Debtor’s Solvency or Recognizing it as Bankrupt”

13 Section 16 Art 13 Law of Ukraine “On Renewing Debtor’s Solvency or Recognizing it as Bankrupt”

14 para 2 Art 9 Law of Ukraine “ On companies in Ukraine”

15 para 1 “й”, Art. 5 Decree of the Cabinet of Ministers of Ukraine “On Personal Income Tax”

16 para 5.13 of Instructions “On Personal Income Tax” approved by Executive Order #12 of Head of the State Tax Inspectorate of Ukraine of 21 April 1993

