



# **2nd Meeting of the Eurasian Corporate Governance Roundtable**

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## *Transparency and Disclosure*

### **SURVEY – Ukraine**

by

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hosted by

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The Georgian Stock Exchange**

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with the support of



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**Disclaimer:**

**I hope that these answers are helpful, despite being limited. PLEASE NOTE: I did as much as I can, in the time I could spare from my general knowledge. I feel that these answers are fairly accurate and most importantly represent the situation in Ukraine fairly. HOWEVER, I DID NOT VERIFY EVERY SINGLE ANSWER in the legal and accounting books. Therefore, at least some mistakes are probable.**

**I also would like to note that the following people were inundated with phone calls and meetings to assist me:**

**Ethan Taylor (NCH Capital, Inc.), Julia Beliakova (NCH Capital, Inc.), Leonid Rakhlevski (Foyil Securities), Alexander Krishtal (Ukrnaftohas Registr). I thank them.**

**Alex Krakovsky**

## Questionnaire

### *A-What is the role of your institutions regarding financial and non-financial disclosure?*

#### **1. What is the role of your institution in establishing disclosure standards (specify)?**

We devise disclosure formats for the management in specific companies and projects where we are involved.

#### **2. What is the role of your institution in enforcing disclosure rules/ regulations (specify)? What sanctions can it impose?**

If the management does not comply with internally imposed disclosures, we can recommend to the board to limit management's authority or fire management.

#### **3. What are your institution's other roles and responsibilities (i.e. licensing, training, etc.)?**

*Restructuring enterprises, representing clients in negotiating transactions to acquire or sell blocks of shares or control.*

### *B- Country background information*

#### **1. Number of Joint Stock Companies:**

##### 1.1 Number of Open Joint Stock Companies (publicly listed / traded companies):

There are roughly 12,000 OJSC, about 120 are "listed," and there is no reliable information as to how many are traded. In general, about 10 companies are traded at least once per week. Most companies that are listed are not traded even once per month. The ones that trade, trade very little. Some non-listed companies trade, but mostly this is market for corporate control. A better question is "HOW MANY COMPANIES ARE REPORTING TO THE SECURITIES AND STOCK MARKET COMMISSION." I HAVE NOT CHECKED THIS INFORMATION YET, but my guess is roughly 8,000 to 9,000 companies report to the SSMC.

##### 1.2 Number of Closed Joint Stock Companies (non publicly listed / traded limited companies):

There are roughly 23,000 CJSC. Of those, some report to the SSMC. I do not know how many. SSMC report shows the total quantity of companies, but not how many report.

### *C- Does the corporate governance framework ensure that timely and accurate disclosure is made on all material matters regarding the corporation?*

#### **1. Is the company required to prepare annual (or more frequent) audited financial statements showing the financial performance and the financial situation of the company?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

YES. FOR REPORTING COMPANIES, THIS IS REQUIRED BY THE SSMC REGULATION AND PFTS EXCHANGE.

Is this applied in practice?

USUALLY. IT IS NOT UNCOMMON FOR SSMC TO NOT HAVE SOME REPORTS.

What are the enforcement procedures? Are there any sanctions (specify)?

THERE IS A FINE LEVIED ON THE COMPANY FOR FAILURE TO PROVIDE INFORMATION. GENERALLY, THIS IS ENFORCED IF THERE IS PRESSURE FROM ACTIVE SHAREHOLDERS ON SSMC. I AM NOT SURE OF THE AMOUNTS.

PFTS CAN DELIST A COMPANY THAT FAILED TO REPORT. PFTS WILL ALSO DISSEMINATE ALL MATERIAL THAT IT CONSIDERS SHOULD BE PUBLIC, REGARDLESS OF HOW THE INFORMATION WAS OBTAINED.

**2. Is consolidated financial reporting required for corporate groups? On what basis?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

100% SUBSIDIARIES ARE REQUIRED TO CONSOLIDATE BY THE NEW RULES OF UKRAINIAN ACCOUNTING.

Is this applied in practice?

THESE RULES ARE NEW, SO I CAN NOT JUDGE HOW THIS IS APPLIED.

What are the enforcement procedures? Are there any sanctions (specify)?

I DO NOT KNOW. THIS REQUIRES CAREFUL EXAMINATION OF NEW ACCOUNTING RULES AND SECURITIES REGULATIONS.

**3. Is the company required to include in annual reports :**

**3.1 Company objectives and strategy?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THE REGULATION OF THE SSMC REQUIRES ANSWERS TO SPECIFIC QUESTIONS THAT RELATE TO OBJECTIVES AND STRATEGY. FOR EXAMPLE, WHAT GOODS THE COMPANY SEES AS MOST STRATEGIC FOR THE FUTURE.

Is this applied in practice?

THIS REGULATION IS AS OF JANUARY 2000. I HAVE NOT OBSERVED YET HOW WELL THESE QUESTIONS ARE ANSWERED BY COMPANIES. ADDITIONALLY, I BELIEVE THIS IS A FORMAL REQUIREMENT, SINCE THE SUBSTANCE OF THESE STATEMENTS PROBABLY WILL NOT BE SCRUTINISED FOR A LONG TIME TO COME.

What are the enforcement procedures? Are there any sanctions (specify)?

A FINE CAN BE LEVIED. HOWEVER, I DO NOT HAVE THE DETAILS, AS IT WILL NEED CAREFUL REVIEW OF RELEVANT REGULATIONS.

### 3.2 Major share ownership and voting rights?

Is this required by the company law, securities law, stock exchange regulation or other related laws?

SSMC REGULATION REQUIRES THE COMPANY TO SUBMIT THE LIST OF ENTITIES WHO HAVE REGISTERED MORE THAN 5% OF THE SHARES.

ALSO, THEY ARE REQUIRED TO REPORT TO THE ANTI-MONOPOLY COMMITTEE (AMC) OWNERSHIP OVER 10%, AND OWNERS OVER 25% IN LARGE COMPANIES MUST FILE WITH ANTI-MONOPOLY COMMITTEE, HOWEVER THE FILINGS WITH AMC CAN BE CONFIDENTIAL AT THE DISCRETION OF AMC.

Is this applied in practice?

YES, BUT REPORTS TO THE SSMC IS ONLY AT THE FIRST LEVEL. REPORTING REQUIREMENT DOES NOT REQUIRE BENEFICIAL OWNER REPORTING. AMC REQUIRES BENEFICIAL OWNER REPORTING.

What are the enforcement procedures? Are there any sanctions (specify)?

A FINE FOR NON-COMPLIANCE (DO NOT KNOW THE AMOUNT). AMC CAN ALSO REQUIRE: A) THAT REPORT BE FILED WITH AMC EVEN IF THE COMPANY IS SMALL, B) THE REVERSAL OF SHARE ACQUISITION IF THE COMPANY IS LARGE. FINE CAN ALSO BE LEVIED.

### 3.3 Related party transactions (management's direct or indirect interest in any material transaction to which the company or any of its subsidiaries was or is to be a party)?

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THE COMPANY LAW FORBIDS MANAGERS FROM TAKING POSITION IN SOME RELATED ENTITIES, BUT IT DOES NOT FORBID THEIR RELATIVES, AND DOES NOT REQUIRE DISCLOSURE.

POSSIBLY, THERE IS AN SSMC REGULATION TO THAT EFFECT, BUT I HAVE NOT SEEN IT.

THE NEW ACCOUNTING RULES REQUIRE DISCLOSURE OF RELATED COMPANY TRANSACTIONS, BUT IT IS NOT CLEAR HOW THIS RULE WORKS IN PRACTICE.

Is this applied in practice?

AS ABOVE, YES.

What are the enforcement procedures? Are there any sanctions (specify)?

SOMETIMES SHAREHOLDERS THEMSELVES TRY TO TAKE ACTION TO LIMIT MANAGEMENT. SSMC, KRU (CONTROL AND AUDIT DEPARTMENT) AND EVEN THE MINISTRY OF THE INTERIOR USUALLY RESPONDS TO SHAREHOLDER COMPLAINTS ABOUT CONTRACTS THAT ARE OBVIOUSLY UNFAVOURABLE TO THE COMPANY, BUT TO AN ENTITY RELATED TO MANAGEMENT. HOWEVER, THESE ORGANISATIONS DO NOT USUALLY TAKE ACTION ON THEIR OWN.

SHAREHOLDERS CAN INITIATE/TAKE ACTION. THERE IS NO SPECIFIED PROCEDURE TO THE BEST OF MY KNOWLEDGE.

3.4 The identity and the professional background of board members and key executives, and their individual or collective remuneration?

Is this required by the company law, securities law, stock exchange regulation or other related laws?

IDENTITY IS REQUIRED BY COMPANY LAW, SSMC AND PFTS. PROFESSIONAL BACKGROUND IS NOT REQUIRED, BUT SOMETIMES DEMANDED BY THE SHAREHOLDERS. GENERALLY, REMUNERATION HAS NOT BEEN DISCLOSED, BUT I DO NOT KNOW IF ANY RULING EXISTS TO THAT EFFECT.

INFORMATION ABOUT THE PROFESSIONAL BACKGROUND AND REMUNERATION HAD BEEN REQUESTED BY PFTS, BUT IT IS NOT A CONDITION OF LISTING TO DISCLOSE THIS INFORMATION ON CONTINUING BASIS.

Is this applied in practice?

YES.

What are the enforcement procedures? Are there any sanctions (specify)?

NONE, EXCEPT SHAREHOLDERS TAKING ACTION AND PUSHING THROUGH WHATEVER CHANNELS THY CAN.

LISTED COMPANIES CAN BE DELISTED.

3.5 Directors' and key executives' ownership interest in company shares?

Is this required by the company law or by the stock exchange regulation?

COMPANY LAW REQUIRES THAT A DIRECTOR MUST BE A SHAREHOLDER. DISCLOSURE OF THE QUANTITY OF SHARES IS NOT REQUIRED.

Is this applied in practice?

YES

What are the enforcement procedures? Are there any sanctions (specify)?

SHAREHOLDERS CAN COMPLAIN TO THE SSMC IF A DIRECTOR IS NOT A SHAREHOLDER. ALSO, IN THEORY, THE DECISIONS OF THE BOARD CAN BE OVERTURNED IF THE DIRECTOR IS NOT A SHAREHOLDER OR SHAREHOLDER'S REPRESENTATIVE.

3.6 Material foreseeable risk factors (trends or uncertainties that are expected to have or have had a material impact on the company)?

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THERE ARE SOME SPECIFIC QUESTIONS TO THAT EFFECT IN THE SSMC REGULATIONS.

Is this applied in practice?

I DO NOT KNOW HOW WELL THIS IS REPORTED BECAUSE THESE SSMC FORMS ARE NEW

What are the enforcement procedures? Are there any sanctions (specify)?

IN THEORY, FINES CAN BE LEVIED. I WOULD BE SURPRISED IF ANY SANCTIONS HAD EVER BEEN APPLIED IN PRACTICE.

3.7 Material issues regarding employees and other stakeholders (management-employee relations, business ethics, environment, or other public policy concerns)?

SAME AS 3.6

Is this required by the company law, securities law, stock exchange regulation or other related laws?

Is this applied in practice?

What are the enforcement procedures? Are there any sanctions (specify)?

3.8 The governance / organisational structure of the company (i.e. key positions in the company)?

Is this required by the company law, securities law, stock exchange regulation or other related laws?

IT IS REQUIRED TO BE STATED IN THE CHARTER OR BI-LAWS BY THE COMPANY LAW. REPORTING COMPANIES MUST MAKE THESE DOCUMENTS PUBLIC.

Is this applied in practice?

YES

What are the enforcement procedures? Are there any sanctions (specify)?

THE OFFICERS OF THE COMPANY WILL NOT HAVE LEGAL AUTHORITY UNLESS THIS IS DONE: THE CONTRACTS WILL NOT BE ENFORCEABLE, THE BANK WILL NOT ACCEPT THE SIGNATURE, THE STATE WILL NOT ACCEPT COMPANY REPORTS SIGNED

BY OFFICERS WHO ARE NOT IDENTIFIED TO A PARTICULAR POST IN THE CHARTER OR BI-LAWS.

2.9 An analysis of the company's operational results?

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THE SSMC REGULATIONS HAS SPECIFIC QUESTIONS THAT RELATE TO THE ANALYSIS OF COMPANY'S OPERATIONS.

THE MANAGERS ARE ALSO EXPECTED TO MAKE A STATEMENT TO THAT EFFECT AT THE SHAREHOLDER'S MEETING.

Is this applied in practice?

THE SECURITIES RELEVANT REGULATION IS RELATIVELY NEW, AND I DO NOT KNOW HOW WELL IT IS APPLIED.

AT THE SHAREHOLDER MEETING USUALLY, MANAGERS SAY ANYTHING THEY WANT. AT A RECENT SHAREHOLDER MEETING I ATTENDED, THE MANAGER WAS THREATENING HIS ENEMIES IN HIS REPORT AND USING VULGARITIES. THE REPORT WAS ACCEPTED. WHILE SUCH EXTREME IS NOT COMMON, THE MANAGEMENT REPORTS ARE USUALLY CONSIDERED UNSUBSTANTIAL AND INCONSEQUENTIAL.

What are the enforcement procedures? Are there any sanctions (specify)?

SEE APPENDIX A

**4. Is the company required to disclose extraordinary developments affecting the company (i.e. mergers/acquisitions, resignation of key executives, filing for bankruptcy, etc.)**

MERGERS AND ACQUISITIONS MUST BE APPROVED AT THE SHAREHOLDER MEETING. RESIGNATION OF KEY EXECUTIVES USUALLY HAVE TO BE REPORTED TO THE SSMC, PFTS (IF LISTED) AND TO THE REGISTRAR, BUT NO DIRECT NOTIFICATION TO SHAREHOLDERS IS REQUIRED WITH REGARD TO EXECUTIVE RESIGNATIONS.

PFTS PUBLISHES THIS INFORMATION ON THE WEB.

**5. What accounting standards are used?**

**4.1 Are companies required to prepare accounts in accordance with local or recognised International Accounting Standards (specify)?**

A UKRAINIAN VERSION OF IAS IS REQUIRED BY SSMC.

Is this required by the company law, securities law, stock exchange regulation or other related laws?

SECURITIES LAW.

Is this applied in practice?

THIS IS THE FIRST YEAR THE REPORTS WILL BE COMING IN. WE CAN DETERMINE AT THAT TIME.

What are the enforcement procedures? Are there any sanctions (specify)?

IF STATEMENTS ARE NOT SUBMITTED TO THE SSMC, FINE CAN BE IMPOSED PFTS CAN DELIST.

4.2 What are the major differences between the local and International Accounting Standards?

UKRAINIAN ADJUSTED IAS ACCOUNTING IS STILL HEAVILY FOCUSED ON FORM OVER SUBSTANCE. FOR EXAMPLE, WITH ONLY NINE AUDIT POINTS, AUDITORS DO NOT LOOK FOR PRINCIPLES, BUT FOR RULES.

4.3 What are, in your opinion, the major deficiencies of the local accounting standards?

LACK OF IAS QUALIFIED ACCOUNTANTS (ABOUT 50 IN THE ENTIRE COUNTRY) FOCUS ON FORM OVER SUBSTANCE.

4.4 Is there a programme for implementing IAS (specify)?

THERE IS A SSMC / USAID LEAD PROGRAM. I DO NOT KNOW THE DETAILS.

**5. Are the annual accounts required to be audited? If so how frequently and by whom?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

YES. SECURITY REGULATIONS REQUIRE THAT ALL REPORTED COMPANY ACCOUNTS BE AUDITED ACCORDING TO LOCAL STANDARDS.

Is this applied in practice?

THIS IS A NEW REQUIREMENT. ADDITIONALLY, UKRAINIAN AUDITING STANDARDS ARE VERY LIMITED AND LARGELY RELY ON FORM. HOWEVER, ACCORDING TO MY OBSERVATIONS, MOST COMPANIES ARE HAVING THEIR ACCOUNTS AUDITED.

What are the enforcement procedures? Are there any sanctions (specify)?

SINCE THIS IS A NEW REQUIREMENT, I DO NOT KNOW WHAT THE SANCTIONS ARE.

**6. What is the role of the board of directors in ensuring that the company complies with financial and non-financial disclosure requirements?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THERE IS NO SPECIFIC REQUIREMENT, HOWEVER THE BOARD HAS THE AUTHORITY, BUT NOT RESPONSIBILITY.

Is this applied in practice?

IN PRACTICE, THE BOARD OFTEN ENFORCES REPORTING IF THERE IS A MAJOR SHAREHOLDER WHO CONTROLS THE BOARD AND REQUIRES REPORTING HIMSELF.

What are the enforcement procedures? Are there any sanctions (specify)?

ONLY PRIVATE – THE BOARD OR THE SHAREHOLDER’S MEETING CAN SANCTION/FIRE MANAGEMENT OR CHANGE THE AUDIT COMMITTEE.

**7. What is the role of the management in ensuring that the company complies with financial and non-financial disclosure requirements?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

IT IS REQUIRED BY THE COMPANY LAW, SSMC REGULATIONS AND POSSIBLY OTHER LAWS THAT THE MANAGEMENT ORIGINATES REPORTING AND COMPLIANCE IN GENERAL.

Is this applied in practice?

THE MANAGERS TRY TO AVOID DISCLOSURE AS MUCH AS POSSIBLE, AND USUALLY TRY TO PROVIDE VERY LITTLE INFORMATION.

What are the enforcement procedures? Are there any sanctions (specify)?

THE SANCTIONS CAN BE TAKEN AGAINST THE COMPANY. I AM NOT AWARE OF ANY POSSIBLE SANCTIONS AGAINST THE MANAGEMENT, UNLESS THEY ARE PRIVATELY INITIATED THROUGH THE BOARD OR THE SHAREHOLDER MEETING.

**8. Are auditors required to be independent (e.g. no material relationships with the company including other fee-generating activities)?**

**If so, how is independence defined? Who appoints the auditor?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THE SSMC REGULATIONS NOW REQUIRE INDEPENDENT AUDITORS. GENERALLY, INDEPENDENT MEANS THAT THEY SHOULD BE OWNED BY THE COMPANY. HOWEVER, THERE MIGHT BE SOME SPECIFIC NEW REGULATIONS OF WHICH I AM NOT AWARE.

THE MANAGEMENT APPOINTS THE AUDITORS.

Is this applied in practice?

THIS IS A RELATIVELY NEW REGULATION, BUT TO THE BEST OF MY KNOWLEDGE MOST COMPANIES HAVE RETAINED AUDITORS THAT ARE INDEPENDENT AT LEAST IN FORM.

What are the enforcement procedures? Are there any sanctions (specify)?

THE COMPANY CAN BE FINED IF IT DOES NOT FILE AUDITED STATEMENTS WITH SSMC. HOWEVER, I DO NOT KNOW THE AMOUNTS.

**9. Are auditors liable (i.e. responsible) for negligence or other wrongdoing (specify)?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

I DO NOT KNOW. FIRST, THIS IS A NEW RULE. SECOND, UKRAINIAN AUDIT STANDARDS ARE ALSO NEW AND LIMITED IN SCOPES. THIRD, IT IS POSSIBLE THAT THERE IS A LAW OR PRINCIPLE OF LAW MAKING UKRAINIAN AUDITORS LIABLE, BUT I HAVE NOT STUDIED THIS ISSUE.

Is this applied in practice?

EVEN IF THERE IS SUCH LAW, THERE WOULD NOT HAVE BEEN ANY TIME TO TEST IT.

What are the enforcement procedures? Are there any sanctions (specify)?

DO NOT KNOW

Who has the right to seek redress (i.e. shareholders, managers, the state, or other stakeholders)?

DO NOT KNOW

**10. Does the legal framework require companies to disclose to a specific range of users (i.e. SRO's, shareholders, securities regulators, etc.)? If so, does the legal framework distinguish what information must be disclosed to specific users and when this information must be disclosed?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THE SECURITIES LAW REQUIRES SSMC REPORTING OF COMPANIES IF THEY HAVE OVER 500 SHAREHOLDERS. OBVIOUSLY, THE PFTS STOCK MARKET REQUIRES REPORTING OF ALL LISTED COMPANIES. THESE REPORTS ARE PUBLIC AND ARE THE EXTEND OF PUBLIC REPORTING TO ALL GROUPS.

THE COMPANY LAW REQUIRES THAT ALL COMPANIES REPORT TO SHAREHOLDERS AND THE BOARD.

PFTS AND SSMC HAVE SPECIFIC FORMS AND QUESTIONNAIRES THAT COMPANIES NEED TO FILE ANNUALLY.

SHAREHOLDERS IN ALL COMPANIES ARE SUPPOSED TO OBTAIN INFORMATION AT THE ANNUAL SHAREHOLDER MEETING ACCORDING TO COMPANY LAW (FINANCIAL AND MANAGEMENT REPORT) BUT THE CONTEXT OF THE MANAGEMENT REPORT IS NOT SPECIFIED. NON-REPORTING COMPANIES DO NOT NEED TO HAVE AUDITED STATEMENTS.

THE BOARD IS SUPPOSED TO GET MANAGEMENT REPORT AND FINANCIAL INFORMATION QUARTERLY, BUT THERE IS NO SPECIFIC REQUIREMENT TO PASS THIS INFORMATION ONTO SHAREHOLDERS.

Is this applied in practice?

IT IS, BUT TO THE EXTENT THE QUALITY OF INFORMATION IS MARGINAL. IT IS ALSO SOMETIMES DIFFICULT TO GET INFORMATION FROM SSMC (A TIP IS USUALLY REQUIRED)  
PFTS ACTIVELY DISSEMINATES VIA INTERNET AND SOMETIMES THE PRESS ALL INFORMATION ABOUT LISTED COMPANIES THAT IT CONSIDERS SHOULD BE PUBLIC, REGARDLESS OF THE SOURCE.

What are the enforcement procedures? Are there any sanctions (specify)?

SSMC CAN FINE AND SUE COMPANIES.  
PFTS CAN DELIST COMPANIES.  
SHAREHOLDERS CAN FILE COMPLAINTS AND CALLS FOR ACTIONS WITH SSMC (SSMC OFTEN RESPONDS), CHANGE MANAGEMENT, SUE COMPANIES.

**11. Do all shareholders receive a copy of the annual report and accounts or are they able to obtain them upon request?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

THE COMPANY LAW REQUIRES THAT THE SHAREHOLDERS OBTAIN BALANCE SHEET AND INCOME STATEMENT. THERE IS NO REQUIREMENT FOR COMPANY REPORT. MANAGEMENT AND BOARD REPORT MUST BE DELIVERED ORALLY AT THE AGM. SHAREHOLDERS CAN OBTAIN A PROTOCOL OF AGM WITH THE SUMMARY OF THAT REPORT.

Is this applied in practice?

NOT REALLY. SMALL SHAREHOLDERS ARE OFTEN TOLD THAT ACCOUNTS AND AGM PROTOCOL ARE COMPANY SECRETS. USUALLY, ACCOUNTS AND SHAREHOLDER MEETING PROTOCOLS OF REPORTING COMPANIES CAN BE OBTAINED FROM THE SSMC FOR A SMALL TIP AND A LITTLE INSIDE KNOWLEDGE OF SSMC (BY LAW THEY ARE OBTAINABLE FREELY).

What are the enforcement procedures? Are there any sanctions (specify)?

FORMALLY, SHAREHOLDERS CAN COMPLAIN TO THE SSMC.  
SSMC CAN ENFORCE THIS AND LEVY FINES AND FILE LAW SUITES.

**12. What are the channels of disclosure (i.e. dissemination through the press, over the internet, through the postal system)? Which are the most used?**

Is this required by the company law, securities law, stock exchange regulation or other related laws?

NOTHING SPECIFIC IS REQUIRED. USUALLY, ANY DISCLOSURE TO BE OBTAINED CAN BE OBTAINED IN PERSON, UNLESS THE COMPANY IS FULLY CONTROLLED BY THE CONTROLLING SHAREHOLDER.

ANNOUNCEMENT AND THE AGENDA OF THE SHAREHOLDERS MEETING MUST BE POSTED IN THE PRESS AND DELIVERED THROUGH THE MAIL.

PFTS USES INTERNET TO PUBLISH ANY AND ALL PUBLIC INFORMATION ABOUT LISTED COMPANIES IT HAS.

Is this applied in practice?

YES, AS ABOVE.

What are the enforcement procedures? Are there any sanctions (specify)?

THE SHAREHOLDER MEETING CAN BE CALLED INVALID IF IT WAS NOT PROPERLY ANNOUNCED.

SHAREHOLDERS WHO DO NOT OBTAIN INFORMATION CAN COMPLAIN TO THE SSMC. SSMC CAN LEVY FINES AND FILE LAW SUITES. PFTS CAN REQUEST INFORMATION THROUGH THE COURTS AND DELIST COMPANIES.

*D- What are the training needs and existing training facilities for accountants and auditors?*

**1. Does the legal and regulatory framework specify the qualifications or recognition criteria that an accountant must satisfy in order to be certified as a public accountant?**

THERE IS NONE TO MY KNOWLEDGE

**2. Does company law or other laws and regulations specify the qualifications or recognition criteria that an auditor must satisfy in order to be able to conduct a statutory audit?**

SSMC REGULATIONS REQUIRE AUDITS BY AN AUDITOR LICENSED IN UKRAINE. THE LICENSING PROCEDURE INVOLVES SPECIFIC TRAINING, EXPERIENCE AND EXAMINATION. THE TRAINING USUALLY FOCUSES ON THE FORM OF UKRAINIAN ACCOUNTING AND AUDIT POINTS.

**3. Are there sufficient training facilities for accountants and auditors (specify)?**

NO. USAID HAD CONDUCTED ACCOUNTANT TRAINING COURSES. ADDITIONALLY, BIG 5 CONDUCT SUCH COURSES. HOWEVER, THE COUNTRY HAS VERY FEW INTERNATIONALLY CERTIFIED ACCOUNTANTS AND THE GROWTH IN THE NUMBER OF CERTIFIED ACCOUNTANTS IS TOO SLOW. THERE ARE MORE UKRAINIAN CERTIFIED AUDITORS, BUT THEY ARE CURRENTLY IN HIGH DEMAND TOO AS THE COMPANIES COMPLY WITH THE NEW SSMC RULES.

**4. Do local auditors have sufficient training and resources to conduct audits according to internationally used auditing standards? Are they sufficiently familiar with International Accounting Standards? If so, how do they gain such knowledge and experience?**

LOCAL AUDITORS ARE NOT GENERALLY WELL TRAINED TO CONDUCT INTERNATIONAL AUDITS, HOWEVER WHEN PRIVATELY INSTRUCTED, LOCAL AUDITORS ARE GOOD AT

OBTAINING OBJECTIVE MANAGEMENT INFORMATION. USAID AND BIG 5 TRAINING IS PROVIDING SOME SKILL BASE IN IAS, BUT MUCH MORE IS NEEDED.

**5. Do companies have a dedicated accounting department? If so, does this department employ certified accountants? Who supervises the work of the accounting department?**

COMPANIES HAVE A DEDICATED ACCOUNTING DEPARTMENT WITH THE HEAD ACCOUNTANT AS THE SUPERVISOR. USUALLY THE HEAD ACCOUNTANT IS WELL TRAINED IN THE TAX CODE, BUT NOT CERTIFIED AS AN ACCOUNTANT. THE COMPANIES HAVE THE AUDIT COMMITTEE, WHICH IS BY CORPORATE STRUCTURE SIMILAR TO A CONTROLLER IN THE UNITED STATES OR A FINANCIAL DIRECTOR IN EUROPE. HOWEVER, AUDIT COMMITTEE MEMBERS ARE USUALLY NOT QUALIFIED, EXCEPT IN PRIVATELY CONTROLLED COMPANIES.

SOME COMPANIES ALSO EMPLOY INTERNAL FINANCIAL DIRECTORS, BUT THEIR ROLE IS NOT PRE-DETERMINED BY REGULATION AND VARIES WIDELY.

**6. Do internal accountants have sufficient training and resources to prepare annual accounts according to International Accounting Standards?**

FOR THE MOST PART, NO. THERE ARE VERY FEW EXCEPTIONS, ALL IN PRIVATELY CONTROLLED COMPANIES.

**7. What is the total number of certified accountants? How many accountants are certified yearly?**

THERE WERE ROUGHLY FIFTY CERTIFIED (ICCA, CPA) ACCOUNTANTS IN 2000. I HAVE NOT OBTAINED THE QUANTITY OF NEWLY CERTIFIED ACCOUNTANTS. THERE IS NO CERTIFICATION FOR UKRAINIAN ACCOUNTANTS, EXCEPT FOR AUDITORS. I AM NOT SURE HOW MANY UKRAINIAN AUDITORS ARE CERTIFIED.

**8. How many certified accountants engage in auditing functions on a full-time basis? (i.e. what is the total number of licensed auditors?)**

OF THE CERTIFIED ACCOUNTANTS, ABOUT 30 OUT OF 50 ARE AUDITORS. HOWEVER, I DO NOT KNOW HOW MANY THERE ARE THAT ARE LOCAL AUDITORS.

*E- Can you describe one or several cases involving major violations of disclosure requirements? (i.e. denied access to information; accounting manipulation; non disclosure of required strategic information; etc.). What enforcement actions were taken in each case?*

GENERALLY, BECAUSE THE REQUIRED INFORMATION IS SO INNOCUOUS, THE ONLY ENTITIES THAT HAVE DIFFICULTY GETTING INFORMATION ARE SMALL INDIVIDUAL SHAREHOLDERS. BROKERS CAN GENERALLY GET INFORMATION EVEN IF THE MANAGEMENT RESISTS EITHER THROUGH THE SSMC OR EMPLOYEES. SOMETIMES AT THE TIME OF PRIVATIZATION INFORMATION BECOMES UNAVAILABLE, BUT THERE IS NO TIME TO TAKE LEGAL ACTION.

I HAVE HAD SITUATIONS WHEN MY EMPLOYEES WENT TO THE SSMC ASKING FOR REPORTS FROM REPORTING COMPANIES, ONLY TO BE ASKED TO WRITE A LETTER, EXPLAINING WHY THEY NEED THIS INFORMATION. THIS GENERALLY CAN BE RESOLVED WITH A TIP TO THE CLERK.

THERE WAS A CASE WHEN A KYIV COMPANY JSC YUNIST THAT OPERATES A SEWING FACTORY AND SOME REAL ESTATE FAILED TO PROVIDE TO A SHAREHOLDER UPON REQUEST THE FINANCIAL INFORMATION AND THE COMPANY CHARTER. IT SO HAPPENED THAT THIS INFORMATION WAS NOT FILED WITH SSMC EITHER. UPON SHAREHOLDER COMPLAINT, THE SSMC WROTE A LETTER TO THE COMPANY, STATING THAT THEY MUST DISCLOSE THIS INFORMATION. SO FAR, THERE WAS NO FURTHER ACTION.

IN A RECENT CASE, UKRRICHFLOT, A UKRAINIAN RIVER TRANSPORTATION COMPANY THAT WAS LISTED ON PFTS FAILED TO PROVIDE PROPER ACCOUNTS OF SIGNIFICANT TRANSACTIONS. PFTS OBTAINED THIS INFORMATION AND DISSEMINATED IT VIA INTERNET AND THE PRESS. SHAREHOLDERS SUED THE COMPANY AND FORCED IT TO BUY OUT OUTSIDE SHAREHOLDERS. THIS WAS A VERY UNUSUAL CASE AND WAS SUCCESSFUL BECAUSE PFTS WAS INVOLVED, BECAUSE THERE WERE SEVERAL OUTSIDE SHAREHOLDERS THAT WERE VERY ACTIVE AND POWERFUL, AND PROBABLY BECAUSE THE MANAGEMENT POORLY PLANNED THEIR VIOLATION. STILL, THE FACT THAT THE COMPANY WOULD BE ABLE TO BUY-OUT OUTSIDE SHAREHOLDERS INDICATES THAT THE SHAREHOLDERS RECEIVED LESS THAN HAD THE SHAREHOLDERS RECEIVED TRUE BENEFIT FROM THE COMPANY OPERATIONS.

***F- What are from your point of view the impediments and deterrents to full disclosure by companies?***

LACK OF QUALIFIED AUDITORS/ACCOUNTANTS;  
LACK OF REGULATIONS THAT REQUIRE FULL DISCLOSURE;  
LACK OF INTERNAL COMPANY REQUIREMENTS FOR DISCLOSURE AS MASS PRIVATIZED COMPANIES AS THESE COMPANIES WERE NOT SET UP TO ADDRESS THE REQUIREMENTS OF SHAREHOLDERS;  
LACK OF ADEQUATE SYSTEM OF MANAGEMENT INFORMATION IN COMPANIES;  
LACK OF CULTURE OF TRANSPARENCY.

***G- Please add any relevant information that has not been covered by the above questionnaire.***

COMPANY INTERNAL REQUIREMENTS: CERTAINLY IF A COMPANY MADE PROPER INTERNAL CG REQUIREMENTS, SUCH AS HAVING AN INDEPENDENT, QUALIFIED AUDIT COMMITTEE, HAVING TRUE IAS AUDIT, AUDITORS TO BE APPOINTED BY SHAREHOLDERS, ETC., SHAREHOLDERS WOULD BE ABLE TO ENFORCE THESE RULES, THOUGH THE REGULATIONS DO NOT CALL FOR THEM. HOWEVER, FOR SUCH RULES TO COME ABOUT IN A COMPANY ONE OF TWO THINGS MUST OCCUR:

- 1) INDIVIDUALS WITH PRACTICAL CONTROL OF THE EXISTING COMPANIES MUST FEEL THAT THEY WILL RECEIVE BENEFIT FROM RESTRUCTURING THIS COMPANY.
- 2) PRIVATE COMPANIES WOULD PRODUCE PROPER CORPORATE DOCUMENT AND IMPLEMENT CORRESPONDING CONTROLS AND DISCLOSURE IN ORDER TO GO PUBLIC AND OBTAIN FINANCING (IPO).

AN EFFORT SHOULD BE MADE TO ADDRESS VOLUNTARY TRANSPARENCY IN SIGNIFICANT COMPANIES. IMPROVING REGULATION IS NOT THE ONLY WAY TO IMPROVE DISCLOSURE. MANAGEMENT OR CONTROLLING SHAREHOLDERS CAN COMMIT TO TRANSPARENCY IN EXCHANGE FOR FINANCE.

THERE ARE MANY OTHER ISSUES. AMONG THEM ARE:

1. CULTURE OF TRANSPARENCY: IT HAS NOTHING TO DO WITH THE ETHNIC CULTURE, BUT MORE WITH THE ITERATIONS OF ENGAGEMENT BETWEEN ACTIVE SHAREHOLDERS, REGULATORS, AUDITORS, COURTS AND THE MANAGEMENT. NO MATTER WHAT IS WRITTEN IN THE LAW BOOKS, IT WILL TAKE SOME TIME FOR THIS CULTURE TO BE ESTABLISHED. ONLY AFTER MANY ITERATIONS THE COURTS AND REGULATORS WOULD PROPERLY AND CORRECTLY SUPPORT REGULATIONS AND THE MANAGEMENT IS BOTH TRAINED IN DISCLOSURE REQUIREMENTS, AND FEELS PROPERLY CONSTRAINED BY THEM.
2. DRAWING A LINE BETWEEN PUBLIC AND NON-PUBLIC COMPANIES: ALL MASS-PRIVATIZED COMPANIES WERE CREATED EQUAL AND DISTRIBUTED TO THE PUBLIC, REGARDLESS OF THE NATURE OF THE COMPANY. THERE ARE NOW PROBABLY ABOUT 9,000 REPORTING COMPANIES. THIS SPREAD THE RESOURCES, SUCH AS QUALIFIED ACCOUNTANTS, TOO THINLY AMONG ALL COMPANIES. ADDITIONALLY, IT MUDDLED THE SIGNIFICANCE OF T&D TO PUBLIC COMPANIES.
3. GENERAL CORRUPTION IN THE COUNTRY AND HOW IT IMPEDES TRANSPARENCY IN CORPORATE GOVERNANCE.

THESE ISSUES NEED TO BE EXPLORED FURTHER