

### Анотація

*Гушин О. О.* Особливості застосування норм міжнародного гуманітарного права в операціях із підтримання миру та безпеки. – Стаття.

Статтю присвячено проблемам дотримання норм міжнародного гуманітарного права під час проведення гібридних миротворчих операцій, що включають елементи підтримки миру та примусу до миру.

*Ключові слова:* ООН, Міжнародний комітет Червоного Хреста, операції з підтримки миру, операції з примусу до миру, міжнародне гуманітарне право.

### Аннотация

*Гушин О. А.* Особенности применения норм международного гуманитарного права в операциях по поддержанию мира и безопасности. – Статья.

Статья посвящена проблемам соблюдения норм международного гуманитарного права при проведении гибридных миротворческих операций, включающих элементы поддержания мира и принуждения к миру.

*Ключевые слова:* ООН, Международный комитет Красного Креста, операции по поддержанию мира, операции по принуждению к миру, международное гуманитарное право.

### Summary

*Gushyn O. A.* Features of the application of international humanitarian law in peacekeeping and security operations. – Article.

The article investigates the implementation of international humanitarian law in the conduct of hybrid peacekeeping operations, including elements of peace-keeping and peace enforcement.

*Key words:* United Nations, International Committee of the Red Cross, peacekeeping operations, peace-enforcement, international humanitarian law.

УДК [336.563:330.322.3](477+4+73)

*J. V. Khort*

## REGULATORY OBSTACLES TO VENTURE CAPITAL FUNDRAISING: A COMPARATIVE STUDY OF UKRAINE, THE EU AND THE USA

**Introduction.** At present Ukrainian venture market is underdeveloped, especially in a high-tech sector. Ukrainian venture capital (*further – VC*) market is assessed at UAH 129 498,4 mln [1]. In comparison, in 2012 the EU total venture capital financings were assessed at €4,4 billion, American – at \$29,7 billion respectively [2]. Access to finance is essential for the growth of venture funds (*further – VFs*). The problem of VC fundraising became even more acute after the financial crisis of 2008 and the ongoing political crisis when a significant reduction of investment allocations to VFs was noticed. A sound legal framework is an important prerequisite for VC fundraising. The availability of debt financing Ukrainian VFs remains limited as its cost is too high. At the same time, Ukrainian legislation contains a range of regulatory obstacles for equity financing, namely, institutional investor allocations to VFs and thereby makes inflow of capital even more challenging.

**Relevance to the previous research.** The impetuous growth of VC industry and uneven distribution of VC flows in different countries caused scholars' interest in the determinants of VC fundraising. A landmark study of Gompers & Lerner (1998) [3] showed regulatory changes which affect venture capital fundraising (pension funds,

capital gains tax rates, economic growth, and R&D expenditures, firm-specific performance and reputation). Over the last few years a growing body of literature has focused on the impact of financial crisis on the evolution of VC fundraising (Vermeulen & Nunes (2012)) [4]. Another body of research dealt with the assessment of the economic impact of the recent legal regulations (the EU Solvency II Directive and the US Dodd-Frank Act) on VFs (Arias, Arouri, Foulquier & Gregoir (2010) [5], Tillman (2012)) [6]. With regard to the VC fundraising in the emerging economies, there is an important work of Klonowski (2012) [7]. Despite a large amount of research on the topic, there is a surprisingly limited evidence on the legal problems of VC fundraising in Ukraine (Mertens (2005)) [8] just mentioned it.

**The main research issue** of this paper is what regulatory steps should be done to improve venture capital fundraising in Ukraine? This article adds to the strand of literature and investigates justification for restrictions imposed on Ukrainian institutional investor allocations to VFs, focusing on the comparison with the EU and US regulations. I offer a more efficient regulation of VC investments in Ukraine.

**Structure of the article.** This article is organized as follows. Part I of this article provides a foundational overview of VF investors and legal obstacles to their investments in Ukraine. In this part I analyze how legislation changed VC fundraising in Ukraine and its impact on the structure of VF investors. I find that current restrictions imposed on institutional investor allocations to VFs are predetermined mainly historical rather than economical determinants. They are too costly and obsolete and should be revisited. Part II of the article is devoted to the analysis of similar regulations in the EU and the USA (countries with the most developed and mature venture capital markets in the world), and their distinction from the Ukrainian one. I consider the structure of VF investors in the EU and USA, motivation for such regulations, determinants which caused the growth of VC market. I evaluate the recent post-crisis financial reforms in both the EU and the USA regarding VC fundraising and make some suggestions for the Ukrainian regulator. In part III a new approach to regulating of Ukrainian institutional investor allocations, pursuing the enhancing of venture capital fundraising is put forward. I suggest a significant liberalization of restrictions imposed on institutional investor allocations to VFs with simultaneous establishment of supervision of the authorized governmental agencies for such investments. I emphasize the role of trust and reputation for VC fundraising and propose development of the best practices and standards by VC self-regulatory organization.

#### *1. Overview of VF Investors and Legal Obstacles to their Investments in Ukraine*

In Ukraine the main investors of venture funds are Ukrainian companies (78,3%), foreign investors (18,1%) and high-net-worth individuals, where share of the last ones is insignificant (3,6%) according to the data of UAIB in 2012 [1, p. 8].

It should be noticed that until 2001 only foreign private equity funds functioned in Ukraine. With the adoption of the Law of Ukraine “On Collective Investment Institutions (Unit Investment Trusts and Corporate Investment Funds)” from March 15, 2001 № 2299-III (*further – Law of Ukraine “On Collective Investment Institutions”*), which firstly envisaged a legal base for VFs activity, domestic investors became active investors of VFs. The share of Ukrainian corporate investors in VFs grew rapidly, ho-

wever, it can be mainly explained by tax preferences. Unlike the EU countries, in Ukraine VFs are used in construction, agricultural and food industries for structuring transactions and reducing taxes (they pay an income tax after their liquidation) and have a very low level of representation in the high-tech industry [9]. For the last decade the structure of investors in VFs hasn't undergone any significant changes. Since 2008 the share of high-net individuals in VFs started to grow when they were allowed to invest in them by the law (if the amount of investment is not less, than 1500 minimum wages) (Art. 4(16)).

So, VC fundraising in Ukraine has been transformed over the last decade from the one where only foreign investors prevailed, to the one where domestic and foreign ones coexist.

The peculiarity of investor structure of Ukrainian VFs is that domestic financial institutions are not represented among VF investors. Current Ukrainian legislation imposes legislative bans on pension funds [10; 11], collective investment institutions investments [12] in VFs, and also significant restrictions on bank investments and insurance companies [13; 14; 15; 16].

In fact, a rather prohibitive approach to the regulation of institutional investor allocations to VFs in Ukraine is formed.

If to consider other emerging economies, which had a similar way of VC industry formation, e. g. at Russian Federation, we can see that it has a less restrictive regulation of institutional investor allocations (investment funds [17], insurance companies [18] and private pension funds [19] can invest in VFs but there are quantitative restrictions on such investments).

Analyzing motives of imposing restrictions on institutional investor allocations in Ukrainian VFs, it is necessary to consider two types of determinants: economical and historical ones.

First of all, VC investments belong to alternative investments and are much riskier than traditional ones. In the academic literature venture capital is called a high-risk asset class (Gompers & Lerner (2001)) [20, p. 145]. However, risks and illiquidity of VC investments are usually compensated by higher returns expected by investors compared with those from traditional investments.

Beyond that, in emerging markets risks of venture investments are much higher compared with developed countries. It can be explained by the following reasons.

Firstly, Ukrainian VFs have a lower level of reputation compare to VFs of developed countries. At present, best practices and standards of VFs' functioning are practically absent there. However, economic research showed a correlation between VC reputation and the level of fundraising: more reputable VC firms have a better ability to provide higher returns (Gompers, 1996; Lee & Wahal, 2004) [21; 22].

Secondly, regulatory and legal risks. Lack of reputational sanctions requires efficient formal enforcement [23, p. 64]. However, the enforcement of contracts and commercial laws is often problematic because of the ineffectiveness of the Ukrainian court system. A catchy example, which shows all the complexity of the situation, is significant losses of banks in 2008–2011 as a result of abuses with invalidation of loan agreements and inability to protect their rights in court or to secure their enforcement.

Thirdly, exit from venture capital investments in Ukraine is quite difficult, as stock market is not developed. However, it is crucial for VF investor decision-making

[24, p. 158] because a successful exit is a precondition for attractive returns and it frees up capital for future investments. Black and Gilson (1998) [25] and Jeng and Wells (2000) [26] claim that a well-developed stock market is an important driver of VC investing. Giot and Schwienbacher (2007) show in their study that IPO is a more preferable exit way for VF investors than a trade sale [27]. Venture capitalists achieve higher returns through IPO than with trade sales [28]. In Ukraine VFs choose exit by means of trade sale to a strategic investor in the same industry.

Fourthly, Ukrainian VFs show a worse performance comparing to foreign funds. At the same time, the study of Gejadze, Pierre Giot and Armin Schwienbacher (2012) shows correlation between fundraising and performance of VFs.

Fifthly, there is a range of other legal and regulatory obstacles in Ukraine (corporate governance, disclosure of information, valuation of assets in VFs), which make VC investments less profitable.

In order to fully understand the motivation of imposing restrictions on institutional investor allocations to VFs in Ukraine, it is necessary to look at them through historical retrospective, i. e. how this regulation was formed.

Traditionally, the development of VC industry in Ukraine is considered to have started back in 1990s when the first foreign private equity funds were set up [29, p. 17]. Active establishment of trust companies and funds and other investment funds in Ukraine are also characteristic of this period. Their activity was directed at the investments in privatized enterprises. However, a lot of investment funds failed, what was mainly caused by the rigorous corporate frauds of their managers who, instead of investing in securities, built “financial pyramids” [30, p. 335–336]. Another reason is absence of proper legal regulation of stock market and reliable investor protection.

Worsening of the economic situation in Ukraine due to the financial crisis in 1998 significantly undermined the stock market and liquidity of securities [30, p. 380].

Corporate frauds, absence of effective investor protection caused loss of trust in investment funds among investors and, to some extent, cast a “shadow” of their negative reputation on VFs. That period was characterized by low level of financial literacy of the population (the majority of people didn’t understand the difference between types of investments funds).

That is why when the first law “On Investment Collective Institutions” of 2001 was adopted it secured strong investor protection through strict regulation of investment funds activity. The Law prohibited individuals’ investments in VFs aiming to protect them from high risks (regardless of whether it was a retail investor or a high-net-worth individual), and establishment of funds of funds (collective investment institutions don’t have a right to invest in other collective investment institutions (Art. 48(24)(4)) pursuing prevention of financial pyramids’ creation. The Law of Ukraine “On Investment Collective Institutions” prescribes different regulation of unit investment trusts, corporate investment funds and VFs; as regards the last ones it is less prescriptive. Still there is no clear understanding of the legal nature of a VF and its distinction from a close notion such as private equity fund in it.

Shortly after the adoption of the Law of Ukraine “On Investment Collective Institutions”, there have been adopted Law of Ukraine “On the non-state pension

provision” from July 9, 2003 № 1057-IV (art. 47(7)(3), Law of Ukraine “On Mandatory State Pension Insurance” from July 9, 2003 № 1058-IV (art. 80(4)(3)) which prohibit investments of their assets in other collective investment institutions, including VFs. In such way the government tried to protect people’s savings from high risks of VF investments.

At the same time there has been a significant growth of VC industry for the last decade. In the end of 2013 1083 VFs were registered. During the last 6 years their number increased in 2,4 times and the volume of assets – in 4,8 times. The share of VFs among other collective investment institutions is around 95% [31].

An important role for the growth of VFs belongs to the rise of the Ukrainian economy and the improvement of Ukrainian corporate and financial market legal environment. Over the last decade, the government has adopted a variety of regulatory policies to catalyze the development of the financial market: the Law of Ukraine “On Financial Services and State Regulation of the Financial Services Markets” from July 12, 2001 № 2664, the Law of Ukraine “On Banks and Banking” from September 20, 2001 № 2740-III (new edition), the Law of Ukraine “On Securities and Stock Market” from February 23, 2006 № 3480-IV (new edition), the Law of Ukraine “On Joint-Stock Companies” from September 17, 2008 № 514-VI, the Law of Ukraine “On the Depository System of Ukraine” from July 6, 2012 № 5178 and a range of others laws and subordinate legal acts.

Despite the fact that Ukrainian non-bank financial sector is still poorly developed and is far behind even recent accession countries in Central Europe [32], the study of Semenog (2011) shows partial growth of the value of their assets, the total share of which increased almost twice within 2004–2009 [33, p. 142].

Further development of Ukrainian VC industry is impossible without inflow of capital and financial institutions’ investments would be very helpful in this case. However, a new edition of the Law of Ukraine “On Collective Investment Institutions” from July 5, 2012 № 5080-VI has not changed the approach to institutional investor allocations to VFs.

Thus, a prohibitive approach to institutional investments in VFs was historically formed in Ukraine. It was mainly a reaction to the corporate frauds in mutual funds in 1990s, and as a result emerged an overregulation of such investments (an almost entire ban of institutional investor allocations to VFs). However, currently, a new stage of development of economy and legislation in Ukraine, that requires revising of legislative approach to regulation of institutional investor allocations to VFs, has been noticed.

## *2. Restrictions on Venture Capital Investments in the EU and the USA*

To understand why the VC markets have grown so much in the USA and the EU, we need to study at the peculiarities of legal regulation of VC fundraising in these countries.

Unlike Ukraine, the EU legislation makes a distinction between professional investors and retail investors (Annex II of Markets in Financial Instruments Directive (MiFID) 2004/39/EC). Similar regulation is provided in the USA securities legislation where it is used a notion of an accredited investor (Rule 506 of Regulation D).

According to the provisions of the Alternative Investment Fund Managers Directive of June 8, 2011 (AIFMD) units or shares of VFs can be marketed only to professional investors (art. 31(6); art. 32(9); art. 35(17); art. 39(11); art. 40(17); art. 42(1)). As in Ukraine, marketing of VFs to retail investors, as a rule, is prohibited except,

when member-state of the EU secures additional protection of such investors in its national legislation (art. 43 of the AIFMD).

Evaluating justification for such regulation it is necessary to take into account two points. First of all, professional and retail investors have different financial savvy to protect themselves. For a long time regulators considered professional investors sophisticated, having enough financial power to protect themselves; VF investors can envisage all necessary covenants for the realization of their rights in investment contracts [34, p. 4]. That is why until recently VFs were unregulated or slightly regulated; and nowadays their regulation is less restrictive compared with other collective investment schemes. From the other hand, it is questionable whether retail investors have the level of sophistication necessary to understand financial matters so well to make investments in venture capital [35, p. 47–48]. That is why only wealthy individuals are allowed to invest in VFs.

Giving a broader access to retail investors to VFs requires better protection and would increase the cost of capital, which in its turn, would diminish returns of the venture capital industry. So, in the EU and the USA such a system of VF financing, where the main investors are institutional ones, was formed.

Compared with Ukraine, the group of institutional investors in the analyzed countries, who can invest in VFs (private equity), is much bigger. It includes banks, insurance companies, pension funds, collective investment vehicles, endowments, foundations, sovereign wealth funds etc.

It should be noted that earlier restrictions on financial institutions' investments to VFs were prescribed by the EU and USA legislation. However, financial liberalization in the 1980–1990 stimulated the development of venture capital market [36]. Reconsidering of pension fund investment policy became the driving force for venture industry growth in the analyzed countries [37, p. 73]. In the USA venture capital activity significantly increased after the removal of restrictions imposed on pension fund investments in 1979 [38, p. 31].

In Sweden, which has a huge state pension fund industry, liberalization of pension fund investments at the beginning of 1990s also boosted the development of venture capital industry [39, p. 69]. However, pension fund investments play a less important role in the development of venture capital industry in the EU than in the USA [40, p. 255], that can be explained by stricter investment regulations of pension fund investments in venture capital in the first case. In the USA restrictions imposed on pension fund investments in venture capital are practically absent; in the EU they have been significantly eased by the Directive 2003/41/EC of the European Parliament and the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (IORP Directive) but the level of restrictions differs from one member-state to another (they are absent in the UK (and it has the second largest VC industry in the world after the USA)) [41].

After the financial crisis of 2008 it became more difficult to make bank investments in venture capital due to the recent regulatory developments – Basel III in Europe and Volcker rule of the US Dodd-Frank Act, which imposed restrictions on the ability of banks to invest in the asset class. Unlike the USA, the EU regulator also strengthened risk

coverage capital framework of insurance companies in Solvency II Directive (which is similar to the banking regulations of Basel II [42, p. 71]). As a result, it becomes more expensive for such financial institutions to invest in venture capital because they should hold more regulatory capital to meet the risks. There is also a discussion if similar to Solvency II risk-based regime should apply to European pension funds (the draft of the reform of the Institutions for Occupational Retirement Provision (IORP) Directive of 2011).

In fact, all the above-mentioned reforms in the EU and the USA have been directed to the prevention of the future financial crisis and aimed mainly at the prevention of the systemic risk in the financial market. Not rejecting the fact of the necessity of revisited risk management systems in financial institutions, most of the global post-crisis reforms have been adopted too fast (there are some concerns that risk-management structures don't take into account the specificities of the insurance or pension fund industry) or without due assessment of their negative economic impact on other actors of the financial system (e. g. Volcker rule and Solvency II on VFs; draft of IORP directive on pension fund industry) [43, p. 2, 33–34; 44].

These financial market reforms represent quite an overreaction to the financial crisis [45, p. 2]. They are dictated by political motives rather than economical reasons [46, p. 127–131]. Politicians always believe that more regulation is better than less regulation. For instance, before the financial crisis there was a discussion as to the regulation of hedge funds but after the financial crisis all other alternative investment funds were regulated, which didn't bring any systemic risk into the economy [47, p. 106]; moreover, “one size-fit” approach of all the funds is used in the AIFMD [48, p. 398]. Insurance companies also didn't cause the financial crisis of 2008; however, they were also strictly regulated by Solvency II Directive (practically in the same way as banks, which were the main causers of the financial crisis).

Thus, the analysis of the EU and USA regulation shows a positive impact of liberalization of institutional investor allocations on the growth of the VC industry. Recent post-crisis restrictions put on them were motivated by the wish to prevent systemic risk in the economy. However, the implementation of this principle into financial legislation was not successful in all the cases. Considering adaptation of Ukrainian legislation according to the recent EU VC regulation, it would be more reasonable to follow its main principles but avoid a typical mistake for Ukrainian policymaker of direct importing of foreign legislation into the national one.

### *3. Policy Proposals and Concluding remarks*

It is a generally accepted fact that cost-benefit analysis is the best available method that captures welfare effects of financial regulation [49, p. 1]. Moreover, in the USA the obligation to consider costs of the proposed regulation is laid upon the USA Securities and Exchange Commission (SEC) by the law. For example, Securities Act of 1933 (§ 2(b)), the Investment Company Act of 1940 (§ 2(c)) require that in certain rulemaking the SEC consider not only investor protection but also whether its proposed rule would “promote efficiency, competition, and capital formation” [50, p. 13, 33]. Professor Ruder aptly notes that it is quite important to reach balance in regulation of these purposes [51]. Indeed, it is proved that better investor protection leads to lower cost of capital (La Porta, Lopez-de-Silanes, and Shleifer (2006)). However, overprotection of

investors can increase other costs, such as operating on stock market (Cervone (2005)) [52, p. 3]. Ironically, some post-crisis financial reforms, as in the case with Volcker rule of the USA Dodd-Frank Act, show that cost-benefit analysis has been grossly violated [53, p. 9]. As a result, at present in the academic literature the issue of whether a policymaker should enact a formal cost-benefit analysis requirement for all financial regulation is being discussed [54, p. 1].

That is why, analyzing the effectiveness of the imposed restrictions on institutional investor allocations to VFs of Ukraine, I will consider costs and benefits of such regulation as well as the possibility of any other economically beneficial solutions in this relation.

I argue that current legislation of Ukraine provides overprotection of investors and financial stability and imposes significant and undue costs both VFs and their investors.

As a counterargument it can be pointed that Ukrainian financial sector (especially its non-banking constituency) is poorly developed and such investments will not add too much to venture capital fundraising. However, venture capital industry of Ukraine has a sharp deficiency in financial resources, especially in the wake of the financial and ongoing political crises when foreign investors exit the Ukrainian market and invest in less risky ones [55, p. 18]. These crises show the importance of domestic investors. So even a small inflow of capital would be helpful. Restrictions imposed on institutional investor allocations to VFs in Ukraine seriously hamper it.

Pursuing suitable protection of such institutional investors, in fact, Ukrainian legislator causes the opposite result by such regulation, namely, hinder their growth. VFs can produce strong returns, making such investments desirable for institutional investors. According to the research of Harris, Jenkinson and Kaplan US private equity funds show better performance than public markets. Outperformance versus the S&P 500 averages 20% to 27% over a fund's life and more than 3% annually [56, p. 1]. The study of Ernst & Young experts "Branching out. How do private equity investors create value?" as to the European market also demonstrates that PE investments outperform investments in comparable public companies in 3,6 times [57, p. 5]. Emerging PE also outperform emerging market listed stocks over 9,3% according to MSCI Global Emerging Markets Index (Source: Cambridge Associates, IFC analysis, June 2012) [58].

Restrictions imposed on Ukrainian institutional investors' investments to VFs significantly limit their investment choice and hinder the efficient diversification of their investment portfolios, what in turn increases risks and reduces possible returns of these institutions.

Such restrictions have a particularly negative impact on pension funds to provide adequate incomes retirement, taking into account aging of the Ukrainian population (it ranks among top 30 oldest countries of the world by the share of population aged 60 and above; at the same time numbers of labor-active population groups is declining) [59, p. 5], lack of money in the budget to pay pensions in due size (the new government of Ukraine is planning to cut pensions by 50% to save Ukraine from default) [60]. This problem is inherent to other countries too, even so developed as Japan, the EU countries and the USA [61]. Pension funds try to solve it through increasing their investments in alternative investment funds, including venture ones (in 2012 investments in alternatives made up 19% of all pension fund assets globally, compared with 5% 15 years ago) [62, p. 15].

In the light of cost-benefit analysis I suggest revising the existing regulation of institutional investor allocations to VFs towards their significant liberalization but not entire removal.

Currently, it is unreasonable to avoid any regulation of institutional investor allocations to venture capital. A contract (which regulates legally binding relations between a VF and its investor) is not so effective investor remedy in Ukraine, as in western countries, because of the absence of reputational constraints of Ukrainian venture business and effective court and law-enforcement systems.

The relaxation of constraints on institutional investor allocations to VFs should be accompanied by establishing supervision of the authorized government agencies for such investments. A thorough analysis of risk management systems of financial institutions (first of all, insurance companies and pension funds) should be done (whether they cover the risks, to which PEFs are exposed).

At the same time, some steps should be taken towards enhancing of public trust to VFs and strengthening their reputation, which is a driving force for investor decision-making. There should be brought more transparency in the Ukrainian venture capital industry. Introduction of the best practices of conduct, corporate governance standards, valuation standards, investor-reporting guidelines of VFs by self-regulatory organization and its control for their compliance would also have a positive impact on the venture funds' reputation. At present Ukrainian Association of Investment Business (UAIB), which is the only self-regulatory organization in asset management, developed a few standards for asset management companies: Methodological recommendations as to organization and conducting internal audit in asset management companies, approved by the Decision of UAIB Board from September 25, 2013; Methodological recommendations as to organization of risk-management system in asset management companies Decision of UAIB Board from December 18, 2013.

I believe that such regulatory measures will provide VF investor protection and increase venture capital fundraising in Ukraine.

### References

1. Analytical overview of asset management market in Ukraine / Ukrainian Association of Investment Business [Electronic resource]. – Access mode : <http://www.uaib.com.ua/files/articles/1954/11/2013-f.pdf>.
2. Venture capital report [Electronic resource]. – Access mode : [http://www.wilmerhale.com/uploadedFiles/WilmerHale\\_Shared\\_Content/Files/Editorial/Publication/2013-wilmerhale-vc-report.pdf](http://www.wilmerhale.com/uploadedFiles/WilmerHale_Shared_Content/Files/Editorial/Publication/2013-wilmerhale-vc-report.pdf).
3. Gompers P.A. What Drives Venture Capital Fundraising? / P.A. Gompers, J. Lerner, M.M. Blair and T. Hellmann // *Brookings Papers on Economic Activity, Microeconomics*. – 1998. – Vol. 2. – P. 149–204.
4. Vermuelen E.P.M. The Evolution and Regulation of Venture Capital Funds / E.P.M. Vermuelen, D.P.D. Nunes // *Lex Research Topics in Corporate Law & Economics*. – 2012. – № 1. – P. 49. – [Electronic resource]. – Access mode : [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2163193](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2163193).
5. Arias L. On the Suitability of the Calibration of Private Equity Risk in the Solvency II Standard Formula / L. Arias, A.M. El Hedi, Ph. Foulquier, S. Gregoir ; An EDHEC Financial Analysis and Accounting Research Centre Publication [Electronic resource]. – Access mode : [http://docs.edhec-risk.com/mrk/000000/Press/EDHEC\\_Publication\\_Calibration\\_PE\\_SII\\_UK.pdf](http://docs.edhec-risk.com/mrk/000000/Press/EDHEC_Publication_Calibration_PE_SII_UK.pdf).
6. Tillman J.A. Beyond the crisis: Dodd-frank and private equity / J.A. Tillman // *New York University Law Review*. – 2012. – Vol. 87. – № 5. – P. 1602–1640.
7. Klonowski D. Private Equity in Emerging Markets. The new Frontiers of International Finance / D. Klonowski. – London : Palgrave Macmillan, 2012. – 324 p.

8. Mertens A. Venture Funds and Venture Investments: How Does It Work? / A. Mertens // *Financial Director*. – 2005. – № 1. – P. 97–105.
9. Starychenko O. Peculiarities and Possibilities of Venture Investment Fund in Ukraine / O. Starychenko // *Ukraine Financial, Informational and Analytical Portal “Ukrainian Agency of Financial Development”* [Electronic resource]. – Access mode : [http://www.ufin.com.ua/analit\\_mat/rzrp/195.html](http://www.ufin.com.ua/analit_mat/rzrp/195.html).
10. Про недержавне пенсійне забезпечення : Закон України від 9 липня 2003 р. № 1057-IV // *Офіційний вісник України*. – 2003. – № 33. – Ст. 1769.
11. Про обов’язкове державне пенсійне страхування : Закон України від 9 липня 2003 р. № 1058-IV // *Офіційний вісник України*. – 2003. – № 33. – Ст. 1770.
12. Про інститути спільного інвестування (пайові та корпоративні інвестиційні фонди) : Закон України від 5 липня 2012 р. № 5080-VI // *Відомості Верховної Ради України*. – 2013 – № 29. – Ст. 337.
13. Про банки і банківську діяльність : Закон України від 7 грудня 2000 р. № 2121-III // *Відомості Верховної Ради України*. – 2001. – № 5. – Ст. 30.
14. Про страхування : Закон України від 7 березня 1996 р. № 85/96-ВР // *Відомості Верховної Ради України*. – 1996. – № 18. – Ст. 78.
15. Про затвердження Правил розміщення страхових резервів із страхування життя : Розпорядження Держфінпослуг від 26 листопада 2004 р. № 2875 // *Офіційний вісник України*. – 2004. – № 51. – Ст. 3399.
16. Про затвердження Положення про обов’язкові критерії та нормативи достатності, диверсифікованості та якості активів, якими представлені страхові резерви з видів страхування, інших, ніж страхування життя : Розпорядження Державної комісії з регулювання ринків фінансових послуг України від 8 жовтень 2009 р. № 741 // *Офіційний вісник України*. – 2009. – № 91. – Ст. 3097.
17. Об утверждении Порядка размещения страховщиками средств страховых резервов : Приказ Министерства финансов Российской Федерации (Минфин России) от 2 июля 2012 г. № 100н // *Бюллетень нормативных актов федеральных органов исполнительной власти*. – 2011. – № 18. – С. 5–6.
18. Об утверждении положения о составе и структуре активов акционерных инвестиционных фондов и активов паевых инвестиционных фондов : Приказ Федеральной службы по финансовым рынкам Российской Федерации от 28 декабря 2010 р. № 10-79/пз-н // *Бюллетень нормативных актов федеральных органов исполнительной власти*. – 2011. – № 18. – С. 19.
19. Об утверждении Правил размещения объектов наружной (визуальной) рекламы в населенных пунктах : Постановление Правительства Российской Федерации от 1 февраля 2007 г. № 63 // *Российская газета*. – 2007. – № 25. – С. 12–13.
20. Gompers P. Venture Capital Revolution / P. Gompers, J. Lerner // *Journal of Economic Perspectives*. – 2001. – № 2. – P. 145–168.
21. Gompers P.A. Grandstanding in the venture capital industry / P.A. Gompers // *Journal of Financial Economics*. – 1996. – Vol. 42. – P. 133–156.
22. Lee P.M. Grandstanding, certification and the underpricing of venture capital backed IPOs / P.M. Lee, S. Wahal // *Journal of Financial Economics*. – 2004. – Vol. 73. – P. 375–407.
23. Guseva Y. KGB’s Legacy: Transplanting Efficient Financial Infrastructure without Efficiency / Y. Guseva [Electronic resource]. – Access mode : <http://webcache.googleusercontent.com/search?q=cache:j0xK-FqRyJgJ:www.eale.org/conference/Aix-Marseille2014/paper/download/908/177+&cd=1&hl=en&ct=clnk&gl=ua>.
24. Lerner J. Institutions and venture capital / J. Lerner, J. Tåg // *Industrial and Corporate Change*. – 2013. – Vol. 22. – № 1. – P. 153–182.
25. Black B.S. Venture capital and the structure of capital markets: banks versus stock markets / B.S. Black, R.J. Gilson // *Journal of Financial Economics*. – 1998. – Vol. 47(3). – P. 243–277.
26. Jeng L.A. The determinants of venture capital funding: evidence across countries / L.A. Jeng, P.C. Wells // *Journal of Corporate Finance*. – 2000. – Vol. 6(3). – P. 241–289.
27. Giot P. IPOs, Trade Sales and Liquidations: Modeling Venture Capital Exits Using Survival Analysis / P. Giot, A. Schwienbacher // *Journal of Banking & Finance*. – 2007. – Vol. 31(3). – P. 679–702.
28. Achleiner A.-K. Industry relatedness in trade sales and venture capital investment returns / A.-K. Achleiner, R. Braun, E. Lutz, U. Reiner Small // *Business Economics*. – 2013. – Vol. 1. – P. 15–17.
29. Красовська О.В. Теоретичні засади функціонування венчурного капіталу та його використання в Україні / О.В. Красовська // *Наука та наукознавство*. – 2007. – № 2. – С. 12–21.
30. Вергун В.А. Інститути спільного інвестування в умовах глобалізації світових фінансових ринків : [монографія] / В.А. Вергун, О.І. Ступницький, В.М. Коверда, Т.В. Волковинська ; Київ. нац. ун-т ім. Т. Шевченка. – К. : Видавничо-поліграфічний центр «Київський університет», 2009. – 512 с.
31. Поллок М.М. Активи венчурних фондів за останні шість років зросли майже в п’ять разів за останні шість років / М.М. Поллок [Electronic resource]. – Access mode : <http://www.capital.ua/ru/publication/13335-aktivy-venchurnykh-fondov-za-poslednie-shest-let-vyrosli-pochti-v-pyat-raz-klientov-privlekaet-vozmozhnost-optimizatsii-finansovykh-potokov-s-pomoschyu-razlichnykh-skhem?issue=244>.

32. The Development of Non-bank Financial Institutions in Ukraine Policy Reform Strategy and Action Plan [Electronic resource]. – Access mode : <http://elibrary.worldbank.org/doi/pdf/10.1596/978-0-8213-6678-3>.
33. Semenog A.J. Activity of Non-bank Financial Institutions in the Context of Economic Increase / A.J. Semenog // Вісник Запорізького національного університету. – 2011. – № 1. – P. 139–148.
34. Caselli S. Contract Characteristics and the Returns of Private Equity Investments / S. Caselli, E. Garcia-Appendini, F. Ippolito [Electronic resource]. – Access mode : [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1525367](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525367).
35. Lee I. Is the Private Equity Industry Ready for the Small Investor? Business Law Brief / I. Lee [Electronic resource]. – Access mode : <http://www.wcl.american.edu/blr/01/3lee.pdf>.
36. Bekaert G. Does financial liberalization spur growth? / G. Bekaert, C.R. Harvey, Ch. Lundblad // Journal of Financial Economics. – 2005. – Vol. 77. – P. 3–55.
37. Lerner J. Boulevard of Broken Dreams: Why Public Efforts to Boost Entrepreneurship Have Failed – and What to Do about it / J. Lerner. – Princeton : Princeton University Press, 2009. – 229 p.
38. OECD. Supporting Investment in Knowledge Capital, Growth and Innovation [Electronic resource]. – Access mode : [http://www.oecd-ilibrary.org/industry-and-services/supporting-investment-in-knowledge-capital-growth-and-innovation\\_9789264193307-en](http://www.oecd-ilibrary.org/industry-and-services/supporting-investment-in-knowledge-capital-growth-and-innovation_9789264193307-en).
39. Dilek C. Karaömerlioglu, Staffan Jacobsson. The Swedish venture capital industry: an infant, adolescent or grown-up? / C. Dilek // Venture Capital. – 2000. – Vol. 2. – № 1. – P. 61–88.
40. Strumskyte S. Private equity in the Baltics. What role for pension funds? / S. Strumskyte [Electronic resource]. – Access mode : <http://browse.oecdbookshop.org/oecd/pdfs/product/2104011e.pdf>.
41. Annual survey of investment regulation of pension funds (April, 2013) [Electronic resource]. – Access mode : <http://www.oecd.org/daf/fin/private-pensions/InvRegPensionFunds2013.pdf>.
42. Buckham D. Executive's Guide to Solvency II / D. Buckham, J. Wahl, S.R. Wiley. – New York : John Wiley & Sons, 2010. – 194 p.
43. Braun A. The Impact of Private Equity on a Life Insurer's Capital Charges under Solvency II and the Swiss Solvency Test / A. Braun, H. Schmeiser, and C. Siegel // Working Papers on Risk Management and Insurance. – 2012. – № 91. – P. 33–35.
44. EVCA. Position Paper on IORP Directive review [Electronic resource]. – Access mode : [http://www.seca.ch/getattachment/e424c402-ac6e-49ef-b645-3a1c0bf25b45/A-stable-pension-systems-requires-long-term-invest.aspx&rct=j&frm=1&q=&src=s&sa=U&ei=RKqQU9PTCYej0QXom4HoCA&ved=0CBQQFjAA&sig2=Gv3ZmcR\\_14\\_1bLqGnTtrTQ&usg=AFQjCNEE89WrQl\\_HRJ\\_62oDyfmJR6czzlQ](http://www.seca.ch/getattachment/e424c402-ac6e-49ef-b645-3a1c0bf25b45/A-stable-pension-systems-requires-long-term-invest.aspx&rct=j&frm=1&q=&src=s&sa=U&ei=RKqQU9PTCYej0QXom4HoCA&ved=0CBQQFjAA&sig2=Gv3ZmcR_14_1bLqGnTtrTQ&usg=AFQjCNEE89WrQl_HRJ_62oDyfmJR6czzlQ).
45. Langevoort D. U.S. Securities Regulation and Global Competition / D. Langevoort // Georgetown Law and Economics Research Paper. – 2008. – № 13. – P. 9.
46. Zimmerman H. Varieties of global financial governance? British and German approaches to financial market regulation / H. Zimmerman // Global Finance in Crisis. The Politics of International Regulatory / ed. by E. Helleiner, S. Pagliari, H. Zimmerman. – London : Routledge, 2009. – P. 121–136.
47. Thomsen S. Should Private Equity Be Regulated? / S. Thomsen // European Business Organization Law Review. – 2009. – Vol. 10. – № 1. – P. 97–114.
48. Ferran E. After the Crisis: The Regulation of Hedge Funds and Private Equity in the EU / E. Ferran // European Business Organization Law Review. – 2011. – Vol. 12. – № 3. – P. 379–414.
49. Adler M. New Foundations of Cost-Benefit Analysis / M. Adler, E. Posner [Electronic resource]. – Access mode : [http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/CBA-Report-3.10.13.pdf](http://webcache.googleusercontent.com/search?q=cache:8v3Rz3YDWwJ:www.ericposner.com/new_foundations_cb.pdf+&cd=1&hl=en&ct=clnk&gl=ua ; Sunstein C.R. Valuing Life: Humanizing the Regulatory State / C.R. Sunstein [Electronic resource]. – Access mode : http://www.press.uchicago.edu/ucp/books/book/chicago/V/bo5872162.html ; Sunstein C.R. Financial Regulation and Cost-Benefit Analysis: A Comment / C.R. Sunstein // Harvard Public Law Working Paper. – 2014. – № 14–17. – P. 4–9.</a></p><p>50. Rose P. The Importance of Cost-Benefit Analysis in Financial Regulation / P. Rose, Ch. J. Walker // Chamber's Center for Capital Markets Competitiveness (CCMC) [Electronic resource]. – Access mode : <a href=).
51. Ruder D.S. Balancing Investor Protection with Capital Formation Needs after the SEC Chamber of Commerce Case / D.S. Ruder // Pace Law Review. – 2005. – Vol. 26. – P. 39–71.
52. Cervone E. EU Conduct of Business Rules and the Liberalization Ethos: The Challenging Case of Investment Research / E. Cervone // European Business Law Review. – 2005. – Vol. 16. – P. 421–456.
53. Elliott D.J. Lessons from the Implementation of the Volcker Rule for Banking Structural Reform in the European Union / D.J. Elliott, Ch. Rauch // White Paper Series. – 2014. – № 13. – [Electronic resource]. – Access mode : [http://safe-frankfurt.de/uploads/media/Elliott\\_Rauch\\_Volcker\\_Rule\\_Lessons.pdf](http://safe-frankfurt.de/uploads/media/Elliott_Rauch_Volcker_Rule_Lessons.pdf).
54. Cochrane J.H. Cost-Benefit Analysis as a Framework for Financial Regulation / J.H. Cochrane [Electronic resource]. – Access mode : [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2425885](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2425885).

55. Jaresko N. Ukrainian private equity market / N. Jaresko // Private Equity Russia & CIS Journal. – 2010. – № 4. – P. 17.
56. Harris R.S. Private Equity Performance: What Do We Know? / R.S. Harris, T. Jenkinson, S.N. Kaplan // Chicago Booth Research Paper. – 2013. – № 11-44. – P. 9-10. – [Electronic resource]. – Access mode : [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1932316](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1932316).
57. Ernst & Young. Branching out. How do private equity investors create value? A study of European exits [Electronic resource]. – Access mode : [http://www.ey.com/Publication/vwLUAssets/Private-equity-creates-value-in-Europe/\\$FILE/Euro\\_PE\\_Study\\_2012.pdf](http://www.ey.com/Publication/vwLUAssets/Private-equity-creates-value-in-Europe/$FILE/Euro_PE_Study_2012.pdf).
58. Wilton D. Why emerging markets private equity / D. Wilton [Electronic resource]. – Access mode : <http://www.ifc.org/wps/wcm/connect/d50a56004ca317b7a60ae7f81ee631cc/Why+EM+PE+short+final+9612.pdf?MOD=AJPERES>.
59. Ukraine National Progress Report of the Regional Implementation Strategy of the Madrid International Plan of Action on Ageing 2007–2011 [Electronic resource]. – Access mode : [http://www.unesc.org/fileadmin/DAM/pau/age/country\\_rpts/UKR\\_e\\_report.pdf](http://www.unesc.org/fileadmin/DAM/pau/age/country_rpts/UKR_e_report.pdf).
60. Pensions in Ukraine to be halved – sequestration draft (March 2014) [Electronic resource]. – Access mode : <http://rt.com/news/ukraine-austerity-pensions-halved-174>.
61. Stokes B. The countries that will be most impacted by aging population (February, 2014) / B. Stokes [Electronic resource]. – Access mode : <http://www.pewresearch.org/fact-tank/2014/02/04/the-countries-that-will-be-most-impacted-by-aging-population>.
62. Boyde E. Pension funds press forward on alternative route / E. Boyde // Financial Times [Electronic resource]. – Access mode : <http://www.ft.com/cms/s/0/4778f2c8-dfed-11e2-9de6-00144feab7de.html#axzz30c4xNc7B>.

### Summary

**Khort J. V. Regulatory obstacles to venture capital fundraising: a comparative study of Ukraine, the EU and the USA.** – Article.

Legal assessment of regulatory obstacles to institutional allocations to Ukrainian venture funds is given in this article. The author suggests their significant liberalization, aiming inflow of capital to venture funds. Herewith, supervision of such investments by the authorized governmental agencies should be provided.

*Key words:* venture fund, venture capital, private equity fund, fundraising, collective investment institutions.

### Анотація

**Хорт Ю. В. Регуляторні перешкоди фандрейзингу венчурними фондами: порівняльний аналіз України, ЄС та США.** – Стаття.

У статті надано правову оцінку ефективності обмежень, покладених на інвестиції інституційних інвесторів до венчурних фондів в Україні. Автором пропонується їх лібералізувати з метою забезпечення потреб венчурних фондів у капіталі. При цьому повинен забезпечуватися нагляд за такими інвестиціями з боку уповноважених органів.

*Ключові слова:* венчурний фонд, венчурний капітал, фонд прямих інвестицій, інститут спільного інвестування.

### Аннотация

**Хорт Ю. В. Регуляторные препятствия фандрейзингу венчурными фондами: сравнительный анализ Украины, ЕС и США.** – Статья.

В статье даётся правовая оценка эффективности ограничений, положенных на инвестиции институциональных инвесторов в венчурные фонды в Украине. Автором предлагается их либерализовать с целью удовлетворения потребностей венчурных фондов в капитале. При этом должен обеспечиваться надзор за такими инвестициями со стороны уполномоченных органов.

*Ключевые слова:* венчурный фонд, венчурный капитал, фонд прямых инвестиций, фандрейзинг, институт совместного инвестирования.