

## The New Law Against the Backdrop of the Financial Crisis

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On October 22, Ukrainian President Viktor Yushchenko signed the new Joint Stock Companies Law adopted September 17 by the Verkhovna Rada. The law fills legal blanks in the sphere of corporate governance, introduces new mechanisms to defend minority shareholder interests, and regularizes operations on the securities exchange.

USAID Capital Markets Project specialists, as well as experts from other USAID projects took an active and wide-ranging part in the ten-year elaboration and adoption process of this law.

CMP's Senior Capital Markets Expert Victor Stetsenko comments on several aspects of the JSC law.

1. Investors have really been waiting for this law. How will it impact the Ukrainian stock market, which is now reeling under the blow of the global financial crisis?

Had this law been passed three years ago, our market would have been in better condition than it is today. Why? If one takes a look at the PFTS Index, it is quite clear that its previous break-neck growth was clearly exaggerated. One can argue that this growth could be accounted for by the emergence of private pension funds and investment funds, by the fact that people, ordinary Ukrainians, started to pay attention to the stock market. Yes, that is all true. But those prices on the [stock] market are not the result of speculation (as permitted by the trading rules); instead, as many experts note, they indicate the presence of market manipulation. And the new law includes provisions that would help restrict such manipulations.

2. What provisions do you mean?

Well, of course, corporate governance requirements. They are excellent provisions! However, the most critical [new] rules for the markets are trade concentration and fair price rules. In other words, the law says that "public joint stock companies shall be listed on an exchange". Furthermore, the stocks of public companies may only be traded on an exchange and only on the one where the company is listed. So far, only 5% of transactions trade on securities exchanges, while 95% are traded over-the-counter. Let's take Aval bank or Zaporizhstal: their stocks are traded both on the market, and OTC. Stock prices on

the exchange and OTC often differ, leading to intense "playing around" with prices over the previous three years. And that is manipulation, rather than speculation: obviously hiked prices, and blatant cases of defaulting on transactions. The introduction by the new JSC law of a trade concentration rule for public joint stock companies requiring them to trade their stocks on an exchange, will force them to conclude transactions openly and transparently.

Another important provision introduces securities settlements according to the "Delivery vs Payment" (DVP) mechanism. It guarantees that transactions are settled on the terms and within the timeframes set when the contract was agreed. This rule is very important, because almost 90% of transactions agreed on exchanges were later never settled according to the initial terms – either the price differed, or the amount of stocks changed, or timeframes shifted – anything could happen.

3. What effects do you expect from this law?

It means banking on the future! I hope that by the time the market stabilizes, the existence of all these rules – concerning corporate governance, trade concentration, information disclosure, and DVP settlement – will guide the market away from its wilder manifestation to a more civilized form. Then, our market will be evolving within the same compass as other markets: it will not grow artificially or drop artificially.

**Victor Stetsenko** has been working as an advisor for Ukrainian government agencies on legislation drafting and stock market infrastructure for 13 years.

Victor caught the securities market right after its birth. In 1993, two years after Ukraine's first exchange opened, Victor Stetsenko was Director of the Ukrainian Stock Exchange Depository. Since 2005, Mr. Stetsenko is the Head of Market Institutions Department at the USAID Capital Markets Project.

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