

ства в умовах ринкової і перехідної економіки.

Перспективами подальших досліджень є застосування розглянутої системи принципів управління при розробці стратегічного плану розвитку корпорацій, проектуванні організаційних структур, запровадженні механізмів і методів управління, при цьому загальні принципи повинні бути узгоджені із специфічними корпоративними, на основі яких пропонується формувати практичні положення і норми законодавчої бази та корпоративних стандартів.

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PROBLEMS OF UKRAINE INTEGRATION INTO THE INSTITUTIONAL EUROPEAN SOCIETY.

Ukraine is an emerging market at the crossroads of Eastern Europe, Russia, Central Asia, and the Middle East, and holds great potential as a new market for U.S. trade and investment. Despite this promise, serious investment obstacles exist. Since achieving independence in August 1991, Ukraine has followed a course of slow economic reform and integration with the West. While Ukraine has achieved significant progress, particularly in the last few years, a tremendous amount of work still lies ahead. The country's resources and economic strengths include rich agricultural land, a strong scientific establishment, an educated, skilled workforce and significant coal and moderate oil and gas reserves. Despite such assets, Ukraine ranks among the poorest countries in Europe. Basic prerequi-

sites for sustained economic growth such as adherence to the rule of law and respect for private property remain uneven. Until these basic weaknesses are addressed, and a strong, independent judiciary is established to support and protect them, Ukraine is unlikely to attract the volume of foreign or domestic investment that the country needs to raise living standards.

The problem of the discrepancy today's Ukrainian economic situation to the standards of market economies leads a great deal of far-reaching consequences not only for exporters prospective but for international image of Ukrainian state.

The studies on institutional aspects of

the transition position of Ukraine was conducted by many economists like Michael Considine (BISNIS International Trade Specialist), Amanda Leness (Project Manager, Post-Privatization Project), Serhiy Skrypchenko (Chamber of Commerce and Industry (CCI) of Ukraine) and other Ukrainian and foreign scientists.

Among the factors that led to the growth of national economy was a marked increase in the pace of economic reforms beginning in 1999. Over the past few years,

Ukraine has taken significant steps to liberalize its markets, reduce regulation, eliminate most licensing requirements, eliminate most restrictions on foreign exchange and transform the agricultural sector from state-run farms to private agriculture. After suffering through years of debilitating hyperinflation and plummeting currency values, the national currency, the hryvnia, has not only been stable but has appreciated slightly against the u.s. dollar.

Table 1.

Domestic economy statistics¹

	2000	2001	2002
GDP (\$ billion)*	32.56	37.61	39.15
GDP Growth Rate (%)**	5.8	9.1	4.1
GDP Per Capita (\$)	656.0	720.6	808.6
Government Spending (% of GDP)	28.3	27.4	28.1
Inflation (annual %)***	25.8	6.1	5.5
Unemployment (%)	4.2	3.7	3.8
Foreign Exchange Reserves (\$ billion)	1.539	3.095	3.405
Average Exchange Rate (UAH : \$)	5.44	5.37	5.38
Foreign Debt (\$ billion)	8.12	7.98	7.82
US Economic Assistance (\$ million)	195.0	175.0	N/A

Notes:

* at the official UAH: \$ exchange rate

** GDP change denominated in hryvnia adjusted to CPI

*** Consumer Price Index, CPI

Despite such progress, the business climate in Ukraine remains fraught with difficulties. Both domestic and foreign direct invest-

ments are hampered by a number of structural and political problems. Ukraine's complex and contradictory tax system and overall high

¹ Legal alert. /Baker & McKenzie. - 2002.

tax rates are cited by both foreign and domestic businesses as major deterrents to investment.

Contrary to popular belief the Ukraine's reforms are keeping slow down and the misunderstanding between the Government and business institutions are just increasing. So the actual issue for institutional economists remains selfsame: reduction the Ukrainian laws and standards to the accepted international ones and obtaining the market economy status by the Ukrainian state.

Privatization in Ukraine has proceeded unevenly thus far, with relatively rapid results in small-scale privatization and a slower pace for large-scale privatization. While the reasons for these delays are complex, several factors include: an underdeveloped legislative base without clear procedures for selling state property; the absence of political will to overcome strong resistance from local authorities and enterprise directors; parliamentary resistance; a generally poor investment climate; and stringent investment requirements. In several strategic sectors, the government's ability to privatize attractive enterprises is limited by a lack of clear regulatory control. Privatization, for Ukrainian citizens as well as foreign investors, will remain a key variable that will shape Ukraine's success or failure in implementing market reforms.

Mass privatization of small- and medium-scale enterprises was essentially completed in 1999. These enterprises, now in private hands, have contributed significantly to recent economic growth. In absolute numbers, Ukraine has now privatized the majority of formerly state-owned companies. Many of Ukraine's largest employers, however, remain state-owned. In 2000, the government started implementing a program to privatize large-scale state-owned enterprises; the implementation, however, has been patchy. The April 2001 privatization of six electricity distribution companies (oblenergos), which included two purchases by a U.S. investor, was to date the first and only large-scale privatization carried out according to internationally accepted standards. This privatization was only made possible through consistent and high-level engagement and support on the part of the inter-

national donor community. A second test of Ukraine's ability and willingness to conduct transparent privatization will come with the scheduled sale of another 9-12 oblenergos in late 2002. The privatization of these oblenergos will be complicated by debt problems, as most oblenergos have outstanding accounts payable and other debt that greatly exceeds their net worth. The Cabinet of Ministers needs to resolve this debt problem before genuinely strategic investors will be willing to acquire the companies.

Other large-scale privatizations conducted since early 2000 have been marked by unclear, non-transparent and changing regulations and by heavy political interference from such government players as the State Property Fund (SPF), the Presidential Administration, the Cabinet of Ministers and the Rada. Part of Ukraine's problems surrounding large-scale privatization are caused by the fact that the rules for privatization are still weak and poorly institutionalized, giving competing political interests - and the lobbies that use them - undue influence on the process. Often management and workers resist the prospects of surrendering government ownership to investors interested in an adequate return on capital. Local and regional governments, who view large state-controlled enterprises within their jurisdictions as an important tool for political influence and patronage, resist surrendering the control that privatization implies. Ukrainian, and increasingly Russian, business interests have been known to use the weak institutional setting and widespread environment of corruption to circumvent privatization rules and procedures to their own advantage. 2001 witnessed the rise of "back-door" privatization, in which interested parties took ownership of state-owned enterprises through often hastily arranged court-run bankruptcy proceedings. Legislation to temporarily stop bankruptcy proceedings against state-owned companies has so far proven ineffective.

The attractiveness of many large-scale enterprises has been diminished by the fact that Ukraine has made the strategic decision not to restructure enterprises before privatization, leaving this task to the investors acquiring the companies. While in theory this pol-

icy allows the new owners themselves to make the decisions affecting the long-term prospects of the company, in practice it forces investors to face the difficult - and politically charged - task of restructuring Ukraine's Soviet-era industrial infrastructure. Particularly delicate are decisions about downsizing the productive capacity and workforces of purchased companies. In many cases, burdensome SPF requirements related to investment, workforce, and support for social infrastructure serve to decrease companies' attractiveness to investors. In 2001, the SPF failed to find buyers for fifty-one large enterprises, clearly demonstrating the unattractiveness of many enterprises being offered for privatization.

Ukraine garnered 2.07 billion hryvnia (US\$390 m) in privatization revenues in 2000, more than the revenues earned from privatization in all years since independence combined. In 2001 Ukraine collected 2.12 billion hryvnia in revenues, less than half of its 5.8 billion target. The shortfall was largely due to delays in the privatization of Ukrtelecom and the remaining oblenergos. Targeted revenues for 2002 stand at 5.8 billion hryvnia, although the State Property Fund has indicated that, realistically, it can only collect about 2.8 billion hryvnia. This figure includes estimated revenues from the sale of nine oblenergos but not Ukrtelecom. By the end of June 2002, only 490 million hryvnia had been collected. The SPF's ability to bring in even 2.8 billion hryvnia will hinge on the Cabinet of Minister's ability to resolve the debt problem surrounding the remaining oblenergos.

Ukraine is currently formulating its next privatization program, which according to legislation should cover a three-year period (although some independent observers have proposed changing the legislation to allow for a longer privatization program). The new program will be submitted to the Rada for approval this fall.

According to IFC's Survey of Ukrainian Businesses, unfair competitive practices ranked as the fourth most important barrier to doing business in Ukraine. The barriers are caused by unfair competition from competitors in the shadow economy (who do not pay

taxes fully, for example) and privileged permits/permissions given businesses favored by local authorities.

Ukraine's Antimonopoly Committee implements antimonopoly, competition, and consumer protection legislation. New companies and mergers/acquisitions face strict controls by the Committee. Most investments, joint ventures with multiple partners, and share acquisitions require the Committee's approval. The Committee reported at least 9214 violations of anti-monopoly legislation in 2001, including 3610 cases of monopoly abuse, 224 cases of anti-competitive coordinated actions, 770 cases of unfair competition, and 2226 cases of discriminatory actions by governmental entities².

On March 2, 2002³ the Law "On Protection of Economic Competition" came into force, giving the antimonopoly committee authority to regulate and/or prohibit coordinated anti-competitive activities. The law requires that the Committee obtain a court order before entering residences or other private property. Offenders of fair competition rules may be fined up to 10 percent of the prior year's turnover. If illegally gained profit exceeds 10 percent of income, up to three times the normal penalty can be collected.

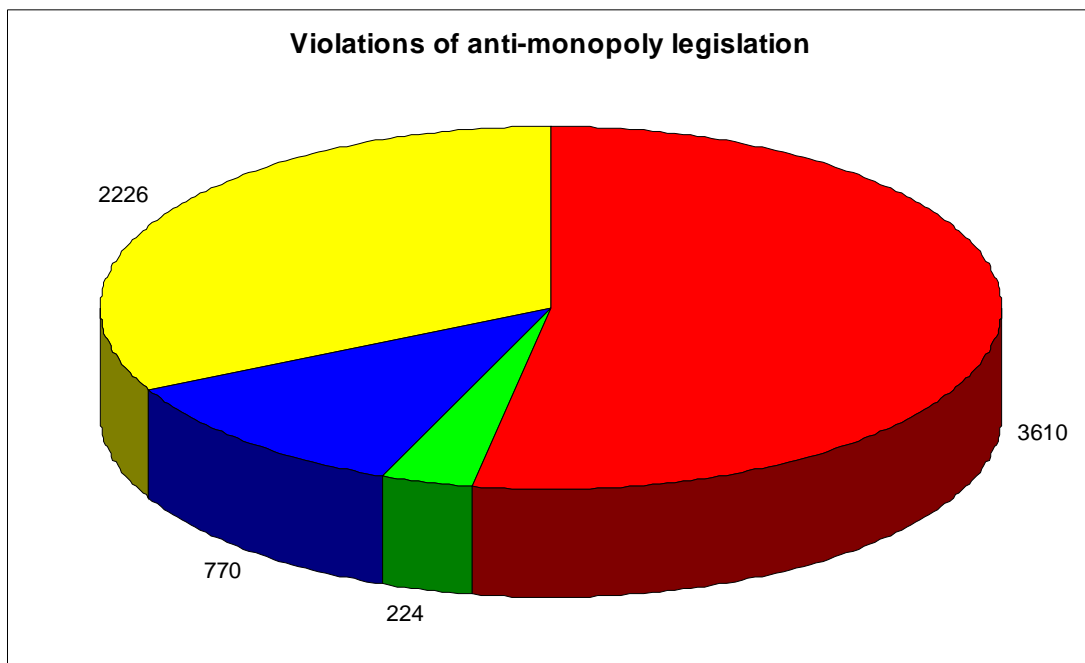
Legal, regulatory, and financial disclosure systems for the securities market in Ukraine are not transparent enough and are not fully consistent with international norms. The reform process is advancing, but the security market still lags behind international standards and reform has not advanced as quickly as in the banking sector. A basic market infrastructure exists as does a competent regulator, but there is no sound legislative basis for capital market operation. Rulings of the Securities and Stock Market Commission (SSMC) are advisory only and are not always followed by the courts. Low pay and a lack of authority hampers recruitment for enforcement positions. Additionally, SSMC personnel face some very real threats as a result of the commission's pro-active role in preventing fraud and shareholders rights abuses.

² <http://www.users.lucky.net.ua/~infb>

³ Official cite of the Parliament of Ukraine//www.rada.kiev.ua

(Note: For instance, on October 29, 2001, SSMC Commissioner and First Deputy Chairman Olexiy Romashko, who oversaw SSMC enforcement and investigation activities, was shot on his door step as he headed to work in “unexplained” circumstances. End-note.) Good corporate governance is not always rewarded with increased investment, and bad corporate governance is often not exposed or punished with financial penalties. Progress continues to be limited by macro-

economic and fiscal challenges as well as by state interference in business transactions. An effective portfolio investment regulatory system, draft laws on Joint Stock Companies, and Tax and Civil codes should be adopted. In the meantime, investors will continue to face low market confidence, high macroeconomic risk, transitional accounting standards, a lack of accurate company information, and inadequate protection of minority shareholders’ rights.



The 1991 Law on Securities and the Stock Market marked the birth of a Ukrainian capital market. The Law outlined the existence of the following types of securities: stocks (registered, bearer, preferred, and common), government securities, general obligations bonds, corporate bonds, savings certificates and promissory notes. Later decrees and amendments adopted from 1991-1995 added bond coupons, loan certificates, bank orders, savings books and privatization certificates.

In June 1995, the State Securities and Stock Market Commission (SSMSC) was established with administrative and disciplinary powers over issuers, investment funds, brokers and trading activities. According to the SSMSC, there were 147 collective investment institutions (defined as investment funds and investment company

investment company mutual funds that carry out exclusive activities on collective investment) operating in Ukraine by the end of 2001. In 2001 the SSMSC registered UAH 21.921 billion in share issuances, while the volume of shares traded on the organized market stood at UAH 7,510,976 (an increase of 4.6 million from the previous year). Bond issues increased dramatically in 2001, with 62 registered issues valued at UAH 694 million, more than twice that registered for all previous years. Securities transactions in Ukraine during 2001 reached a total of UAH 68.5 billion (a record level for Ukraine). As of the beginning of 2002, 859 securities traders, 86 custodians, 366 registrars, 11 self-regulatory organizations (six of which are associations), and five stock exchanges were registered in

Ukraine⁴.

In 1996, a Ukrainian securities industry broker/dealer self-regulatory organization (SRO) and its nationwide electronic trading system (PFTS) were founded. PFTS is the largest marketplace with 80 percent of secondary onshore trading through 2001. Market capitalization was US\$1.6 billion at the end of 2001 and the average monthly trade volume increased through 2001, with the US\$98 million traded monthly. The Professional Association for Registrars and Custodians (PARC) was established in July 1996 and was granted legal SRO status in October 1997. Ukraine has about 366 licensed registrars, more than half of which is PARC members. Eighty-six legal entities are now registered as custodians.

Principle laws, decrees, and regulations governing Ukraine's financial markets include: Law on Securities and Stock Exchanges (1991), Law on Business Associations (1991), Presidential Decree on Investment Funds and Investment Companies (1994), Law on State Regulation of Securities Markets (1995), Amendments to Law on Business Associations (1996), Law on National Depository System (1997), Law on Accounting and Financial Reporting (1999), Bankruptcy Law (1999) the Law on Collective Investment Institutions (2001), and the Law on Financial Services (2001).

A Presidential Decree "On Additional Measures Regarding the Development of the Stock Exchange Market of Ukraine" passed in March 2001 and a Cabinet of Ministers Resolution passed in August 2001 approved a plan for the development of securities markets over 2001-2005.⁵ The decree and resolution provided for tax incentives, changes to the regulatory system, development of corporate governance, development of institutes of mutual investment, formation of stock exchange market infrastructure, development of the Depository System, development of securities legislation, and the training of stock market and corporate development specialists. A law "On

Collective Investment Institutions" encourages the creation of mutual funds, introduces the idea of a licensed asset manager, regulates the establishment and operation of subjects of mutual investment, provides guarantees of ownership rights to securities, and protects rights of exchange market participants.

An March 2001 Order of the State Committee "On the Issues of Regulatory Policy and Entrepreneurship," and a Resolution of the State Securities and Stock Exchange Market Commission "On Approval of the Licensing Conditions for Carrying Out Professional Activities at the Securities Market," established conditions for obtaining licenses for securities market activities.

An April 2001 law "On the Circulation of Promissory Notes in Ukraine," provided a framework for the circulation of promissory notes in accordance with the Geneva Convention of 1930 - which introduced the Unified Law "On Negotiable and Ordinary Promissory Notes" subject to provisions stipulated in Appendix II to the Convention and the Geneva Convention of 1930 "On Settlement of Certain Conflicts of Laws On Negotiable and Ordinary Promissory Notes," and "On Stamp Duty In Respect to Negotiable and Ordinary Promissory Notes."

A March 2002 Presidential Decree "On Measures for the Development of Corporate Governance in Ukrainian Joint Stock Companies" provides for the improvement of the legal foundation, information disclosure, shareholders protection, and company management structure. It also recommends that the Judiciary summarize and analyze corporate governance practices in Ukraine in order to support their compliance with international best practices.

Therefore, it is very necessary for Ukraine to establish all the needed institutions such as the real and effective stock market, state support of national manufacturers and certainly legal and public transformation of state ownership into the private belong in order to the successful integration in the WTO and European Union.

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⁴ Commercial guide of BISNIS (Business Information Service for the Newly Independent States)//www.bisnis.doc.gov

⁵ Official cite of the Parliament of Ukraine//www.rada.kiev.ua