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## **UKRAINE: LIMITED LIABILITY COMPANY - CONCEPTUAL APPROACH TO LEGISLATIVE REFORM**

### **I. Legislative Background**

The Ministry of Justice of Ukraine (“MinJust”) intends to draft a separate law on private limited liability companies (LLC) in Ukraine.

The first draft by the Ministry of Justice should be ready by the end of 2007.

The reason for the prompt drafting of the law is the expected adoption of the Law “On the Joint-Venture Companies”. It will repeal the section on the joint-venture companies from the Law “On Commercial Societies”.

However, the private limited liability companies section of this law contains numerous references to the section on the joint-venture companies. Thus, there will be almost no rules for the private limited liability companies left in the Law “On Commercial Societies”.

MinJust wants to investigate the best practices (choice of Germany, Poland, UK, and the European Union) for comparison and to incorporate the best elements into the Ukrainian law.

This shall be done by drafting the following report.

### **II. Requirements to the Report And Structure of Review**

This report aims at providing a sort of checklist for drafting the new law. For instance, the sections on capital, managers, shareholders’ meetings shall be highlighted.

It also contains recommendations on which country’s contemporary experience it is better to use for each respective section of the report.

However, the MinJust does not simply want to obtain a compilation of information (which is already widely available in the textbooks, translations of the official texts and the internet), but a “synergy of information”.

Among the specific problems, the problem of the management authorities and management control shall be discussed.

The research follows a matrix structure comparing the essential elements of a modern company law through selected jurisdictions. The selected jurisdictions are the German Limited Liability Companies Act (GmbHG), the Council Regulation on the Statute for a European Company (Societas Europaea) (EC/Reg. No 2157/2001) and the draft regulation on the European Private Company (as provided by the Paris Chamber of Commerce) due to their continental legal tradition, accessibility and actuality. (It should also be noted that not all provisions regarding the Societas

Europaea (SE) can be applied to the provisions on (private) LLCs due to its nature as public limited liability company.)

The internal structure is as follows:

1. Establishment procedure/ Incorporation
2. Articles of Association/ Statutes
3. Shareholders' rights
4. Shareholders' obligations
5. Authorities of the shareholders' meeting
6. Management and its authorities
7. Share capital
8. Number of shareholders
9. Liquidation of the LLC

### III. Comparison of Legal Forms

Comparison between the Ukrainian Act on Corporations, the German Limited Liability Companies Act, the Council Regulation on the Statute for a European Company and the draft of a regulation regarding the European Private Company.

Ukraine: Act on Corporations	Germany: Limited Liability Companies Act	European Union: Council Regulation on the Statute for a European Company (EC/Reg.No 2157/2001)	Draft Regulation (official proposal set for Mid 2008) on The European Private Company (source: www.etudes.ccip.fr)
<b>1. Establishment procedures/ Incorporation</b>			
<p>The establishment of the LLC requires the following:</p> <ol style="list-style-type: none"> <li>1. Establishment of Articles of Association</li> <li>2. Payment (contribution) of at least 50% of share capital</li> <li>3. Registration of Articles of Association with the regional administrative office, Art. 4, 51</li> <li>4. Application for official company seal</li> <li>5. several other applications/ registration with different administrative institutions including statistic office, tax police, tax revisory office, pension fund and social security.</li> </ol>	<p>The establishment of the LLC requires five steps:</p> <ol style="list-style-type: none"> <li>1. Establishment of Articles of Association, Sec. 1-5</li> <li>2. Appointment of managers, Sec. 6</li> <li>3. Contribution to share capital, Sec. 7</li> <li>4. Application for registration in Commercial Register, Sec. 7, 8</li> <li>5. Inspection, registration und publication thereof, Sec. 9c, 10</li> </ol>	<p>There are 4 possible ways of establishing a SE: by merger (Sec. 17-31), formation of a holding company (Sec. 32-34), formation of a joint subsidiary (Sec. 35, 36), or by conversion of a previously formed public limited liability company (Sec. 37).</p> <p>The establishment of the SE must be registered in the national registers and publicized in the Official Journal of the European Communities.</p>	<p><b>Art. 5:</b></p> <p>An EPC can be established by means of creation or transformation- (merger or division)</p> <p><b>Art. 8:</b></p> <p>The EPC has to be registered in the Member State of its registered office, in the register specified by the legislation in that State implementing Article 3 of Directive 68/151/EEC.</p>

**Recommendation:** Common to all establishment procedures of the different legislations are the requirements regarding the establishment of Articles of Association, contribution to share capital and registration of some kind. The Ukrainian establishment procedure is very bureaucratic and its provisions do not regulate the order in which certain registration/ administrative requirements must be fulfilled (above number 5.). Therefore we advise a simplification of the establishment procedures altogether or at least a more detailed legislative description for reasons of clarification.

## 2. Articles of Association/ Statutes

### Art. 4 II:

The Articles of Association must contain the following information: the nature of the company, its sector of activity, a list of founders and shareholders, the name and the registered office, the procedure of gathering the share capital and the amount of the share capital, the procedure of profit and loss accounting, the composition and authorities of the company organs, as well as the procedure of decision making, a list of questions, which need a qualified majority in order for decision, the procedure regarding the registration of amendments in the Articles of Association, the procedure regarding the liquidation and reorganisation of the company, the amount of capital contribution of each shareholder (primary deposit).

### Sec. 3:

(1) The Articles of Association must contain:

1. the company name and registered office,
2. the purpose of the company
3. the amount of the share capital
4. the amount of the capital contribution of each shareholder (primary deposit)

(2) If the company is to exist for a limited time or if the shareholders have further obligations besides capital contribution, these provisions need to be incorporated into the Articles of Association.

### Art. 12:

The statutes have to respect the arrangements for employee involvement.

### Artt. 39, 40:

The statute must state the number of members of the supervisory organ and the rules for its appointment in case of a two-tier system.

### Artt. 39, 43:

The statute must state the number of members of the administrative organ and the rules for its appointment in case of a one-tier system.

### Art. 44:

The duration of the intervals between the meetings of the administrative organ in a one-tier system must be laid down in the statutes.

### Art. 1:

The Articles of Association represent an agreement binding the founding shareholders prior to registration and the company and future shareholders after the registration.

### Art. 2:

The Articles of Association must state the shareholders' rights, the organization and operation of the company, the powers of its governing bodies and the manner of transfers of shares.

### Art. 4:

The Articles of Association must contain a valuation of each contribution to the share capital in kind.

<p><b><u>Art. 51:</u></b></p> <p>In addition to the information listed in Art. 4 the Articles of Association must contain the amount, composition and procedure regarding the form of the contribution, extent and procedure of the instalment of a reserve fund as well as the procedure regarding the transfer of shares without changing the amount of the share capital.</p>	<p><b><u>Annex:</u></b></p> <p>As of Mid 2008 this Act will contain standard-form Articles of Association as an annex which may be adopted by the shareholders.</p>	<p><b><u>Art. 46:</u></b></p> <p>The duration of the appointment of members of company organs must be laid down in statutes.</p> <p><b><u>Art. 48:</u></b></p> <p>The statutes must list the categories of transactions which require the authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.</p> <p><b><u>Art. 59:</u></b></p> <p>Amendments to the statutes require a majority of two thirds of the cast votes (if national law does not conflict) und must be publicised.</p>	<p><b><u>Art. 14:</u></b></p> <p>The Articles of Association must determine the company's organization including the procedure of appointment, the powers and terms of operation of the company's governing bodies and the appointment procedure of the statutory auditors pursuant to Directive 78/660/EEC.</p> <p><b><u>Art. 15:</u></b></p> <p>The Articles of Association must determine the pecuniary and non-pecuniary rights relating to each class of shares. They must state the decisions which have to be taken collectively by the shareholders and the procedure regarding the decision making.</p> <p><b><u>Art. 13:</u></b></p> <p>This Regulation will contain standard-form Articles of Association as an annex (Schedule 1) which may be adopted by the shareholders.</p>
<p><b>Recommendation:</b> The requirements regarding the mandatory contents of the Articles of Association are all similarly constructed. The incorporation of standard-form Articles of Association into a reformed version (as done by the coming German LLC Act and the draft regulation on the EPC) of the Ukrainian law seems advantageous (e.g. regarding establishment costs).</p>			

<b>3. Shareholders' rights</b>			
<p><b><u>Art. 10:</u></b></p> <p>The shareholders have the right to:</p> <p>a) participate in the management of the company in accordance with the Articles of Association, except for those cases prescribed by law;</p> <p>b) participate in the distribution of the profit of the company and to receive dividends. The right to dividends in proportion to their share in the company is only appointed to persons, who were already shareholders at the time of the payment of the dividends;</p> <p>c) leave the company;</p> <p>d) receive information concerning the activities of the company. Upon request of the shareholder the company is obliged to hand over the annual balance sheet, reports on the activities of the company and minutes of the shareholder meetings for his inspection;</p> <p>e) sell shares of the share capital as well as other securities confirming his participation in the company.</p>	<p><b><u>Sec. 45:</u></b></p> <p>(1) The rights concerning the company, especially regarding the management, are governed by the Articles of Association, as long as they do not contradict ruling law.</p> <p>(2) If the Articles of Association do not contain specific provisions, Sections 46-51 are to be applied.</p>	<p>The shareholders' rights are limited to those of the shareholders' assembly according to the ruling law of the Member State in which the company has its registered office.</p>	<p><b><u>Art. 15:</u></b></p> <p>The Articles of Association must determine the pecuniary and non-pecuniary rights relating to each class of shares.</p>

<b>Recommendation:</b> The Ukrainian provisions on shareholders' rights are quite extensive. A revision of these is neither urgent nor mandatory.			
<b>4. Shareholders' obligations</b>			
<b><u>Art. 11:</u></b>  The shareholders are obliged to:  a) act in accordance with the Articles of Association and to enact all decisions made by the shareholders' meeting and other executive bodies;  b) fulfil all obligations regarding the Articles of Association and pay all contributions in the manner prescribed by the Articles of Association;  c) keep all information regarding the activities of the company confidential;  d) fulfil other obligations stated in this Act, other Ukrainian legislation or the Articles of Association.	The shareholders' obligations are not stated explicitly in the Act, but arise from the Articles of Association.  Furthermore the following obligations have been established by case law:  - membership obligation - payment and sustaining of the share capital - collective obligation of coverage - reserve liability - duty of good faith - duty of advancement - ancillary obligations	<b><u>Art. 1:</u></b>  Shareholders are only liable for the amount of shares they have subscribed. Further obligations do not exist.	<b><u>Art. 2:</u></b>  Each shareholder shall be liable only to the extent of the contribution made.  (The EPC may not issue securities to the public or issue bearer shares.)
<b>Recommendation:</b> Contrary to the German LLC Act the Ukrainian law contains provisions on shareholders' obligations. These principles are also known in German company law but are based on case law. Generally speaking it is a good idea to minimize the shareholders' obligations in order to make this legal form attractive for potential shareholders. An alteration of the existing regulations in Ukraine is not necessary because they are not excessive to a point where potential shareholders might be intimidated from using this legal form.			

5. Authorities of the shareholders' meeting			
<p><b><u>Art. 41:</u></b></p> <p>Authorities of the shareholders' meeting include:</p> <p>a) determination of the direction of activities of the company and approval of its plans as well as reports on their execution;</p> <p>b) amendments of the Articles of Association or alteration of the amount of the share capital;</p> <p>c) establishment and dismissal of executive and other organs of the company;</p> <p>d) approval of annual activity results of the company, including all subsidiaries, approval of reports and results of the audit commission, the procedure regarding the allocation of profits, the due date and procedure regarding dividends, determination of the procedure regarding the setting off of losses;</p> <p>e) establishment, restructuring and liquidation of subsidiaries, branch offices and representations, approval of their Articles of Association and</p>	<p><b><u>Sec. 46:</u></b></p> <p>The shareholders decide on matters such as:</p> <ol style="list-style-type: none"> <li>1. determination of the annual financial statement and use of the operating profit; decision regarding the disclosure of individual financial statements according to international accounting standards (Sec. 325 Para. 2a German Commercial Code) and regarding the approval of the financial statements as delivered by the managers;</li> <li>2. the demand of payment of the capital contributions;</li> <li>3. the reimbursement of additional contributions;</li> <li>4. the division and redemption of shares;</li> <li>5. the appointment and dismissal of managers and their discharge;</li> <li>6. measures of examination and control of the management;</li> </ol>	<p><b><u>Art. 52-60:</u></b></p> <p>The authorities of the shareholders' meeting are generally prescribed by the applicable law of the Member States according to where the company has its registered office or the Regulation No 2157/2001 or Statutes, if they do not conflict with the above mentioned.</p> <p><b><u>Art. 55:</u></b></p> <p>Shareholders holding at least 10% of shares may request that a shareholders' meeting be convened by the competent authorities.</p> <p><b><u>Art. 56:</u></b></p> <p>Shareholders holding at least 10% of shares may request that additional items be put on the agenda of the shareholders' meeting.</p> <p><b><u>Art. 59:</u></b></p> <p>The shareholders' meeting has the right to amend the statutes.</p>	<p><b><u>Art. 15:</u></b></p> <p>Shareholders holding at least 10% of shares may request that a shareholders' meeting be convened by the competent authorities.</p> <p>The approval of the annual financial statements and the allocation of profits, the appointment of the statutory auditor and any amendment of the Articles of Association require a collective decision of the shareholders' meeting.</p>

<p>provisions;</p> <p>f) decision making regarding liability of officers or other executive bodies;</p> <p>g) approval of procedural rules and of internal documents of the company, determination of the structure of the company;</p> <p>h) determination of remuneration of executive bodies of the company, the subsidiaries, branch offices and representations;</p> <p>i) approval of contracts, which surpass the amount stated in the Articles of Association;</p> <p>j) decision making regarding liquidation of the company, determination of the liquidation commission, approval of liquidation financial statement;</p> <p>k) decision making regarding appointment of authorized persons for the representation of the interests of the company in the cases prescribed by law.</p>	<p>7. the appointment of authorized representatives (<i>Prokuristen</i>) and of other representatives of the business;</p> <p>8. the assertion of claims for compensation by the company arising from the establishment of the company against the manager or shareholders, as well as the representation of the company in legal proceedings against the manager.</p>		
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<p><b><u>Art. 59:</u></b></p> <p>In addition to the points mentioned above, the shareholders' meeting has the authority regarding:</p> <p>a) determination of the amount, the form and the procedure of payment of additional contributions;</p> <p>b) decision making regarding the acquisition of shares by the company itself;</p> <p>c) exclusion of shareholders from the company;</p> <p>d) determination of the manner of control regarding the managing organs, establishment and determination of authorities of such controlling institutions.</p>			
<p><b>Recommendation:</b> The provisions on the shareholders' meeting in Ukraine are quite extensive. Nonetheless they contain no regulation on the possibility of a minority of shareholders (10%) requesting the convention of a shareholders' meeting, Therefore a similar provision formulating the rights of minority shareholders may be advisable.</p>			
<p><b>6. Management and its authorities</b></p>			
<p><b><u>Art. 62:</u></b></p> <p>The TOV requires the establishment of an executive body; either in form of a collective organ (directorate) or</p>	<p><b><u>Sec. 35:</u></b></p> <p>(1) The company is represented by the manager in and out of court.</p>	<p><b><u>Art. 38:</u></b></p> <p>The management system can be conceived as a two-tier system comprised of a supervisory organ</p>	<p><b><u>Art. 14:</u></b></p> <p>The procedure of appointment, the powers and terms of operation of the company's governing bodies and the</p>

<p>single person (Director). The directorate is managed by the General Director. Persons who are not shareholders can also be members of the executive body.</p> <p>The Directorate (Director) decides all matters concerning the activity of the company, except for those matters for which the shareholders' meeting is responsible. The shareholders' meeting may transfer parts of their authorities to the Directorate.</p> <p>The Directorate (Director) is accountable to shareholders' meeting and ensures the execution of its decisions.</p> <p>The Directorate (Director) is not entitled to make binding decisions on behalf of the shareholders' meeting.</p> <p>The Directorate (Director) acts as an agent for the company to the extent prescribed by law and the Articles of Association.</p> <p>The General Director has the authority to represent the company even without an explicit power of representation.</p>	<p>(2) The managers have the right to execute declarations of intent and to sign on behalf of the company in the manner prescribed by the Articles of Association. If no relevant provisions exist the declaration and signature must be executed by all managers. If declarations of intent are to be received by the company, it suffices if these are addressed at one of the managers. [...]</p> <p><b><u>Sec. 36:</u></b></p> <p>The Company is entitled and obliged by the legal transactions performed by its managers in its name; it is irrelevant if the transactions were expressly performed in the name of the company or if a corresponding will can be deduced from the circumstances.</p> <p><b><u>Sec. 37:</u></b></p> <p>(1) The managers are obliged to act within their granted authorities of representation pursuant to the Articles of Association and the shareholders' resolutions.</p>	<p>and a management organ or as a one-tier system with one administrative organ.</p> <p><b><u>Two-tier system</u></b></p> <p><b><u>Art. 39:</u></b></p> <p>The management organ is responsible for managing the company. The member(s) of the management organ shall be appointed and removed by the supervisory organ or by the shareholders' meeting. Membership in both the management and supervisory organ is not permitted.</p> <p><b><u>Art. 40:</u></b></p> <p>The supervisory organ supervises the work of the management organ. Its members are appointed by the shareholders' meeting, except for the members of the first supervisory organ which may be appointed by the statutes.</p> <p><b><u>Art. 41:</u></b></p> <p>The management organ shall report to the supervisory organ at least once every three months. The supervisory organ may request</p>	<p>relationship between them are governed by the Articles of Association.</p>
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<p>The General Director cannot be chairman of the shareholders' meeting.</p>	<p>(2) A restriction of the power of representation of the managers has no influence on third parties. [...]</p> <p><b><u>Sec. 38:</u></b></p> <p>The appointment of the managers can be revoked at any time, irrespective of any claims of compensation arising from existing agreements. [...]</p> <p><b><u>Sec. 40:</u></b></p> <p>(1) The managers have to register any changes in the persons of the shareholders or the amount of shares immediately in the form of a signed list of shareholders containing the complete names, dates of birth and residences as well as their shares in the Commercial Register. [...]</p> <p>(2) Managers who violate obligations according to Paragraph 1 are liable for all damages of creditors as co-debtors.</p> <p><b><u>Sec. 41:</u></b></p> <p>The managers are obliged to ensure orderly accounting of the company. [...]</p>	<p>information necessary for the fulfilment of its duties.</p> <p><b><u>One-tier system</u></b></p> <p><b><u>Art. 43:</u></b></p> <p>The administrative organ is responsible for the (day-to-day) management of the company. The member(s) of the administrative organ are appointed by the shareholders' meeting.</p> <p><b><u>Art. 44:</u></b></p> <p>The administrative organ meets once every three months and all members have the right to inspect all relevant information.</p> <p><b><u>Art. 45:</u></b></p> <p>The members of the administrative organ elect a chairman from among its members.</p> <p><b><u>General</u></b></p> <p><b><u>Art. 49:</u></b></p> <p>The members of an SE's organs are may not divulge any information concerning the SE which might be prejudicial to the company's</p>	
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	<p><b><u>Sec. 43:</u></b></p> <p>The managers are to apply the diligence of an orderly businessman in matters regarding the company.</p> <p><b><u>Sec. 49:</u></b></p> <p>The shareholders' meeting is convened by the managers.</p> <p><b><u>Sec. 51a:</u></b></p> <p>The managers are obliged to immediately inform each shareholder upon request about the matters of the company and to allow inspection of books and documents.</p>	<p>interests, while in office or afterwards.</p> <p><b><u>Art. 51:</u></b></p> <p>Members of an SE's management, supervisory and administrative organs are liable for loss or damage caused by any breach of their obligations inherent in their duties in accordance with the applicable law of Member States.</p> <p><b><u>Art. 54:</u></b></p> <p>Shareholders' meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority (in accordance with national law).</p> <p>Shareholders' meetings shall be held at least once a year.</p>	
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**Recommendation:** All jurisdictions contain extensive and similar provisions regarding the management and its authorities. The German model also states the obligation of informing the shareholders as soon as important decisions have been taken. Although the Ukrainian model also prescribes extensive management duties, the incorporation of this specific aspect is worth a thought. The matter of liability of the management should also be addressed explicitly (as is the case in the German LLC Act) in any new legislation.

<b>7. Share capital</b>			
<b><u>Art. 52:</u></b> The total amount of the share capital may not fall short of 100 minimum wages, which were valid during the establishment of the company.	<b><u>Sec. 5:</u></b> The minimum share capital has to amount to EUR 25,000; the individual shares have to amount to at least EUR 100. (As of Mid-2008 the minimum share capital will be EUR 10,000 and individual shares will require a minimum amount of merely EUR 1).	<b><u>Art. 4:</u></b> The minimum subscribed share capital has to amount to EUR 120,000.	<b><u>Art. 3:</u></b> The minimum share capital has to amount to EUR 25,000. It has to be subscribed for and paid in full at the time of registration. Share capital may be contributed in cash or in kind.
<b>Recommendation:</b> The amount of minimum share capital should be stated as an absolute amount. The linkage to minimum wages might be sensible from an employee/ social point of view. Shareholders and business partners on the other hand are interested in a clear and foreseeable sum of liability. This sum should not exceed EUR 10,000 in order for the Ukrainian LLC to remain attractive for foreign investors. Altogether there is a recognizable trend in Europe, as demonstrated by the current legislative reform in Germany, to lower the amounts of share capital due to strong competition initiated by the English Limited Company and enhanced by the recent accession of new EU member states. (The EUR 25,000 share capital requirement of the EPC should not be adopted.)			
<b>8. Number of shareholders</b>			
<b><u>Art. 50:</u></b> The maximum number of shareholders of a limited liability company is 10 persons.  <b><u>Art. 141 II Ukrainian Civil Code:</u></b> One person limited liability companies are not admissible, if the only shareholder is a one person company.	no corresponding provision  <b><u>Sec. 1:</u></b> Limited liability companies can be established by one or several persons in accordance with the provisions of this act for any	no corresponding provision	no corresponding provision  <b><u>Art. 4:</u></b> An EPC can be established by a sole person.

<p>A person can only be shareholder of a one person limited liability company.</p>	<p>lawfully admissible purpose. (The prohibition of concluding agreements with one's self pursuant to Sec. 181 German Civil Code is to be respected.)</p>		
<p><b>Recommendation:</b> It is not advisable to prescribe a maximum number of shareholders. None of the compared laws contain such a provision. This also applies to the structure of a one person limited liability company. The restriction of Art. 141 II Civil Code should be scrapped.</p>			
<p><b>9. Liquidation</b></p>			
<p><b><u>Art. 19:</u></b></p> <p>A company can be liquidated due to:</p> <p>a) the expiration of the Articles of Association (if the LLC was only founded for a limited time) or fulfilment of the company's purpose (if the company was only founded for a limited purpose);</p> <p>b) the decision of an executive organ with the corresponding authority;</p> <p>c) to court's decision in cases of serious or repeated violation of Ukrainian legislation;</p> <p>d) other reasons foreseen by the Articles of Association.</p>	<p><b><u>Sec. 65:</u></b></p> <p>The application for liquidation of a LLC must be registered in the Commercial Register and the shareholders must be notified of this measure.</p> <p><b><u>Sec. 66, 67:</u></b></p> <p>The liquidation is performed by the managers if no contradictory provisions of the Articles of Association or legislation exist. The liquidators have to be registered.</p> <p><b><u>Sec. 72:</u></b></p> <p>The company's assets are distributed among the shareholders according to their amount of the shares in the company.</p>	<p><b><u>Art. 63:</u></b></p> <p>The liquidation of an SE is governed by the legal provisions which would apply to a public limited liability company pursuant to the law of the Member State in which its registered office is situated.</p> <p><b><u>Art. 65:</u></b></p> <p>The liquidation of an SE must be publicized in the Official Journal of the European Communities.</p>	<p><b><u>Art. 36:</u></b></p> <p>Regarding liquidation the EPC is subject to the legal provisions applicable to the companies to which it is considered equivalent in each State pursuant to this Regulation.</p> <p>The persons referred to by national law are liable in accordance to these provisions.</p>

<p><b><u>Art. 20:</u></b></p> <p>Liquidation of the LLC is performed by a liquidation commission selected by the company.</p> <p><b><u>Art. 21:</u></b></p> <p>The company's assets are allocated to the shareholders according to the Articles of Association or the legislative provisions.</p> <p><b><u>Art. 22:</u></b></p> <p>Liquidation of the LLC is completed if the company has seized its activities and the termination of the company has been registered in the corresponding official register.</p> <p><b><u>Art. 150 Ukrainian Civil Code:</u></b></p> <p>Liquidation of the LLC requires a corresponding shareholder resolution. Reasons for the liquidation can be the expiration of the Articles of Association (if the LLC was only founded for a limited time) or a court's decision for those cases prescribed by law.</p> <p>It is also possible to convert the LLC into other legal forms.</p>	<p><b><u>Sec. 74:</u></b></p> <p>The end of the liquidation must also be registered.</p>		
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<b>Recommendation:</b> In this regard the differences between the different jurisdictions are rather small. The international (European) legislations refer to the national laws of the Member States. It would be advisable to eliminate all amending (or conflicting) provisions contained in other Acts (i.e. Art. 150 Ukrainian Civil Code), so that all matters pertaining to liquidation are contained in one sole (new) law.			

#### **IV. Summary**

In summing up, it must be mentioned that the Ukrainian Act on Corporations is the first piece of legislation on this subject matter conceived by a member country of the former Soviet Union. It was enacted in September 1991 and due to major changes in society, after 16 years, it is out of date.

The Ukrainian version of the limited liability company (TOV) is regulated by the Ukrainian Act on Corporations (GUK), the Ukrainian Civil Code, the Ukrainian Commercial Code and the Ukrainian Act on the public registration of legal and natural entities - companies. The most extensive of these with respect to the limited liability company is the GUK. The others merely repeat the general provisions or contain regulations referring to the GUK, e.g. Article 141 No.1 of the Ukrainian Civil Code, which refers to Article 50 GUK.

One main weak point of this act is the vague regulation of the matter of decision making by the shareholder meeting by means of written questioning of the shareholders (Art. 60 GUK). It is not clear, if during a shareholder assembly lasting several days, the attending shareholders have to be registered every day; this is important because many shareholders tend to leave the meetings early.

Furthermore a great number of problems arise due to structures prescribed by Ukrainian corporate law, which cannot be solved with the help of general provisions. At the end of the 1990's some countries developed national laws concerning corporate governance which were formulated as suggestions. Such laws implemented provisions, which are followed by the companies, only because this is beneficial to them and not because the disregarding of these rules is punished. The instalment of such a regulation would be of advantage in Ukraine.

#### **V. Conclusion and Recommendation**

It is impossible to unite all variations of these two different legal forms in one general act.

Due to reasons of clarification and simplicity it is advisable to create one uniform act on the TOV, consisting of one general and one special part. Another argument in favour of this view is the fact that a stock company and a limited liability company are two different legal forms, which partially pursue different legislative goals.

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