



# Legal Regulation of Securities and Stock Market in Ukraine

**T**he EBRD's 2008 Law in Transition reports that Ukraine's securities legislation was in "high compliance" with the Objectives and Principles of Securities Regulation established by the International Organization of Securities Commissions (IOSCO). Since then Ukraine has adopted the *Joint-Stock Companies Act* and other regulations improving the legal framework in the area of securities even further. Nevertheless, as with many other laws in Ukraine, the practical application of the laws and regulations is rather far from perfect.

Currently, the priority tasks for the development of Ukrainian securities exchanges include removing gaps and ambiguities in Ukrainian securities legislation as well as implementing international standards and generally accepted principles of market practice. These efforts will include amending various legislative acts to make the operation of the Ukrainian securities exchanges more clear and transparent, providing effective protection of securities owners' rights and modernising securities market accounting and trading systems, for example, by implementing modern securities trading technologies.

## The Securities Commission

The Securities Commission is the main regulator of the Ukrainian securities market. The Securities Commission is a state authority subordinated to the President of Ukraine and accountable to the Verkhovna Rada (the Ukrainian Parliament). It is responsible for developing and implementing uniform state policy on the functioning of the Ukrainian securities market as well as monitoring the compliance of all Ukrainian securities market participants with Ukrainian securities legislation. It has extensive registration, licensing and enforcement powers as well as broad legislative powers to issue regulations,



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resolutions, recommendations and letters of advice. The Securities Commission has the power to apply sanctions against parties that breach securities legislation and these include issuing fines (determined as a fixed amount or as a percentage of the amount obtained illegally) and suspending or revoking the offending party's securities licence.

## Types of Securities and Issuance Procedures

Ukrainian law classifies the securities which can be issued and traded in Ukraine into six groups:

- (i) equity securities (include shares; investment certificates; and certificates of real estate operations funds),
- (ii) debt securities (include corporate, state and municipal bonds, including VAT bonds; treasury bills; deposit certificates; promissory notes; and bills of exchange),
- (iii) mortgage-backed securities (include mortgage-backed bonds and certificates),
- (iv) privatization securities,
- (v) derivatives, and
- (vi) commodity-related securities.

Ukrainian securities may be either documentary (certificated) or non-documentary (electronic), and may have bearer, registered or order form. The procedures for issuance, registration and disposal of securities vary depending on their type and form. For example, the procedure for a share issue requires the issuer to complete many steps before being able to complete registration of the shares with the Securities Commission and start trading them. However, the issue of promissory notes is much simpler as these do not need to be registered with any state authority. To place securities outside of Ukraine, Ukrainian issuers, other than the State issuing bonds externally, need to obtain the prior permission of the Securities Commission.

## Securities Exchanges

There are ten securities exchanges in Ukraine. The largest securities exchange by market capitalisation in Ukraine is currently the PFTS Stock Exchange, which developed from the over-the-counter electronic market trading system PFTS. It has over 800 securities listed (including equity, debt and other securities relating to Ukrainian companies) and a capitalisation of PFTS listed companies of approximately USD 29.849 billion (as of 1 September 2010). The other nine securities exchanges are individually much smaller by way of total market capitalisation and accounted in aggregate for about half of completed trades on Ukrainian securities exchanges for the year of 2009 and nine months of 2010.

When the global economic and financial crisis occurred in 2008, Ukrainian companies, especially companies in the mining and metals, energy and chemicals sector, were most severely affected. The main Ukrainian securities exchange, the PFTS, bounced back strongly in 2009, with a gain of more than 83% by the end of September, declined somewhat in winter and showed a steady rise in 2010.

Generally, Ukrainian securities exchanges remain relatively illiquid with only a few local, poorly capitalized companies listed and exchanges have no tradition of market-making. The development of these companies is also hampered by a lack of clear and sufficiently sophisticated regulatory environment as well as a lack of proper enforcement of existing legislation. In addition, legal remedies frequently applied in other countries either do not operate properly or are not available in Ukraine.

However, one thing is clear. If at any time any Ukrainian securities exchange ceases to comply with the relevant statutory requirements, the State Commission on Securities and the Stock Market (the Securities Com-

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mission) may suspend its operations. Representatives of Ukrainian securities exchanges are obliged to regularly report to the Securities Commission on the securities traders operating on their respective securities exchange and the securities listed on it as well as provide summarised information on completed securities transactions.

Due to the requirements of the *Joint-Stock Companies Act* requiring all joint-stock companies registered as public joint-stock companies to be publicly listed, the number of companies that apply to Securities Exchanges to be included in the list has started to increase.

### Licensing of Professional Activities with Securities

All professional activities on the Ukrainian stock market are subject to licensing by the Securities Commission and include the following:

- (i) trading in securities (includes brokerage, dealing, underwriting, and securities management),
- (ii) activities of asset management companies,
- (iii) depository activities (include activities of securities registrars, custodians and depositories), and
- (iv) activities of securities exchanges.

Licences may be obtained only by legal entities that meet certain statutory criteria, which include: a minimum amount of charter capital, an appropriate ownership structure, compliance with relevant other licences. Generally, such entities are prohibited from engaging in any other business activities apart from their licensed professional activities. Licences may be suspended or cancelled if the licensee either ceases to comply with the established criteria or breaches Ukrainian securities legislation.

### Depository System

The depository system of Ukraine has a two-tier structure, an upper tier and a lower tier.

The upper tier comprises the National Depository of Ukraine and other licensed depositories whose main functions are the clearing and processing of settlements under securities transactions.

The National Depository of Ukraine mostly performs administrative functions such as standardising depository

accounting procedures and documentation related to securities transactions, codifying securities by assigning an ISIN, and establishing relations with foreign depository institutions.

In 2008, the National Bank of Ukraine and a group of the largest Ukrainian banks founded the All Ukrainian Securities Depository (AUSD), which was expected to end the dispute between the Interregional Fund Union (known as MFS) and National Depository of Ukraine, as AUSD was registered as the successor of MFS and owner of 97% of its shares (the rest was owned by the NBU). However the competition between these two entities continues.

The lower tier of the Ukrainian depository system consists of custodians and securities registrars. The custodians are engaged in the custody of securities and servicing the securities transactions on their securities accounts, and the registrars keep registries of registered securities owners. State authorities exercising control over, and supervising, the national depository system include primarily the Securities Commission, the National Bank of Ukraine and the Ministry of Finance.

### Latest Legislative Developments

The *Joint-Stock Companies Act*, adopted in 2008, established the following securities regulation: 1) a rule for mandatory dematerialisation of the stock (should be completed by all Ukrainian joint-stock companies of 30 October 2010); 2) a rule for mandatory stock exchange listing; 3) a requirement that all corporate documents of the joint-stock company be put into line with the *Joint-Stock Companies Act's* requirements (change of the charter and internal regulations). In light of the approaching deadlines for the compliance with the cited Act, the Securities Commission has issued several Regulations, dealing with the process for dematerialisation and change of the corporate form of the joint-stock companies. Some new Regulations of the Securities Commission dealing with fines and penalties for failure to comply with requirements of the *Joint-Stock Companies Act* are expected to be issued soon.

With the new political consensus reached and the shown aim of the new President of Ukraine to focus govern-

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ment on resolving the economic problems of the country, the business community hopes such focus will lead to an improvement in the regulation of the Ukrainian securities market. One of the positive signs that confirms this anticipation is the adoption by the Securities Commission of the Securities Market Development Program for 2015. This Program contains more than 120 items on the issues list, including: lowering the requirements for the listing of securities, simplifying the conditions for issuance and listing of securities, changing the requirements posed to underwriters, providing clear rules for share issues and circulation of currency derivatives and other initiatives.