

CONCEPT (TOR)

of the draft Law on Corporate Governance in Municipal Enterprises and Companies with a Share of Ownership of Territorial Communities

This concept is based on the reform of corporate governance in state-owned enterprises, which began in Ukraine in 2024, and on the OECD Guidelines for State-Owned Enterprises 2024.

Block 1. Development of a new Law of Ukraine “On Corporate Governance in Municipal Enterprises and Companies with a Share of Ownership of Territorial Communities”

In order to comprehensively legalize relations regarding the management of municipal property objects, in particular municipal unitary enterprises and business companies, in the authorized capital of which there is a share of the territorial community, a separate Law of Ukraine “On Corporate Governance in Municipal Enterprises and Companies with a Share of Ownership of Territorial Communities” is being developed. The law aims to clearly define the rights of the territorial community as the owner, the powers of authorized management bodies regarding the ownership, use and disposal of these objects, in order to meet public needs. The need for the law is also due to the entry into force of the Law of Ukraine "On the Peculiarities of Regulation of the Activities of Legal Entities of Certain Organizational and Legal Forms in the Transitional Period and Associations of Legal Entities", which provides for the corporatization of utility companies and the introduction of corporate governance tools, which requires separate legislative regulation.

Block 2. Defining and distributing the powers of the local council (owner), authorized management bodies (executive bodies of local councils), and the supervisory board regarding the management of communal property.

Local government: establishes management rules as the owner.

Key role: determines the strategic principles for managing community enterprises. Approves procedures and policies for municipal enterprises and business entities in which the community owns 50%+ of the shares, based on model procedures approved by the Cabinet of Ministers of Ukraine.

Its powers include: adopting the community's communal property policy; approving (in accordance with Cabinet of Ministers of Ukraine procedures) procedures for the competitive selection of managers and members of the supervisory board, the procedure for the work and evaluation of the supervisory board, determining the remuneration of managers and members of the supervisory board, performance criteria, and reporting requirements.

Authorized management body (executive bodies of the council): ensures the implementation of council decisions.

Key role: implements the policy approved by the council, ensures control over the activities of enterprises through administrative instruments, and organizes the selection of members of the supervisory board.

Its powers include: appointing and dismissing managers of municipal enterprises/business entities, concluding and monitoring the performance of contracts (if the SB is not mandatory or has not been formed); approving the owner's letter of expectations based on the CMU procedure and monitoring its implementation; monitoring financial activities and initiating external independent audits; submitting candidates for owner representatives and independent members to the supervisory board for consideration; keeping records of facilities, ensuring transparency and accessibility of information about the activities of enterprises.

Supervisory board: exercises strategic oversight of the organization's activities and management. It is mandatory to form a supervisory board in municipal enterprises and business associations with a community share of 50%+ that meet certain criteria.

Key role: ensures professional control over the activities of the enterprise, makes strategic management decisions without interfering in administrative issues and operational management.

Its powers include: approving the strategic development plan, annual financial and investment plans, and reports on their implementation; approving significant transactions, organizing and conducting competitive selection of managers, appointments, concluding contracts, setting remuneration, dismissals; forming policies: anti-corruption, corporate social responsibility (CSR), ethics, sustainable development; implementation and control of internal audit, compliance, and risk management systems; preparation of an annual report on the activities of the Board of Directors and assessment of the effectiveness of corporate governance.

This division of functions will ensure qualified and focused management of municipal legal entities, increase the transparency and accountability of their activities, optimize decision-making and administrative procedures, prevent conflicts of interest, and promote sustainable community development through effective management of its resources to meet public needs.

Block 3. Disposal of property of enterprises and companies

1. Enterprises and companies established by territorial, district, or regional councils manage property contributed by the community as part of their authorized capital, as well as assets acquired in the course of their business activities.
2. Authorized local self-government bodies may transfer municipal property for use by such enterprises and companies in accordance with the procedures and conditions determined by law and by decisions of local councils.
3. The alienation or transfer for use of property owned by municipal enterprises and companies shall be conducted on a competitive basis through electronic auctions within an electronic trading system, ensuring transparency and fair access — except in cases and under specific conditions defined by law.
4. The disposal or transfer of municipal property provided to enterprises and companies under the right of usufruct or other property rights shall be governed by the procedures established by the Laws of Ukraine “On Privatization of State and Communal Property” and “On Lease of State and Communal Property.”

Block 4. Introduction of a Community Property Policy

The introduction of a mandatory Community Property Policy as a strategic document approved by the local council will enable a systematic approach to the management of municipal enterprises and corporate rights of the community.

The policy should be based on principles established by law and recommendations from central government bodies, and should be reviewed at least once every three years. The policy is subject to public discussion and should be made public.

Communities must develop and adopt the Policy within one year after the Law comes into force (i.e., three months for the central government to develop recommendations and nine months for communities to adopt them).

Proposed structure of the Policy:

1. Justification for keeping objects in community ownership. The purpose and social expediency of keeping certain objects in community ownership (e.g., providing socially important services, supporting competition, maintaining critical infrastructure).
2. Classification of municipal legal entities. Based on grounds for retention, privatization, reorganization, or liquidation. Definition of categories with non-financial (social, environmental, etc.) objectives.
3. Criteria for mandatory corporate governance tools. The law will contain a list of threshold indicators (income, assets, number of employees, signs of monopoly) that determine the mandatory implementation of corporate governance tools:
 - creation of a supervisory board with a majority of independent members;
 - implementation of an internal control system (internal audit, compliance, risk management);
 - conducting an external independent audit of financial statements.
- The relevant indicators must be reflected in the Municipal Property Policy. At the same time, the community will be able to supplement this list at its own discretion with other criteria that, in its opinion, also require a higher level of management transparency.
4. Principles of reporting, transparency, and management objectives. Formulation of requirements for annual plans, financial and non-financial reporting, information disclosure structure, financial and non-financial performance indicators. Focus on achieving community goals, not just profitability.
5. Remuneration policy for managers and members of supervisory boards of municipal legal entities. To be approved by the local council, based on the principles of transparency, fairness, market conformity, and reflecting the objectives of the legal entities.
6. Letters of expectations. Each year, based on the approved Communal Property Policy and after consultation with the supervisory board, the authorized management body/executive committee (for MEs) or the general meeting of shareholders (for JSCs) approves the owner's letter of expectations. It sets out short- and medium-term financial, operational, and non-financial goals that are consistent with the enterprise's strategic development plan.

Block 5. Introduction of mandatory corporate governance tools for certain legal entities owned by municipalities

1. Establishment of criteria for application

The law defines the criteria under which a municipal unitary enterprise or business association with a community share of more than 50% is required to introduce corporate governance tools. These criteria are:

- the value of assets is equal to or greater than UAH 941,600,000 (EUR 20 million) according to the latest annual financial statements;
- the average number of employees exceeds 250;

- it does not have the characteristics of a municipal non-profit enterprise.

According to preliminary estimates, 57 municipal enterprises fall under these criteria.

These criteria must be included in the Municipal Property Policy. At the same time, communities have the right to expand the list of municipal enterprises that fall under the requirements of this legislative regulation.

2. Corporate governance tools

All municipal unitary enterprises and business entities with a community share of more than 50% that meet three of the specified criteria are required to implement the following corporate governance tools:

- establishment of a supervisory board that performs strategic management, control, and key personnel functions;
- conducting an open competitive selection of managers of legal entities, the winners of which are determined by the supervisory board and based on the results of which the supervisory board concludes contracts with the winners; the requirements, powers, functions, and remuneration of managers are regulated by law, the charter, and decisions of the supervisory board;
- implementation of an internal control system covering compliance, risk management, and internal audit, the functioning of which is controlled by the supervisory board;
- annual independent financial audit, which is within the powers of the supervisory board.

Block 6. Formation and composition of the supervisory board

For municipal enterprises and business entities with a community share of 50%+ that fall under the mandatory criteria, the law establishes requirements for the composition, formation, powers, and functioning of the supervisory board.

If municipal enterprises or business entities with a 50%+ community share fall under the criteria specified in part 1 of block 5, the authorized management body/local council is obliged to start a competitive selection of independent members of the supervisory board and determine the owner's representatives within 60 days.

1. Quantitative composition, structure

The supervisory board shall consist of 5 to 9 members.

The majority of its members shall be independent members selected through an open competitive selection process. The typical procedure for selecting independent members of the supervisory board shall be approved by the CMU.

2. Term of office

Members of the Supervisory Board are elected for a term of up to 3 years with the possibility of one re-election. The chair of the Supervisory Board is elected from among its members by a majority vote for a term of 3 years.

4. Procedure

Issues of the internal organization of the SB's work (meetings, decision-making, powers of the chairperson, rights of members, remuneration, etc.) are determined by law, the charter of the enterprise or company, and the regulations on the SB, which are approved for municipal enterprises by the council and for commercial companies by the general meeting of participants (shareholders).

5. Powers of the Supervisory Board

The competence of the supervisory board is determined by law and the charter of the enterprise. Other management bodies may not interfere with the exclusive powers of the Supervisory Board.

6. Requirements and restrictions

The law establishes criteria for independent members of the SB, qualification requirements, as well as restrictions on concurrent positions, terms, and grounds for early termination of powers.

7. Features of declaration

Independent members of the supervisory board and non-resident foreigners are not subject to declaration within the meaning of the legislation on the prevention of corruption.

Block 7. Competence and organization of the supervisory board of a municipal enterprise and a business entity with a 50%+ community share

The supervisory board of a municipal enterprise or a business entity with a 50%+ community share performs strategic, control, and personnel functions. The law defines the list of its powers, which may also be supplemented by the charter.

1. It is determined that the exclusive competence of the supervisory board includes (among others):

strategic and financial planning:

- approval of the strategic development plan of the enterprise;
- approval of the annual financial plan and report on its implementation;
- approval of the investment plan (annual and medium-term);
- determination of performance indicators;
- submission of proposals to the owner's letter of expectations regarding financial, operational, and non-financial goals.

appointment of management:

- organization and conduct of a competitive selection process for the position of head of a municipal enterprise or business entity;
- determination of criteria for selecting candidates for the position of head of a municipal enterprise or business entity;
- appointment and dismissal of the head, approval and control of contract terms, determination of remuneration.

control and independent assessment:

- approving regulations governing the activities of the enterprise (within the limits of its competence);
- proposals on the selection of an audit entity, approval of contract terms;
- decisions on conducting an independent assessment of property, approval of the contract and remuneration of the appraiser;
- approval of significant transactions and transactions with interested parties.

internal control and audit:

- establishment of an internal audit department, approval of working procedures and reporting;
- appointment and dismissal of the head of internal audit, approval of the terms of contracts for audit employees;
- control of the effectiveness of internal control, risk management, and compliance systems.

policies, ethics, responsibility:

- preparation of the annual report of the supervisory board, assessment of its own work and the quality of corporate governance;
- formation of the company's anti-corruption policy;
- approval of the corporate social responsibility and sustainable development policy;
- approval of business ethics rules.

Other powers: decisions on other issues that, according to the law and the charter, fall within the exclusive competence of the supervisory board.

2. The Law on the Powers of the Supervisory Board also defines:

1. The specifics of the approval by the supervisory board of the strategic development plan, annual financial plan, annual investment plan, medium-term investment plan (three to five years), and reporting by the managers of enterprises and companies to the supervisory board.
2. The general procedure for organizing, conducting meetings, and making decisions by the supervisory board.
3. The specifics of the formation and activities of committees (on audit issues and the committee on appointments and remuneration).
4. The specifics of appointing an internal auditor (internal audit unit) and its activities.
5. Features of SB reporting to the local council (annual report on the work of the SB, reflecting an assessment of its activities; specify the requirements for the report, the procedure and deadlines for publication).

Block 8. Define the assessment of the activities of the supervisory board of a municipal enterprise, a business association with a community share of 50%+.

The activities of the supervisory board of a municipal enterprise or business association with a community share of 50%+, in which the establishment of a supervisory board is mandatory, shall be evaluated at least once every three years.

1. The evaluation procedure is the same as for state-owned enterprises, as approved by the CMU (Procedure for evaluating the activities of the supervisory board for state-owned enterprises, 50%+ community share).
2. The evaluation criteria are approved by the authorized management body or the relevant council.
3. The evaluation may be carried out with the involvement of an independent consultant appointed in accordance with the established procedure by the authorized management body or the relevant council.
4. Based on the results of the evaluation, decisions may be made to renew the composition of the supervisory board, adjust its powers, or implement measures to improve management efficiency.
5. The results of the assessment may be published on the official website of the local council and the municipal enterprise, economic association 50%+ if such a decision is taken by the council.

Block 9. Procedure for remunerating managers of municipal enterprises, economic associations, and members of the supervisory board

The amount of remuneration for managers of municipal enterprises and heads of executive bodies of business associations is determined by the supervisory board (if any) in accordance with the principles established by the

remuneration policy approved by the local council.

Members of the supervisory board are entitled to remuneration for their activities and compensation for expenses related to the performance of their functions, in accordance with the remuneration policy for the supervisory board.

Legal entities of communal property, in which the establishment of a supervisory board is mandatory, are required to approve and publish an annual report on the remuneration of managers and members of the supervisory board. The requirements for the structure, content, and procedure for approving the report are established by the relevant board.

Block 10. Determine the obligation to publish and update information about objects of communal property rights and the responsibility of authorized management bodies

1. The head of a municipal legal entity and the authorized management body are required to publish and update the list of information specified in part 8 of the new Article 60-2 of the Law of Ukraine “On Local Self-Government in Ukraine” on municipal property:

- on the Unified State Web Portal of Open Data;
- on the official websites of local self-government bodies;
- in the functional service of the Unified State Register of State Property Objects.

2. The authorized management body is responsible for the completeness, accuracy, and timeliness of the publication and updating of information on objects of communal property.

3. Control over the implementation of the requirements of this article shall be entrusted to the central executive body responsible for ensuring the formation and implementation of state policy in the field of local self-government development.