This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in Ukraine.

For a full list of jurisdictional Q&As visit here
1. **What is the typical organizational structure of a company and does the structure typically differ if the company is public or private?**

Ukrainian law provides for over 20 organizational forms of business entities. However, the majority of small and medium-sized enterprises in Ukraine are incorporated as a limited liability company (LLC). As of February 2020, there are approximately 677,000 LLCs in Ukraine. Around 14,000 companies have the form of a public (listed) or private (non-listed) joint stock company (JSC). Other organizational forms are either outdated or designed for specific business purposes (e.g., farming enterprise, service cooperative, etc.).

The organizational structure of a LLC includes a general meeting of participants and an individual or collective executive body (CEO or executive board). Although recently amended Ukrainian legislation allows to establish a supervisory board in a LLC, few LLCs have taken advantage of this opportunity.

All JSCs typically have a similar structure that includes a general meeting of shareholders, a supervisory board, an audit commission, and an executive board or individual CEO. In contrast to public JSCs, private JSCs have the option not to establish a supervisory board if there are less than 10 shareholders in the company. Private JSCs with less than 100 shareholders may appoint a single auditor instead of an audit commission.

Generally, there are few public (listed) companies in Ukraine—only a few large companies and banks.

2. **Who are the key corporate actors (e.g., the governing body, management, shareholders and other key constituencies) and what are their primary roles? How are responsibilities divided between the governing body and management?**

The highest governing body in a LLC is the general meeting of participants (GM) which is entitled to make decisions on any issue in the company. Some questions such as payment of dividends or charter amendment in a LLC belong to the exclusive competence of the GM.

The executive body (collective or an individual CEO) handles day-to-day operations. A supervisory board in a LLC is optional. If established, the supervisory board controls and regulates the activities of the CEO or executive board and may elect the members of the executive body. If the participants choose not to establish a supervisory board, the GM executes the aforesaid functions.

In JSCs, the general meeting of shareholders (GM) is the highest governing body with exclusive competence in such issues as charter amendment, payment of dividends, issue of additional shares, election of board members and some other vital matters. Until the recent changes in the Law on JSCs, the GM had the right to decide on any matter. However, since May 2018, the GM cannot overcome the exclusive competence of the supervisory board. The
only exemption from this rule are private JSCs. They can grant the GM with unlimited powers in the charter, including the powers to consider matters belonging to the competence of the supervisory board.

Under the law, the primary role of a supervisory board in a JSC is to oversee the executive body and ensure adherence to the established strategic guidelines. The supervisory board has a number of exclusive competences, including the issue of bonds and the choice of the company’s audit firm. The supervisory board also elects the members of the executive body, except in private JSCs where the charter may grant such election rights to the GM.

The members of the executive board implement the strategy of the company on a daily basis. Although both public and private JSCs may establish an individual executive body – a CEO, only small or affiliated private JSCs use this option, while large companies usually have a collective executive board.

The JSC audit commission revises the financial and economic activity of the company and prepares annual reports. The GM appoints members of the audit commission.

3. **What are the sources of corporate governance requirements?**

The main sources of corporate governance requirements for LLCs and JSCs are the Civil Code of Ukraine, the Commercial Code of Ukraine, the Law on Limited and Additional Liability Companies, the Law on Joint Stock Companies, and the Law on Securities and Stock Market. In addition, there is specific legislation for state-owned and municipal enterprises as well as for banks.

As a soft law source, the National Securities and Stock Market Commission (hereinafter – the “Commission”) adopted the Principles of Corporate Governance aimed to serve as general guidelines for Ukrainian companies. The Commission is about to present a new Code of Corporate Governance elaborated in cooperation with the expert community.

4. **What is the purpose of a company?**

In Ukraine, as elsewhere, the main purpose of a private business entity is profit and increasing shareholder value. A recent trend appreciating sustainability objectives is also noticeable. The draft Code of Corporate Governance (see question 3 above) proclaims that the company creates long-term sustainable value and maximises returns to its shareholders.

Social or endowment goals may be pursued by means of establishing a non-profit organization such as an NGO or charity fund.

Municipal and state-owned enterprises may pursue goals other than profit, e.g. satisfaction of certain public needs. Such specific goals should be fixed in the company’s ownership policy.
5. Is the typical governing body a single board or comprised of more than one board?

Ukrainian JSCs are governed by the executive board (or CEO) and the supervisory board. Meanwhile, LLCs usually have only a CEO or, rarely, a collective executive board without a supervisory board. See also question 2.

For the purposes of this questionnaire, the supervisory board in a JSC will hereinafter be deemed as the “governing body”. Questions pertaining to the executive board will be addressed in the section describing management.

The law does not stipulate the term of office, election procedure and composition of a supervisory board in a LLC. These issues in a LLC are determined in the charter adopted by the GM. Therefore, questions below concerning the governing body will focus exclusively on JSCs.

6. How are members of the governing body appointed and removed from service?

In JSCs, the GM appoints members of the supervisory board for a term of up to three years and is entitled to remove them. Shareholders in public and state-owned companies elect board members by cumulative voting through ballot. Private JSCs may elect board members by ordinary non-cumulative voting if their charter so provides.

If the JSC’s supervisory board was elected by cumulative voting, the GM may remove a member of such board only together with all other board members. However, a shareholder may at any time substitute a board member elected as this shareholder’s representative (see question 7).

7. Who typically serves on the governing body and are there requirements that govern board composition or impose qualifications for directors regarding independence, diversity, tenure or succession?

There are two types of directors in a supervisory board: representatives of shareholders and independent directors.

A representative director is nominated by a shareholder or group of shareholders. The GM elects representative directors along with independent ones. However, representative directors may be substituted by their principal shareholder at any time.

Meanwhile, an independent director should be completely detached from any shareholder influence and must act impartially in the best interests of the entire company, not of certain shareholder(s). The law sets rigid requirements for independent directors. For instance, a person is not independent if he/she was a member of any governing body in the company during the last five years, worked in the company or its affiliates for the last three years,
owns five percent or more shareholding in the company etc.

There are no statutory requirements regarding the diversity of the supervisory board so far. However, in 2019 legislative initiatives to implement a 40% minimum for any gender in the supervisory boards of state-owned enterprises were widely discussed. As for succession, any director may be reelected for an unlimited number of times. Nevertheless, if a person was a board member for 12 years, such person may not be elected as independent director.

A board of a public JSC should consist of at least five directors. Moreover, a public JSC should have no less than 1/3 (or at least 2) of independent directors on its board. Private JSCs are not obliged to elect independent directors but are encouraged to do so by the Commission’s Principles of Corporate Governance.

8. **What are the common approaches to the leadership of the governing body?**

   The chairperson of the supervisory board in a JSC is elected by the board members among them. The chairperson generally organizes the work of the supervisory board, suggests the agenda and presides on board meetings. The chairperson represents the board before the management, shareholders, personnel and other stakeholders.

9. **What is the typical committee structure of the governing body?**

   The supervisory board in a JSC may establish permanent or interim committees for preliminary analysis and preparation of questions for consideration at board meetings. While such committees are not mandatory for private JSCs, all public JSCs are obliged to set up an audit committee, a remuneration committee and an appointment committee. The two latter committees may be combined in one. The board is free to establish any other additional committees.

10. **How are members of the governing body compensated?**

    The GM adopts regulations regarding compensation of directors in compliance with the rules laid down by the Commission. In public JSCs, the GM should annually review such regulations and approve reports on the remuneration of board members.

    Generally, the compensation of board members has fixed and variable elements. The latter usually depend on the profitability of the company and the KPIs of each director. The remuneration structure of every director is specified in his/her employment contract subject to the approval of the GM.

11. **Are fiduciary duties owed by members of the governing body and to whom are they owed?**
All JSC officials (i.e. members of the supervisory board, executive board and audit commission) have an obligation to act in the best interest of the company. Similarly, directors and executives in a LLC must act reasonably and in good faith in the interests of the company.

12. **Do members of the governing body have potential personal liability? If so, what are the key means for protecting against such potential liability?**

Board members as well as other JSC and LLC officials are personally liable to the company for damages caused by their action or failure to act. In addition, JSC shareholders and the directors representing them on the supervisory board are jointly liable for damages caused to the company by such director. Employment contracts may set additional liability for directors and top executives.

As a rule, a company official will not be held liable if he/she proves that the damages were not his/her fault. Therefore, the best way to protect oneself against potential liability is to act with prudence and in good faith pursuant to law, the provisions of the company’s charter and one’s employment contract. Some insurance companies also offer programs for professional liability insurance – D&O (Directors and Officers Liability Insurance). However, such insurance is not common in Ukraine so far.

13. **How are managers typically compensated?**

For the purpose of this section, the term “management” shall comprise all members of the executive board and/or the company’s CEO.

In JSCs, a supervisory board adopts regulations on remuneration of executive board members using the Commission’s guidelines. The supervisory board also approves the terms and conditions of employment contracts with every member of the executive board.

Executives in big JSCs usually have fixed and variable elements in their compensation. Variable bonuses usually depend on the financial results of the company. Although such bonuses are generally paid in money, the Commission in its recent regulation allowed their payment in share options.

In small and medium LLCs, the management usually receives standard fixed salaries with possible financial bonuses at the end of the year.

14. **How are members of management typically overseen and evaluated?**

Members of the executive board in LLCs and JSCs are primarily evaluated based on the company’s profitability. Some big companies use more sophisticated KPIs like customer retention, project completion rates, marketing efforts etc. in addition to financial results.
All public JSCs must approve and annually review the regulation on compensation of executive board members with financial and non-financial KPIs for managers.

15. **Do members of management typically serve on the governing body?**

Ukrainian corporate governance has a two-tier system. The law directly prohibits members of the executive body to sit on the supervisory board (of the same company) both in LLCs and JSCs. Moreover, in JSCs the former chairman of the executive board cannot be elected chairman of the supervisory board for one year after the termination of his powers.

16. **What are the required corporate disclosures, and how are they communicated?**

The strictest standards on corporate disclosure apply to public (listed) JSCs. Inter alia, public JSCs must disclose their constituent documents, GM agendas and minutes, the reports of the audit commission and independent auditors, annual financial statements, reports of the supervisory and executive board. Moreover, public JSCs are also obliged to disclose the date and agenda of upcoming GMs. The company annually submits the above documents along with some other information (shareholders owning more than 5% of shares, information on material transactions, information on the existence of a shareholder’s agreement etc.) to the Commission or other authorized agents for further disclosure. Besides, public JSCs disclose certain additional information to the stock exchange where they are listed.

Since 2018, private JSCs must publish the date and agenda of upcoming GMs on their websites. Like public JSCs, private JSCs should submit certain data (financial statements, information on majority shareholders, GM protocols etc.) to the Commission for further disclosure.

LLCs are not obliged to make any public disclosures. The only obligation imposed on LLCs by law is to retain all financial statements together with other documents pertaining to the activities of the company and provide them to participants or relevant state authorities.

17. **How do the governing body and the equity holders of the company communicate or otherwise engage with one another?**

Equity holders in LLCs and JSCs officially engage with company officials at the annual GM where the supervisory and executive boards present their yearly reports. Apart from this, 10% of equity holders in a JSC or LLC may initiate an extraordinary GM in order to discuss any issue of the company’s activity, demand reports from officials or initiate the removal of board members from office.

In between annual and extraordinary meetings equity holders have the right to obtain any information on the company’s activity, usually through the corporate secretary or designated executives.
18. Are dual or multi-class capital structures permitted and how common are they?

Both public and private JSCs may have a single-class or dual-class share capital structure. The capital structure is determined in the company’s charter.

In the case of a single-class structure, the company’s share capital consists only of common shares. Every common share grants its owner one vote on any issue at the GM and a proportional part of the yearly dividends if the GM decides to distribute the company’s profit through dividends.

If a JSC has a dual-class structure, its share capital consists of common and preference shares. Although preference shares have limited voting power, such shares entitle its owner to a certain guaranteed sum of annual dividends. The charter specifies the amount of such guaranteed dividends which the company must pay in any case irrespective of its financial results. The law also allows to further subdivide preference shares into several classes with different rights. The amount of preference shares may not exceed 25% of all the company’s shares.

Generally, preference shares are not very popular in Ukraine and most companies have single-class capital structures.

19. What percentage of public equity is held by institutional investors versus retail investors?

There is no public data on the overall percentage of public equity held by institutional investors versus retail investors in Ukraine. In general, retail investors dominate in the public equity over institutional investors.

20. What matters are subject to approval by the shareholders and what are the typical quorum requirements and approval standards? How do shareholders approve matters (e.g., voted at a meeting, written consent)?

The GM is the highest governing body in a JSC with exclusive competence in 33 vital issues of the company’s activity, including charter amendment, payment of dividends, additional shares issue, election of the supervisory board members and the audit commission. The GM may also decide on any other questions of the company’s activity except in cases when such questions refer to the exclusive competence of the supervisory board. Private JSCs, however, may entitle the GM with powers to rule on questions of the board’s exclusive competence.

A quorum is present if the owners of more than 50% of the company’s shares have registered for participation in a GM. Most decisions require a simple majority of shareholders’ votes present. Some important issues such as charter amendment, change of registered capital or winding up of a company require 3/4 of votes of shareholders present at the meeting. See
also questions 6 and 24 for the board members’ election procedure.

Shareholders usually vote at the GM by ballot. JSCs with no more than 25 shareholders may adopt decisions by absentee (poll) voting if their charter so provides. In cases of poll voting the questions are sent to all shareholders for approval. If all shareholders have voted for a certain decision in writing, the decision is considered adopted.

21. Are shareholder proposals permitted and what requirements must be met for shareholders to make a proposal?

Every shareholder regardless of its stake in the company may submit proposals to the GM beforehand along with a draft decision on the issue. Proposals of shareholder(s) owning more than 5% of the company’s shares are automatically included in the agenda. Proposals of shareholder(s) owning less than 5% of JSC’s shares may be turned down by the supervisory board on the grounds stipulated in its charter (if any).

22. May shareholders call special meetings or act by written consent?

Shareholder(s) owning 10% or more of the company’s shares may demand the supervisory board to call an extraordinary GM.

A shareholder may appoint a representative to act on his/her behalf at the GM based on a power of attorney. However, shareholders may not vote by written consent without being present at the meetings, except in cases of poll voting (see question 20).

23. Is shareholder activism common and what are the recent trends?

Majority shareholders in Ukrainian companies often play an active role in the company’s everyday management. They constantly interact with company officials, maintain contact with key clients and occasionally instruct board members on necessary decisions.

In contrast, shareholder activism among minority shareholders is hardly a part of Ukraine’s corporate culture. Although minority shareholders enjoy certain statutory rights (access to information, right of proposal to the GM agenda etc.), they rarely get actively involved in the company’s affairs. On the other hand, professional portfolio shareholders often challenge the decisions of the company, usually those of economic nature.

24. What is the role of shareholders in electing the governing body?

Shareholders elect the supervisory board at the GM, normally by cumulative voting through ballot. Any shareholder may propose his/her own candidate(s) for election subject to the reservation outlined in question 21 above.
25. Are shareholder meetings required to be held annually or otherwise, and what information needs to be presented?

JSCs must hold an annual shareholder meeting (GM) by 30 April following the respective financial year. The agenda of such annual meeting should cover payment of dividends, the approval of the company’s annual financial report as well as the reports of the supervisory board, the executive board and the audit commission. Public JSCs must also approve reports on the compensation of supervisory board members and assess the necessity of amending regulations on remuneration of board members at such annual meetings.

All other shareholder meetings are considered extraordinary and may be called at any time and for any reason pursuant to the procedure stipulated by law and the company’s charter.

26. Do any organizations provide voting recommendations or otherwise advise or counsel shareholders on whether to approve matters?

Engagement of independent shareholder advisors or proxy consultant firms is not common in Ukraine. Shareholders usually rely on their personal or collective judgment as well as advice from their attorneys and auditors.

27. What role do other stakeholders, including debt holders, employees, suppliers, customers, the government and communities, typically play in the corporate governance of a company?

Major debt holders such as banks usually have a strong influence on the company’s corporate governance. Loan or credit line agreements often contain provisions regarding the bank’s consent on certain management decisions as well as the bank’s broad information rights. Moreover, after recent changes in legislation creditors may enter into contracts with JSC shareholders obliging the latter to vote in a certain way at the GM, perform other actions in the company or even sell their shares at a fixed price in certain circumstances. Still, this practice has not yet become common.

Employees, especially top-level management, may have impact on key decision-makers in the company. However, ordinary employees hardly participate in corporate governance, mostly due to the lack of strong and independent labor unions in Ukraine.

Governmental and municipal agencies are not involved in the corporate governance of privately-owned companies and may only exercise overall control in cases stipulated by law.

28. What consideration is given to ESG (environmental, social and governance) issues, including climate change, sustainability and product safety issues, and are there any legal disclosure obligations regarding the same?
There are numerous regulations on environmental protection and product safety in Ukraine. Therefore, all companies consider such provisions in their everyday business activities. Although Ukrainian legislation does not directly impose specific public disclosure obligations on those issues, the Commission’s Principles of Corporate Governance encourage JSCs to disclose their internal policy on personnel, social issues and environmental protection.

In the recent years, attention to corporate social responsibility is constantly growing among Ukrainian companies. More and more businesses include information on social or environmental projects in their yearly reports and publish it on their official web-sites.

29. **How are the interests of shareholders and other stakeholders factored into decisions of the governing body?**

Majority shareholders generally exercise influence on the supervisory board through their representative directors (see question 7). It is common practice when a majority shareholder, often dominating, is the chairperson of the supervisory board of the company. Majority shareholders who are not board members are sometimes allowed to be present at the meetings and comment on important issues. Other stakeholders are usually not permitted to participate in board meetings unless upon specific invitation.

Naturally, the primary concern of both independent and representative directors are the interests of the company and its shareholders which, however, should be aligned with other stakeholders’ interests to deliver truly sustainable decisions for the company in the long perspective.

30. **Do public companies typically provide earnings guidance on either a quarterly or annual basis?**

Earnings guidance is not common for Ukrainian companies. The law only requires public JSCs to state the company’s possible development perspectives in their annual management reports.

31. **May public companies engage in share buybacks and under what circumstances?**

Public JSCs may engage in share buyback by the GM decision and consent of the owners of such shares. The buyback may be conducted at any circumstances the GM deems necessary, except for a few exceptions including bankruptcy, unpaid dividends on preference shares etc.

In some cases, the company is required to perform a mandatory share buyback. In particular, any shareholder has the right to demand mandatory buyback of his shares if during the GM such shareholder voted against the company’s reorganization, material or related-party transaction, change of registered capital or refusal from preferential rights for buying additional emission shares.
What do you believe will be the three most significant issues influencing corporate governance trends over the next two years?

1) Wider acceptance of independent directors

Although the concept of independent directors appeared in Ukrainian corporate law only 4 years ago, it is slowly but surely becoming accepted in progressive business circles. In the next couple of years, we predict a continuing trend towards the establishment of strong supervisory boards with independent directors. The infrastructure is also being developed. For instance, the Corporate Governance Professional Association (CGPA) and the Ukrainian Corporate Governance Academy hold educational programs for independent directors. The CGPA also maintains a publicly available register of recommended candidates.

2) Popularization of shareholders’ agreements

Until recently, the idea of shareholders’ agreements (SHAs) existed in Ukrainian legislation only theoretically. In 2018, a major reform in corporate law introduced proper regulation for such agreements both in JSCs and LLCs. Today more and more Ukrainian shareholders opt for this mechanism to govern their internal relations and increase the company’s sustainability.

3) Harmonization of Ukrainian legislation

Ukraine has been actively harmonizing its legislation and environment with EU standards of corporate governance. In March 2020, the Commission is planning to present a new Code of Corporate Governance aimed to encourage Ukrainian companies for implementation of the best practice in corporate governance. The new Code was elaborated with involvement of the expert community (including the authors).

Ukrainian legislation recently allowed the squeeze-out procedure; and more than 300 companies utilized this new opportunity to concentrate ownership structure and facilitate corporate governance.

A groundbreaking reform of corporate governance is currently being debated in the committees of the Ukrainian parliament. In November 2019, a draft bill No. 2493 on the new edition of the Law on Joint Stock Companies was presented. Along with the existing two-tier system of corporate governance, the bill introduces a classic one-tier system and gives most JSCs the right to choose a suitable option. The bill also proposes many important novelties for JSCs such as electronic voting at GMs, changes in shareholder representation and reorganization procedures to harmonize Ukrainian legislation with EU Directives 2007/36/EC and 2017/1132.
In parallel, Ukraine strives to integrate with external markets and attract foreign investment. For example, in 2018 the admission requirements to trade foreign securities in Ukraine were substantially simplified and Ukrainian citizens were legally permitted to buy such securities. On the other side, in the same 2018, legislative changes simplified operations with Ukrainian securities between foreign investors. We expect such mutual integration trends to continue, which will have a positive effect, among other things, on corporate governance practice in Ukraine.