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## TYPES OF ADMINISTRATIVE AND LEGAL INSTRUMENTS FOR FUNCTIONING OF STOCK EXCHANGES IN UKRAINE

**Abstract. Purpose.** The purpose of the article is to characterise the types of administrative and legal instruments for the functioning of stock exchanges in Ukraine. **Results.** It is established that most of the administrative services provided by the National Securities and Stock Market Commission are free of charge and are provided within a specially established period (30 days). In general, the administrative services that are directly related to Ukrainian stock exchanges include: issuance, replacement or cancellation of title documents of stock market participants; issuance of duplicate documents related to stock exchange activities; approval of statutory documents in the manner prescribed by law; admission of securities to circulation in Ukraine (for foreign participants); approval of personnel decisions of stock market participants. Administrative and information services in the field of stock exchanges in Ukraine are special types of public services related to stock exchange activities and are provided by specialised information agencies and the National Securities and Stock Market Commission to stock market participants for the purpose of legitimate stock exchange activities, self-regulation of the professional activities of stock market participants, obtaining and dissemination of information about stock exchanges and general legal framework for the operation of stock exchanges. **Conclusions.** It is concluded that the main entity providing administrative and information services in the sphere of functioning of stock exchanges is the National Securities and Stock Market Commission as a power-regulatory entity of public administration, which ensures administrative and coordination relations of stock market participants, and news agencies as special public administrators. The administrative and legal instruments for the functioning of stock exchanges in Ukraine is a set, provided for by law, of legal and organisational forms, measures and methods of implementing administrative and regulatory framework for stock exchanges which is interdependently formed into a single effective mechanism to ensure optimal organisation and progressive functioning of stock exchanges.

**Key words:** charter, state registration, legal entity, physical person, commission.

### 1. Introduction

The effectiveness of the legal regulatory mechanism is a degree of achievement of the expected regulatory result, i.e. the correlation between the established goal of legal regulation of social relations and actual results (goal-result). The effectiveness of regulatory framework is one of the key indicators of its quality, along with value ("meeting the needs, interests, development of individuals, social groups, and society") and cost-efficiency ("adequacy of social costs to the results of legal framework for social relations"). The effectiveness of the legal regulatory mechanism means the optimal measure of the law's targeted impact on social relations, that is, achievement of the goal of obtaining the results of their implementation that are foreseeable and desirable for the creator of legal provisions. The purpose, if its content is legal consequences,

is to best meet the two basic conflicting needs of the individual and society: justice (freedom) and security (order). A rulemaking body may have other goals (economic, environmental, political, social and cultural) in addition to legal ones. In this case, the effectiveness of legal regulation is determined by the achievement of all goals (Skakun, 2014, p. 215).

Undoubtedly, the effectiveness of the regulatory mechanism for stock exchanges depends on the "correctness" of application of administrative and legal instruments for the functioning of stock exchanges, which are components of their overall regulatory mechanism.

### 2. Principles for determining specific features of stock exchanges in Ukraine

The essence of an instrument in law is defined as an arsenal, the entire range of legal phenomena of different levels, which are distinguished and considered not only in the con-

text of the needs of legal practice, but also from the standpoint of their functional purpose, i.e. those features that characterise them as instruments for performing economic, political or social tasks (Paterlylo, 2006).

In our opinion, the administrative and legal instruments for the functioning of stock exchanges in Ukraine is a set, provided for by law, of legal and organisational forms, measures and methods of implementing administrative and regulatory framework for stock exchanges which is interdependently formed into a single effective mechanism to ensure optimal organisation and progressive functioning of stock exchanges.

According to R. Melnyk and V. Bevzenko, the instruments of public administration include regulations of public administration, administrative act and administrative contract (Melnyk and Bevzenko, 2014, p. 58). According to V. Halunko, P. Dikhtievskiy, O. Kuzmenko and S. Stetsenko, the instruments of public administration include: 1) regulations; 2) administrative acts; 3) administrative contracts as an instrument of public administration; 4) plans as instruments of public administration; 5) actions as instruments of public administration (Melnyk, Bevzenko, 2014, pp. 143-145). In addition, scholars argue that the choice of an appropriate public administration instrument in the activities of a public administrator is based on two main factors: first, adherence to the principle of legality (a public administrator shall act exclusively in the manner prescribed by the Constitution and laws of Ukraine), in other words, to choose competence among the instruments of public administration. Second, ensuring the effective restoration of the rights, freedoms and legitimate interests of individuals and the public interest of society. In this case, when choosing a public administration instrument, a public administrator should consider a number of factors with certain contradictions. In the second case, the public administrator should optimally combine the highest efficiency in restoring the violated values of the person in need with minimal inconvenience to other persons and minimal expenditure of human and material resources and time (Halunko, Dikhtievskiy, Kuzmenko, Stetsenko, 2018).

Therefore, the following types of administrative and legal instruments for the functioning of stock exchanges in Ukraine can be distinguished: issuance of regulatory and individual acts; e-governance tools; control; prudential supervision as a special tool; administrative and information services in the field of stock exchange functioning; administrative enforcement for violation of the requirements

of the legislation on the functioning of stock exchanges.

An important individual instrument for the functioning of stock exchanges in Ukraine is the Stock Exchange Rules, provided for by the Regulations on the Functioning of Stock Exchanges, approved by the National Securities and Stock Market Commission by its Decision No. 1688 of 22 November 2012. In accordance with the Regulations, the Stock Exchange Rules, as well as amendments thereto, shall be effective upon their registration with the Commission in accordance with the requirements of Ukrainian law. The stock exchange rules may be contained in one document or consist of separate stock exchange documents. Stock exchange rules must be transparent and non-discriminatory (By the decision of the National Securities and Stock Market Commission on the approval of the Regulation on the functioning of stock exchanges, 2012).

The Stock Exchange Rules consist of the following procedures: organising and conducting stock exchange trading; listing and delisting securities; admitting stock exchange members and other persons to stock exchange trading; quoting securities and other financial instruments, publishing the stock exchange rate; disclosing and publishing information on the stock exchange's activities; resolving disputes between stock exchange members and other persons entitled to participate in stock exchange trading in accordance with the law; control over compliance by members of the stock exchange and other persons entitled to participate in stock exchange trading in accordance with the law with the rules of the stock exchange; - sanctions for violation of the rules of the stock exchange, including cancellation (non-performance) of the stock exchange contract (agreement) on a security or other financial instrument (By the decision of the National Securities and Stock Market Commission on the approval of the Regulation on the functioning of stock exchanges, 2012).

The stock exchange may establish specifics of organisation and conduct of exchange trading in the relevant type of security or other financial instrument on different types of markets provided for by the stock exchange rules. The rules of the stock exchange for each market shall determine the procedure for submitting orders and specifying their types; specific features of entering into exchange contracts (agreements), the procedure for ensuring (if any) fulfilment of obligations under exchange contracts (agreements); the procedure for settlements. The rules of the stock exchange should determine: the procedure for acquiring the status of a stock exchange member, includ-

ing requirements for a stock exchange member, suspension and termination of the status of a stock exchange member; rights and duties of a stock exchange member; procedure for maintaining a list of stock exchange members, exchange traders and their authorised representatives; procedure for registering authorised representatives of exchange traders; procedure for providing information by stock exchange members and exchange traders (By the decision of the National Securities and Stock Market Commission on the approval of the Regulation on the functioning of stock exchanges, 2012).

Therefore, the main administrative instrument for the functioning of stock exchanges in Ukraine is the issuance of regulations and individual acts, which is mostly carried out by the National Securities and Stock Market Commission. A special role should be given to the Stock Exchange Rules, which transparently define the requirements and rules for the functioning of stock exchanges and establish the specifics of the relationship between stock market participants.

Stock exchanges are considered to be an integral part of the economy of any developed country. They are a product of the natural development of the economy. Stock exchanges were created and are created to enable firms to obtain the financial resources necessary for their development, i.e. to make the issued securities as viable as possible. Stock exchanges act as an economic barometer of the global financial system. Sharp fluctuations in stock prices and their fall cause shocks in the world market, rapid outflow of capital, which in turn leads to economic and financial instability, asset depreciation, crisis phenomena, etc. (Mitiukov, Aleksandrov, Vorona, Nedbaieva, 2001).

The study of administrative and information services in the field of stock exchanges, first of all, should focus on the legal category of "administrative services".

From the legislative definition, some scholars have identified the key features of an administrative service, such as: 1) an administrative service is provided only upon application of an individual or legal entity; 2) the application leads to a certain result aimed at acquiring, changing or terminating the rights and/or obligations of a person; 3) an administrative service is the result of the exercise of power by the administrative service provider; 4) an administrative service is provided in accordance with the law (Halunko, Dikhtiiivskiy, Kuzmenko, Stetsenko, 2018). Based on these features, the following conclusions can be drawn: - an administrative service is provided by an administrative service provider only at the initiative of a person who needs such a service; - the result of con-

sideration of an application by an applicant is: 1) a decision of individual action (administrative act), which is made in relation to a specific person and gives rise to, changes or terminates the rights and/or obligations of a person (for example, a marriage registration certificate, a licence for a certain type of economic activities, an entry in the Unified State Register of Legal Entities and Individual Entrepreneurs); 2) an administrative agreement under which a person's rights and/or duties are acquired, changed or terminated; - an administrative service is provided only by an administrative service provider; - the provision of an administrative service is the responsibility of a state or local authority; - the powers of public administration bodies and the procedure for providing administrative services should be enshrined exclusively in law (Halunko, Dikhtiiivskiy, Kuzmenko, Stetsenko, 2018).

With regard to the issue of administrative and information services in the field of stock exchanges, we believe it is important to note that the main authority in this field is the National Securities and Stock Market Commission.

In accordance with the List of Administrative Services Provided by the National Securities and Stock Market Commission No. 112 of 18 July 2018, the administrative services directly related to Ukrainian stock exchanges include the following services: issuance of a certificate of registration of an association of professional stock market participants; issuance of a certificate of registration of an association as a self-regulatory organisation of professional stock market participants; replacement of the certificate of registration of the association of professional stock market participants; replacement of the certificate of registration of the association as a self-regulatory organisation of professional stock market participants; cancellation of the certificate of registration of the association of professional stock market participants; cancellation of the certificate of registration of the association as a self-regulatory organisation of professional stock market participants; issuance of a certificate for the right to perform actions related to the direct conduct of professional activities in the stock market; issuance of a duplicate certificate for the right to perform actions related to the direct conduct of professional activities in the stock market; cancellation of a certificate for the right to perform actions related to the direct conduct of professional activities in the stock market; issuance of a licence for professional activities in the stock market (securities market); cancellation of a licence to carry out professional activities in the stock market (securities market); approval of a draft charter of a corporate invest-

ment fund and registration of a share issue to form the initial authorised capital of a corporate investment fund with the issuance of a temporary certificate of registration of a share issue; admission of securities of foreign issuers to circulation in Ukraine; delegation of powers to a self-regulatory organisation of stock market participants; early termination (refusal to exercise) of delegated powers to a self-regulatory organisation of stock market participants; approval of internal documents of a self-regulatory organisation (amendments thereto) approved by a self-regulatory organisation of stock market participants; approval of rules and standards of professional activities in the stock market (amendments thereto) approved by the association of professional stock market participants; approval of candidates for the positions of stock exchange managers; approval of distribution of advertising (amendments to advertising) of securities and the stock market; registration of rules (amendments to rules) of the stock exchange; approval of the charter (amendments to the charter) of the stock exchange (Official website of the National Securities and Stock Market Commission, 2022).

### **3. Specific features of the regulatory and legal framework governing the powers of stock exchanges**

In order to approve the charter (amendments to the charter) of a stock exchange, the documents required to provide such an administrative service are sent to the legal address by post or submitted directly in person. The administrative service is free of charge. For state registration of the charter (amendments to the charter) (unless the stock exchange is established and operates on the basis of a model charter), the stock exchange must submit the charter (amendments to the charter) and the following documents to the Commission for approval - an application for registration of the stock exchange's charter (amendments to the charter); - justification of the reasons for amending the charter; - a copy of the original decision to amend the charter; - the charter (amendments to the charter) in three copies, executed in accordance with the requirements of Article 15 of the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" in paper form and one copy in electronic form; - a comparative table of the old and new versions of the charter in paper and electronic forms. Within 30 calendar days from the date of receipt of the package of documents, the Commission has the right to decide to approve/refuse to approve the charter (amendments to the charter) of the stock exchange. In case of submission of an incomplete package of documents or documents that are

executed in violation of the established requirements, they shall be returned without consideration within 10 business days from the date of receipt by the Commission. If the Commission has any comments on the content of the submitted documents, it has the right to send a notice to the applicant not later than 30 days from the date of receipt of the package of documents on the need to take such comments into account. The result of this service is the Commission's decision to approve/refuse to approve the charter (amendments to the charter) of the stock exchange. Two copies of the stock exchange's charter (amendments to the charter), with the Commission's stamp of registration indicating the date and number of the relevant Commission's decision. The grounds for refusal to approve the charter (amendments to the charter) of a stock exchange may be - non-compliance of the submitted documents with the requirements of the law; - presence of inaccurate data in the submitted documents (Official website of the National Securities and Stock Market Commission, 2022).

In order to approve candidates for the positions of stock exchange managers, the documents required for the provision of such an administrative service shall be sent to the legal address by post or submitted directly in person. The administrative service is free of charge. The Commission shall make a decision based on the overall assessment of all submitted documents and the results of the interview within 30 calendar days from the date of receipt of the application and relevant documents. If there are grounds provided for by law, the Commission may return them without consideration no later than 5 working days from the date of receipt of the application for approval of the candidate for the position of the head of the stock exchange and the relevant documents. To obtain approval for appointment to the position of the head of the stock exchange, the applicant's authorised body shall submit an application for approval of the candidate for the position of the head of the stock exchange and the following documents: 1) Copy of the decision of the relevant governing body of the stock exchange on dismissal from the position of the head and a copy of the decision of the relevant governing body of the stock exchange on the election of a candidate for the position of the head, certified by the signature of the authorised person; 2) Application form of the candidate for the position of the head of the stock exchange signed by the person of the candidate for the position of the head of the stock exchange, certified by the person dealing with personnel issues at such stock exchange, or notarised; 3) Copies of documents

on education issued by a higher educational institution of Ukraine and/or a foreign educational institution, certified by the signature of an authorised person or notarised (for a foreign individual); 4) Copy of the employment record book or other document (for a foreign individual) confirming the employment record of the candidate for the position for the last three years, certified at the last place of work or notarised (for a foreign individual); 5) Copies of all pages of the passport containing information about the person; 6) Copy of the Registration number of the taxpayer's registration card; 7) Information about the candidate for the position of the head of the stock exchange provided by the stock market supervisory authority of the relevant foreign country and/or information from stock market participants of the foreign country where the candidate for the position previously worked; 8) Information on the candidate for the position of the head of the stock exchange provided by professional stock market participants and/or their founders, where the candidate for the position previously worked, and/or information of the applicant's members, certified by the signatures of the members or the signature of the head of the legal entity that provided such information; 9) Notarised copy of the permit for the use of labour of foreigners and stateless persons in Ukraine; 10) For a foreign individual - a certificate from the relevant state authority of the foreign state in which the candidate for the position resides, stating that the candidate has no criminal record that has not been cancelled or expunged in accordance with the established procedure. The result of the service is the Commission's decision to approve/refuse to approve the candidacy of the stock exchange's head. The grounds for refusal are: - the candidate for the position of a head, according to the submitted documents, does not meet the requirements of the law; - the documents on the candidate for the position of a head contain inaccurate information; - the candidate has not confirmed the appropriate level of professional knowledge and skills, which, in particular, is assessed based on the results of the interview; - the candidate did not appear for the interview without valid reasons (Official website of the National Securities and Stock Market Commission, 2022).

To obtain a licence to carry out professional activities in the stock market, the applicant shall submit to the General Department of the Commission or send by mail (registered letter) an application for a licence drawn up in the state language and two copies of the list (description) of documents submitted for the issuance of a licence to carry out professional activities in the stock market, the applicant shall indicate

which document submitted with the application for a licence is confidential information. The administrative service shall be free of charge. The Commission, in accordance with the procedure established by it, shall issue or refuse to issue a licence for a certain type of professional activities in the stock market within three months from the date of receipt of the documents referred to in part two of this Article. For verification of information on foreign legal entities or foreign individuals included in the ownership structure of a legal entity that intends to carry out professional activities in the stock market, the period for reviewing documents shall be six months. The decision of the NSSMC to issue or refuse to issue a licence is an entry in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations on the decision of the licensing authority to grant or deny a licence to a business entity to carry out the type of business activities it has determined. A written notification of the decision to issue or refuse to issue a licence (with a copy of the relevant decision attached) shall be sent (issued) to the applicant within five working days from the date of the relevant decision (signed by the head of the structural unit of the Commission that considers the application for a licence and relevant documents) (Official website of the National Securities and Stock Market Commission, 2022).

Therefore, most of the administrative services provided by the National Securities and Stock Market Commission are free of charge and are provided within a specially established period (30 days). In general, the administrative services that are directly related to Ukrainian stock exchanges include: issuance, replacement or cancellation of title documents of stock market participants; issuance of duplicate documents related to stock exchange activities; approval of statutory documents in the manner prescribed by law; admission of securities to circulation in Ukraine (for foreign participants); approval of personnel decisions of stock market participants.

With regard to information services in the field of stock exchanges, we note that pursuant to the provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplifying Business and Attracting Investments by Securities Issuers" No. 210-VIII of 16 November 2017, the National Securities and Stock Market Commission amends existing and develops new regulations regarding the provision of information services in the stock market (Official website of the National Securities and Stock Market Commission, 2022).

Legal regulations governing the activities of information agents will include: the proce-

procedure for authorisation of legal entities intending to provide information services; the procedure for maintaining the Register of persons authorised to provide information services in the stock market and disclosure of information therefrom; requirements for information services agreements; requirements for a certificate of inclusion in the Register of persons authorised to provide information services; requirements for a person who intends to carry out information services activities; the procedure for notifying the Commission of changes in information and/or documents submitted for inclusion in the Register of persons authorised to provide information services and for obtaining a certificate of inclusion in the Register; the procedure for cancellation of the certificate of inclusion in the Register of persons authorised to provide information services; the procedure for approval by the Commission of internal rules and requirements for software and hardware systems used in the provision of information services: for the publication of regulated information on behalf of stock market participants, for the distribution of consolidated information on financial instruments and/or stock market participants in a continuously updated mode, for the submission of reports and/or administrative data to the Commission (Official website of the National Securities and Stock Market Commission, 2022).

That is, the purpose of providing information services is to simplify the administrative and regulatory framework for stock exchanges for stock market participants, and their main feature is to expand the legal impact of information services provided by special entities - information agencies.

News agencies are special public administrators that are authorised by the National Securities and Stock Market Commission to provide information services in the stock market in accordance with the procedure established by law.

In general, information services in the field of stock exchange functioning consist of official publication of information on the activities of stock exchanges or submission of reporting data on the functioning of the stock exchange to the National Securities and Stock Market Commission.

#### 4. Conclusions

Therefore, administrative and information services in the field of stock exchanges in Ukraine are special types of public services related to stock exchange activities and are provided by specialised information agencies and the National Securities and Stock Market Commission to stock market participants for the purpose of legitimate stock exchange activities, self-regulation of the professional activ-

ities of stock market participants, obtaining and dissemination of information about stock exchanges and general legal framework for the operation of stock exchanges.

The main entity providing administrative and information services in the sphere of functioning of stock exchanges is the National Securities and Stock Market Commission as a power-regulatory entity of public administration, which ensures administrative and coordination relations of stock market participants, and news agencies as special public administrators.

Therefore, administrative and legal instruments for the functioning of stock exchanges in Ukraine is a set, provided for by law, of legal and organisational forms, measures and methods of implementing administrative and regulatory framework for stock exchanges which is interdependently formed into a single effective mechanism to ensure optimal organisation and progressive functioning of stock exchanges.

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## ВИДИ АДМІНІСТРАТИВНО-ПРАВОВОГО ІНСТРУМЕНТАРІЮ ФУНКЦІОНУВАННЯ ФОНДОВИХ БІРЖ В УКРАЇНІ

**Анотація. Мета.** Мета статті полягає у характеристиці видів адміністративно-правового інструментарію функціонування фондових бірж в Україні. **Результати.** З'ясовано, що більшість адміністративних послуг, які надаються Національна комісія з цінних паперів та фондового ринку є безоплатними та надаються у спеціально встановлений строк (30 днів). В цілому, до адміністративних послуг, які мають безпосереднє відношення до фондових бірж України можна віднести: видача, заміна або анулювання правовстановлюючих документів учасників фондового ринку; видача дублікатів документів, що пов'язані з біржовою діяльністю; погодження статутних документів у порядку, встановленому законом; допуск цінних паперів до обігу в Україні (для іноземних учасників); погодження кадрових рішень учасників фондового ринку. Адміністративні та інформаційні послуги у сфері функціонування фондових бірж в Україні є спеціальними видами публічних послуг, що стосуються провадження біржової діяльності та надаються спеціалізованими інформаційними агентствами та Національною комісією з цінних паперів та фондового ринку учасникам фондового ринку для законного здійснення біржової діяльності, саморегулювання професійної діяльності учасниками фондового ринку, отримання та розповсюдження інформації про фондові біржі та загально-правового регулювання питань функціонування фондових бірж. **Висновки.** Зроблено висновок, що основним суб'єктом надання адміністративних та інформаційних послуг у сфері функціонування фондових бірж є Національна комісія з цінних паперів та фондового ринку, як владно-регуляторний суб'єкт публічної адміністрації, що забезпечує адміністративно-координаційні взаємозв'язки учасників фондового ринку, та інформаційні агентства як спеціальні суб'єкти публічної адміністрації. Адміністративно-правовий інструментарій функціонування фондових бірж в Україні – це нормативно-забезпечена сукупність правових та організаційних форм, заходів та способів реалізації адміністративно-правового регулювання фондових бірж, що взаємозалежно формується в єдиний ефективний механізм задля забезпечення оптимальної організації та прогресивного функціонування фондових бірж.

**Ключові слова:** статут, державна реєстрація, юридична особа, фізично особа, комісія.