



Changes in Ukrainian Corporate Law with the Ratification of the EU-Ukraine Association Agreement

Ivan Romashchenko, PhD in Law
Assistant Professor, Department of Civil Law



Association Agreement

between the European Union and its Member States, and Ukraine

Political provisions signed on 21 March 2014.
Economic part signed on 27 June 2014.



Agreement simultaneously ratified by
Verkhovna Rada and European Parliament
on 16 September 2014.

As of today, ratified by all Member States,
20 November 2015 – ratified by Brussels Regional Parliament,
6 April 2016 – non-binding referendum in the Netherlands.



Entry into force and provisional application

- In line with Art. 486 the Agreement has been provisionally applied since 1 November 2014, before its entry into force.
- On 1 November 2014 the terms for implementation have started expiring.
- This Agreement shall enter into force on the first day of the second month following the date of deposit of the last instrument of ratification or approval (Art. 486(2)).



Association Agreement and Company Law

TITLE V “ECONOMIC AND SECTOR COOPERATION”

Chapter 13 “Company Law, Corporate Governance, Accounting and Auditing”

Article 387 “COMPANY LAW, CORPORATE GOVERNANCE, ACCOUNTING AND AUDITING”

the Parties agree to cooperate:

- (a) on the protection of shareholders, creditors and other stakeholders in line with EU rules in this area, as listed in **Annex XXXIV** to this Agreement;
- (b) on the introduction of relevant international standards at national level and gradual approximation to EU law in the field of accounting and auditing, as listed in **Annex XXXV** to this Agreement;
- (c) on further development of corporate governance policy in line with international standards, as well as gradual approximation to the EU rules and recommendations in this area, as listed in **Annex XXXVI** to this Agreement.



Annex XXXIV to the Agreement

protection of shareholders, creditors and
other stakeholders
(totally 10 directives)



Annex XXXIV to the Agreement (1)

Name of the Directive	Subject-matter	Terms for implementation
<p>First Council Directive 68/151/EEC of 9 March 1968 <i>(now Directive 2009/101/EC)</i></p>	<p>Co-ordination of safeguards (disclosure of documents and particulars, validity of obligations, nullity of the company)</p>	<p>2 years (till 1 November 2016)</p>
<p>Second Council Directive 77/91/EEC of 13 December 1976 <i>(now Directive 2012/30/EU)</i></p>	<p>Formation of public limited liability companies and the maintenance and alteration of their capital</p>	
<p>Eleventh Council Directive 89/666/EEC of 21 December 1989</p>	<p>Disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State</p>	



Annex XXXIV to the Agreement (2)

Name of the Directive	Subject-matter	Terms for implementation
Third 'Mergers' Council Directive 78/855/EEC of 9 October 1978 <i>(now Directive 2011/35/EU)</i>	Mergers of public limited liability companies	3 years (till 1 November 2017)
Sixth 'Divisions' Council Directive 82/891/EEC of 17 December 1982	Division of public limited liability companies	
Twelfth Council Law Directive 89/667/EEC of 21 December 1989 <i>(now Directive 209/102/EC)</i>	Single-member private limited-liability companies	
'Shareholder Rights' Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007	Exercise of certain rights of shareholders in listed companies	



Annex XXXIV to the Agreement (3)

Name of the Directive	Subject-matter	Terms for implementation
'Takeover' Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004	Takeover bids	4 years (till 1 November 2018)
'Transparency' Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004	Harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market	
Commission Directive 2007/14/EC of 8 March 2007	Implementation of certain provisions of Directive 2004/109/EC	



Annex XXXV to the Agreement

introduction of international standards
and gradual approximation to EU law
in the field of accounting and auditing
(totally 3 directives i 1 regulation)



Annex XXXVI to the Agreement

further development of corporate
governance policy
(OECD principles and 2 recommendations)
-harmonization of soft law
-no terms for implementation



Laws adopted by Verkhovna Rada since EU-Ukraine was ratified [selected]

- *On Amending Certain Legislative Acts Related to Identification of Ultimate Beneficiaries of Legal Entities as of 14 October 2014*
- *On Amending Certain Legislative Acts Regarding Liability of Parties Related to Banks as of 2 March 2015*
- *On Amending the Law of Ukraine On Joint-Stock Companies as of 19 March 2015*
- *On Amending Certain Legislative Acts Related to the Protection of Rights of Investors as of 7 April 2015*
- *On Amending Article 60 of the Law of Ukraine On Economic Companies (Regarding Reduction of Quorum Requirement in Limited Liability Companies) as of 24 November 2015*



On Amending Certain Legislative Acts Related to Identification of Ultimate Beneficiaries of Legal Entities as of 14 October 2014

- **Companies have to establish ultimate beneficiaries;**
- Ultimate beneficiary owns a share or a right to vote in the amount of 25% or more;
- Otherwise: administrative liability,
namely fine 5100-8500 UAH
- At first the deadline to fulfill the requirements was 25 May 2015
- Law of Ukraine as of 21 May 2015 postponed the deadline for 4 months
+ provided that legal entities may submit information
that there is no ultimate beneficiary



On Amending Certain Legislative Acts Regarding Liability of Parties Related to Banks as of 2 March 2015

- Changes to the Criminal Code and the Code on Administrative Offences increasing liability of bank officials.
- Sophisticated rules defining bank groups, ownership structure and related parties.
- Broader rights of the National Bank of Ukraine in defining related parties.
- Related party transactions that are not in line with market conditions are invalid.
- A new term introduced “**a key owner of legal entity**” (may own less than 25%, but more than other shareholders).



On Amending the Law of Ukraine On Joint-Stock Companies as of 19 March 2015

- Quorum in joint-stock companies changed **from 60% to 50+%**.
- Changes concern all joint-stock companies (both public and private ones).
- Additional mechanism to collect dividends from a joint-stock company (through the executive note of a notary).
- Mandatory requirement: meeting of supervisory board is legitimate if half of its members are present.
- Took effect partly on 27 March 2015, fully enforceable – 26 May 2015.



*On Amending Certain Legislative Acts Related
to the Protection of Rights of Investors
as of 7 April 2015 (1)*

- **Derivative action** for shareholders having 10 or more % introduced.
- Requirement on maximum quantity of shareholders in private joint-stock companies (100 shareholders) **removed** (with no preemption right to acquire shares if there are more than 100 shareholders).
- Shareholders have **more information rights**, namely to be acquainted with draft documents to be approved by the general meeting of shareholders.

Implementation of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies

- Only **physical persons** – members of supervisory board.
- Concept of **independent directors** introduced (at least 2 persons in public joint-stock companies).

Implementation of Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC)



*On Amending Certain Legislative Acts Related
to the Protection of Rights of Investors
as of 7 April 2015 (2)*

- Shareholders, interesting in a transaction, **do not have right to vote** when voting on approval of this transaction, and decisions on this issue is taken by majority of non-interested shareholders, registered to participate in general meetings of shareholders and who own voting shares.
- General meeting of public joint-stock company **cannot take decisions on preliminary approval** of fundamental transactions with an interest.
- After the decision to approve transaction with an interest is taken, joint-stock company **has to make its provisions public** in the procedure as provided by law (this requirement does not apply to private joint-stock company, unless otherwise stipulated by its articles of association).
- Partly took effect on 14 May 2015.
- **Will finally take effect on 01.05.2016**
(some rules will apply after 01.01.2018).



*On Amending Article 60 of the Law of Ukraine
On Economic Companies (Regarding Reduction of Quorum
Requirement in Limited Liability Companies)
as of 24 November 2015*

- Adopted by the Parliament, but not yet signed by the President.
- **Quorum requirement in limited liability companies changed from 60% to 50+%**.
- In limited liability companies without any state share a different quorum percentage may be established.



Laws of Ukraine are partly harmonized with the following EU company laws

- **First Council Directive** 68/151/EEC of 9 March 1968, as amended by Directive 2003/58 (*now Directive 2009/101/EC*)
- **Second Council Directive** 77/91/EEC of 13 December 1976, as amended by Directives 92/101/EEC and 2006/68/EC (*now Directive 2012/30/EU*)
- **Third 'Mergers' Council Directive** 78/855/EEC of 9 October 1978 (*now Directive 2011/35/EU*)
- **Sixth 'Divisions' Council Directive** 82/891/EEC of 17 December 1982

Twelfth Council Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies

- **'Transparency' Directive** 2004/109/EC of the European Parliament and of the Council of 15 December 2004
- **'Shareholders Rights' Directive** 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies
- **Commission Recommendation** of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC).



What's next? (1)



- further harmonization of Ukrainian company laws with EU laws, namely

Creation of conditions for consolidation by controlling shareholder having more than 95% of shares in public joint-stock companies of all shares of a company through the public demand of majority shareholder to acquire shares of minority shareholders (squeeze-out) –

in order to implement 'Takeover' Directive № 2004/25/EC



What's next? (2)

- Implementation of paragraph 2.3 of the Coalition Agreement “European Ukraine” (within the financial sector reform), including:
 - Introduction of shareholder agreements
 - Prevention of raider attacks
 - Improvement of legal regulation of limited liability companies through the introduction of effective practices of corporate governance, used in joint-stock companies, and
 - More discretion in relationships between shareholders
- Implementation of Complex program of financial sector development till 2020, approved by the Board of the National Bank of Ukraine (more transparency and disclosure)



Thank you for your attention!



Ivan Romashchenko
iromashchenko@gmail.com

