

2010 INVESTMENT GUIDE TO UKRAINE

Ukraine was something of a latecomer to the economic transformation that swept through Central and Eastern Europe following the fall of communism. In spite of this, foreign investors from Europe and the U.S. have acquired important stakes in many of the country's key, formerly state-owned institutions. According to a report by the United Nations Organization (UNO), Ukraine is among the top twenty most attractive countries for investors.

This 2010 Investment Guide to Ukraine aims to identify the basic reasons for the influx of foreign investment in recent years. It also provides an introduction to the key areas of Ukrainian law relevant to those who envisage entering the Ukrainian market.

1. GENERAL OVERVIEW

1.1. BASIC INFORMATION ABOUT UKRAINE

Situated in Eastern Europe, Ukraine is one of the largest European countries. Ukraine covers 603,700 square kilometres and has a population of 45.89 million. It has a very favourable location, sharing borders with Russia (1,955 km), Belarus (1,084 km), Poland (542 km), the Slovak Republic (98 km), Hungary (135 km), Romania (608 km) and Moldova (1,202 km). In addition, it is located by the Black Sea and the Sea of Azov in the south and thus has the status of a maritime power.

The capital city, Kyiv, with its population of 2.79 million, is situated in the northern part of the country, close to the borders with Russia and Belarus. It is connected to the most significant railway lines, highway transportation facilities, as well as air transport routes to Europe and Asia. Besides Kyiv, Ukraine has several other million-strong cities with convenient locations and highway connections.

The most developed industrial sectors are metallurgy, energy production, chemicals and mining, though Ukraine is considered to be an industrial-agricultural country.

Ukraine is a member of the World Trade Organization (WTO), the Council of Europe (CE), the Organization for Security and Cooperation in Europe (OSCE), and the European Bank for Reconstruction and Development (EBRD). Furthermore, it is a founding member of the Organization of the Black Sea Economic Cooperation (BSEC) and is an affiliate member of the international Parliamentary Assembly of the BSEC. The priority objective of Ukraine's foreign policy remains entry to the European Union (EU).

1.2. ECONOMIC REFORMS AND EVENTS

The economic life of Ukraine is still in the stage of reform. The transit from a planned economy to market-based economy in Ukraine began in 1994 after independence was proclaimed in 1991 and Ukraine had separated from the Soviet Union. The result of monetary reform in 1996 and the reform of the ownership system, i.e. privatization of state-owned enterprises - specifically, industrial, construction, agricultural, food industry and trade enterprises - has been to create conditions for the development of small and medium-sized businesses.

Thanks to the Law of Ukraine "On State Registration of Legal Entities and Private Entrepreneurs"¹ businesses in Ukraine can be set up within an extremely short period of time. The provisions of this law are very attractive in terms of the establishment of businesses in Ukraine.

¹ The Law of Ukraine "On State Registration of Legal Entities and Private Entrepreneurs" No. 755-IV of May 15, 2003

2. MAIN ISSUES TO BE CONSIDERED BY FOREIGN INVESTORS

2.1. TAX SYSTEM

2.1.1. Overview of the tax system

Taxes, levies, and the general tax principles applied in Ukraine are established by the Law of Ukraine “On the Taxation System”,² which classifies all taxes or levies either as national or local. Specifically, national taxes include corporate income tax, value added tax, personal income tax, customs duties and excise duty, and account for the largest portion of budget revenues. Local authorities collect revenue from a number of local taxes, such as tax on advertising, community development tax, parking tax, recreation tax, and other taxes.

Only income taxes, value added tax and unified tax will be dealt with in this chapter, as they are the most relevant from an investor’s point of view.

2.1.2. Corporate income tax

According to Article 10 of the Law of Ukraine “On Corporate Profit Taxation”³ corporate income tax has a flat rate of 25 %. Separate tax rules apply to agricultural enterprises, operations with securities and insurance companies. The tax obligation of legal entities resident in Ukraine is unlimited and they are, therefore, liable to pay tax on income derived from Ukrainian sources and on income derived from sources abroad. Non-residents (foreign tax residents) have only a limited tax obligation and are, therefore, liable to pay corporate income tax only on the income they derive from business activities within Ukraine.

Furthermore, under the above law dividends received by non-residents from Ukrainian companies are subject to taxation as set out in Ukrainian legislation. A Ukrainian company paying dividends to a non-resident shall withhold and pay to the budget a withholding tax at the rate of 15 % at the non-resident’s expense unless otherwise provided for by the international tax treaties in force. Double tax treaties have been concluded by the Ukrainian government with a large number of other states. If such a treaty exists between Ukraine and a state of which the investor is a resident then the provisions and taxation regime envisaged by the treaty shall be applied.

Note that the Law of Ukraine “On Corporate Profit Taxation” does not contain any particular provisions on group taxation. Each company must submit a separate tax return.

² The Law of Ukraine “On the Taxation System” No. 1251-XII of June 25, 1991

³ The Law of Ukraine “On Corporate Profit Taxation” No. 334/94-BP of December 28, 1994

2.1.3. Personal income tax

According to Article 7 of the Law of Ukraine “On Personal Income Tax”⁴, the personal income tax rate is 15 % for residents and 30 % for non-residents. In case of income paid to non-residents in the form of shares, dividends or royalties, a personal income tax rate amounting to 15 % can be applied by non-residents instead of the above-mentioned 30 %. Article 1 of the law defines a tax resident of Ukraine as an individual who has permanent residence in Ukraine.

If an individual has permanent residence in more than one country, he/she will qualify as a Ukrainian tax resident if he/she has closer personal or economic ties (e.g. his/her centre of vital interests) in Ukraine. If it is impossible to determine the country in which the individual has his/her centre of vital interests, or if the individual does not have permanent residence in any country, the individual will be considered a Ukrainian tax resident if present in Ukraine for at least 183 days of the tax period. Furthermore, if tax residency is impossible to determine based on the above provisions, additional factors may be applied to determine residency, such as whether the individual is a legal Ukrainian citizen, has family permanently residing in Ukraine, or is registered as a subject of entrepreneurial activity in Ukraine.

Ukrainian tax residents are liable to personal income tax on their worldwide income. Other individuals (tax non-residents of Ukraine) are liable for personal income tax on their Ukrainian sources only. These include, for example, income from work carried out in Ukraine, income received from a Ukrainian company for performing a statutory function in that company or income from consulting services or similar activities carried out in Ukraine.

2.1.4. Value added tax

Value added tax (hereinafter referred to as “VAT”) is governed by the Law of Ukraine “On Value Added Tax”⁵. The VAT rate is 20 % of the taxable amount for domestic sales and imported goods or services. A Ukrainian taxable entity with its main office, place of business or establishment in Ukraine must register as a VAT payer provided its turnover within the previous twelve calendar months exceeds UAH 300,000 exclusive of VAT (approx. EUR 31,100). Voluntary registration is also possible.

For exported goods, and services related to such exports, the VAT rate is 0 %. Certain transactions are exempt from VAT. These include, but are not limited to:

- Sale of domestically produced baby food products;
- Supply (via subscription) of domestically produced periodical mass media publications and books (except those of an erotic nature), student notebooks, textbooks, supplementary study materials, and Ukrainian-foreign language and foreign language-Ukrainian dictionaries, including the delivery of such periodical mass media publications on the territory of Ukraine;
- Provision of educational services by institutions with special permission (licence) to provide such services (music and art schools, etc.);

⁴ The Law of Ukraine “On Personal Income Tax” No. 889-IV of May 22, 2003

⁵ The Law of Ukraine “On Value Added Tax” No. 168/97-BP of April 3, 1997

- Sale of special-purpose goods for disabled individuals;
- The supply/import of medical or medical-related products included on a list which is annually determined by the Cabinet of Ministers of Ukraine before September 1 each year (if the Cabinet of Ministers fails to publish such a list, then the list of the previous year will be applied);

2.1.5. Unified Tax

The Edict “On Simplified Taxation, Accounting and Reports of Small Business Entities”⁶ enables Ukrainian small enterprises to pay a single, lower tax instead of the range of different taxes prescribed by the general taxation system.

According to Article 6 of the Edict, this unified tax is paid instead of: VAT (except when voluntarily registered); corporate income tax; personal income tax (for individuals-sole entrepreneurs); land tax; fees for the specific use of natural resources; fees paid to the fund to enact measures to eliminate the consequences of the Chernobyl disaster and provide for social defence of the population; innovation fund fees; social insurance fees; fees for the construction, re-construction and repair of public roads; communal taxes; trade tax; pension fund fees; contributions to the social protection fund for disabled persons; contributions to the employment fund; and special patent payments, if any.

Two rates of unified tax are applied to legal entities:

- 6 % of earnings - excluding VAT;
- 10 % of earnings - including VAT.

Since the adoption of the Edict, the unified tax system has become very popular. A legal entity - Ukrainian resident of any form shall be deemed a small business entity and can switch to the unified tax system providing the following criteria are met concurrently:

- The number of employees of the legal entity amounts to no more than 50 employees during a calendar year;
- Annual earnings do not exceed UAH 1,000,000 (approx. EUR 103,627).

According to Article 7 of the Edict and Article 4 of the Final Provisions of the Law of Ukraine “On Amending the Law of Ukraine “On the State Budget of Ukraine for 2005 and Other Legislative Acts of Ukraine”⁷ the following entities may not be subjects of the unified tax system:

- Banks, insurance and other companies providing financial activities;
- Entities 25 % of whose shares are owned by a legal entity which is not a small business entity;
- Entities involved in certain kinds of activities that require licences (gambling, jewellery manufacture, etc.);

⁶ The Edict of the President of Ukraine “On Simplified Taxation, Accounting and Reports of Small Business Entities” No. 727/98 of July 3, 1998

⁷ The Law of Ukraine “On Amending the Law of Ukraine “On the State Budget of Ukraine for 2005 and Other Legislative Acts of Ukraine”” No. 2505-IV of March 25, 2005

- Entities providing joint activities;
- Entities which produce, import, export or sell goods which are subject to excise duty;
- Entities providing exchange of foreign currency.

2.1.6. Double taxation avoidance treaties

A tax regime can be modified by double taxation avoidance treaties. To date, Ukraine has concluded such treaties with 61 countries.

2.2. PROTECTION OF FOREIGN INVESTMENTS

According to Ukrainian legislation relations connected with foreign investments in Ukraine are regulated by the relevant provisions of the Ukrainian law as well as by international treaties to which Ukraine is a party, provided that the rules of the international treaties shall always have priority.

A range of regulations in Ukraine provides foreign investors with comprehensive information regarding implementation of foreign investments in the country. One such regulation is the Law of Ukraine “On the Foreign Investment Regime”⁸ which describes in detail the forms of foreign investment in Ukraine, the objects of foreign investment, the procedure for evaluating foreign investments, etc.

Additionally, Ukraine provides relevant guarantees of foreign investment protection,⁹ namely:

- Adjustment of the national regime of investment activity within Ukraine for foreign investors;
- Guarantees in the event of amendments to Ukrainian legislation;
- Guarantees against appropriation of foreign investments by state bodies or officials;
- Compensation and indemnification of losses caused to foreign investors;
- Guarantees in the event of the termination of a foreign investor's activities in Ukraine, including involvement in a Ukrainian entity which has received foreign investment;
- Guarantees regarding the transfer of profits, earnings and other funds obtained through implementation of a foreign investment in Ukraine;
- Property brought into Ukraine as a contribution by a foreign investor to the share capital of a foreign investment enterprise registered in Ukraine is free from customs duty.

Furthermore, a foreign investment effected in Ukraine may be registered upon submission of the relevant documents by the foreign investor or their authorized representative to the body responsible for state registration of foreign investments in Ukraine. According to Article 2 of the Regulation “On the Procedure

⁸ The Law of Ukraine “On the Foreign Investment Regime” No. 93/96-BP of March 19, 1996

⁹ According to Chapter II of the Law of Ukraine “On the Foreign Investment Regime” No. 93/96-BP of March 19, 1996

of Foreign Investment State Registration”¹⁰ the bodies of state registration of foreign investments in Ukraine are the Council of Ministers of the Autonomous Republic of Crimea, the regional public administration, or the Kyiv or Sevastopol municipal state administrations (depending on the place of implementation of the foreign investment within Ukraine).

Registration of a foreign investment is voluntary and provides a foreign investor with legal protection and guarantees as listed above. Such an investment may be returned without any obstruction.

Upon completion of foreign-investment registration the foreign investor will obtain the relevant confirming document - “Informational declaration on foreign investment introduction” - issued by one of the aforementioned Ukrainian bodies. Usually, the procedure for registration of a foreign investment takes a month after submission of the relevant documentation. The fee for state registration of a foreign investment is about EUR 35.

2.3. LOW-COST AND SKILLED LABOUR FORCE

2.3.1. Labour force availability

Ukraine has an employment-age population of 29.8 million, with a strong tradition in agriculture, engineering and mechanical production. Many people speak Russian as well as Ukrainian. Knowledge of English is very common in the big cities of Ukraine. Knowledge of German, French or Polish is also not regarded as unusual. Citizens of Ukraine may move freely within the Commonwealth of Independent States (CIS) without the need to obtain visas or any other kinds of permit¹¹.

At the end of the first quarter of 2010 the unemployment rate in Ukraine was lower than the equivalent rate in the EU and among neighbouring countries. When analyzing labour force availability in Ukraine it is also necessary to take into consideration the hundreds of thousands people who have left Ukraine to work abroad. Recently, the lack of work caused by the global financial crisis has forced some of these people to return home. Given this situation, the current unemployment rate is very far from its highest point.

Table 1: Unemployment Rate (%)

	Ukraine	Poland	Hungary	Russia	Spain	Latvia
2009	9.6	8.0	9.7	9.1	18.0	22.8
2010	8.8	12.9	11.4	8.9	19.4	22.3

Source: Statistics Office of the European Communities, State Statistics Committee of Ukraine, Federal State Statistics Service of the Russian Federation

¹⁰ The Regulation “On the Procedure of Foreign Investment State Registration” approved by Decree of the Cabinet of Ministries of Ukraine No. 928 of August 7, 1996

¹¹ The Commonwealth of Independent States (CIS) includes 11 post-soviet states: Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Republic of Belarus, the Russian Federation, Turkmenistan, Tajikistan, Ukraine and Uzbekistan

2.3.2. Labour costs

There are significant regional disparities between the average monthly salaries in different regions of Ukraine. The highest can be found in the capital, the surrounding Kyiv Region and the industrially developed regions in the east of Ukraine like Donetsk and Dnipropetrovsk Regions. In regions with no significant manufacturing, but very attractive conditions for recreation, like Zakarpattya Region and the Autonomous Republic of Crimea, average monthly salaries are comparably lower.

Table 2: Average monthly salaries by region

	UAH / month					EUR / month
	2006	2007	2008	2009	2010 (1st quarter)	2010 (1st quarter)
Ukraine	1,041	1,351	1,806	1,736	2,201	228
City of Kyiv	1,729	2,300	3,074	3,101	3,293	342
Kyiv Region	1,058	1,362	1,852	1,894	2,277	236
Donetsk Region	1,202	1,535	2,015	2,035	2,497	259
Dnipropetrovsk Region	1,139	1,455	1,876	1,824	2,366	245
Zakarpattya Region	868	1,091	1,453	1,439	1,829	190
Autonomous Republic of Crimea	952	1,220	1,609	1,565	1,980	205

Source: State Statistics Committee of Ukraine

This phenomenon can be explained by the fact that there is a sharp contrast between the average monthly salaries for different types of economic activities. For example, the average monthly salary in the financial sector of the economy is EUR 454 per month while in agriculture it amounts to EUR 213 per month. The predominant economic activity in each region therefore results in the disparity apparent above.

Table 3: Average monthly salary by types of economic activity

	UAH / month					EUR / month
	2006	2007	2008	2009	2010 (1st quarter)	2010 (1st quarter)
Financial activities	2,050	2,770	3,747	3,973	4,378	454
Transport and communications	1,328	1,670	2,207	2,264	2,569	266
Real estate activities, renting, engineering and provision of services to businessmen	1,193	1,595	2,085	2,137	2,228	231
Industrial production	1,212	1,554	2,017	2,052	2,387	247
Construction	1,140	1,486	1,832	1,376	1,520	158
Agriculture, hunting and related services	553	733	1,076	1,043	2,058	213

Source: State Statistics Committee of Ukraine

The average monthly salary in Ukraine is continuously rising, but still remains one of the lowest in Europe.

Table 4: Average monthly salaries in selected neighbouring countries.

	EUR / month
Ukraine	228
Poland	850
Hungary	820
Russia	444

Source: State Statistics Committee of Ukraine, Federal State Statistic Service of the Russian Federation, Central Statistical Office of Poland.

2.3.3. Labour law overview

Article 3 of the Code of Laws on Labour of Ukraine¹² (hereinafter referred to as “the Labour Code”) provides that employment relationships between enterprises with foreign investment (as well as representative offices of foreign legal entities) and their employees on the territory of Ukraine are regulated by the applicable Ukrainian law.

Employees are hired on the basis of a labour agreement. The agreement can be concluded orally or in writing. Article 24 of the Labour Code specifies the cases in which a written agreement is required. Additionally, the Labour Code recognizes three types of labour agreements depending on their duration: labour agreements of indefinite duration, labour agreements of specific duration and labour agreements effective for a specific project. There are no maximum or minimum periods for which a labour agreement can be concluded.

A probation period not exceeding either three months or one month may be established, depending on the classification of employees. In some cases, the probation period can be extended to six months, but the permission of labour unions is required for this to occur.

According to Article 50 of the Labour Code, the maximum weekly working time is 40 hours. For young workers under 18 years of age (minors) and workers in some hazardous occupations the maximum weekly working time is 36 hours.

Employees are entitled to annual paid vacation of a minimum of 24 days (excluding official holidays). If the employee was not working for a full year then the number of days is proportionally decreased. There are currently 10 official holidays in Ukraine (Article 73 of the Labour Code). For some categories of employees who are working in arduous and hazardous conditions an additional paid vacation is provided.

¹² The Code of Laws on Labour of Ukraine No. 322-VIII of December 10, 1971

Article 36 of the Labour Code determines the grounds for termination of a labour agreement. These reasons can be classified in three principal ways:

- by mutual agreement of the parties to the labour agreement;
- at the initiative of a party to the labour agreement or of a labour union;
- other (employee being called to serve military duty; sentencing of an employee to punishment that prevents him/her from continuing his/her work; election of an employee to public office; etc.).

According to Article 38 of the Labour Code, an employee may terminate a labour agreement by written notice within a statutory notice period of at least 2 weeks. The agreement may be terminated immediately if an employer violates the provisions of the labour agreement or labour law.

According to Article 40 of the Labour Code, an employer may terminate a labour agreement in the following cases:

- upon liquidation of the employer's enterprise, its declaration as bankrupt, reorganization or amendments in the production process of the enterprise;
- redundancy of employee;
- loss by the employee of his/her ability to perform his/her previous work due to a change in his/her health conditions for more than 4 months in succession according to medical assessment;
- employee's qualifications or medical condition failing to fulfil the requirements of the position held;
- systematic non-fulfilment of employment duties by an employee without good reason (if the employee has already been subject to disciplinary punishment);
- 3 hours' absence by an employee from his/her place of work during a working day without good reason;
- to allow a former employee to be reinstated in the position he/she had formerly held;
- employee's presence at work under the influence of alcohol, drugs or any other toxic substances;
- theft by an employee of property from the enterprise at which he/she works.

In general, except for a few specific cases, the notice period is 2 months. However, an employer may terminate a labour agreement immediately, unless otherwise stated in a labour agreement, in the event of: 3 hours' absence by an employee from his/her place of work during a working day without good reason; systematic non-fulfilment of employment duties by an employee without good reason; an employee's presence at work under the influence of alcohol, drugs or any other toxic substances; theft by an employee of property from the enterprise at which he/she works; and in other specific cases.

In the event of termination of a labour agreement by an employer, the employer shall pay to the employee dismissal compensation totalling not less than his/her average monthly salary if employment was terminated for the following reasons:

- liquidation of the employer's enterprise, declaration of bankruptcy, reorganization or amendments in the production process of the enterprise;
- redundancy of an employee;
- employee's failure to fulfil the required qualifications or medical condition necessary for the position held;
- to allow a former employee to be reinstated into the position he/she had formerly held.

According to Article 3 of the Decree “On the System of Currency Regulation”¹³, the wages of any employees (residents and non-residents) must be paid in Ukrainian currency.

The Resolution “On the Procedure for Issuance, Prolongation and Cancellation of Work Permits for Foreigners and Stateless Individuals”¹⁴ states that employees who are foreign citizens must obtain work permits to be employed within Ukraine, unless otherwise provided for by the applicable international treaties of Ukraine. Currently, there are no such agreements. Usually, the procedure for obtaining a work permit takes a month and requires, among other documents, certified copies of documents confirming the education and/or qualifications of the foreign citizen. The work permit must be issued if there is a lack of candidates with the required qualifications among Ukrainian citizens in the relevant region of Ukraine. The work permit term must not exceed 1 year, but it may be prolonged for each subsequent year.

2.3.4. Social Security Benefits

Under Ukrainian law all employers are obliged to make payments for each of their employees to 4 Social Security Funds (as a percentage of the employees’ monthly wages):

- Pension fund - 33.2 %;
- Social security fund for cases of temporary disability - 1.4 %;
- Social security fund for cases of unemployment - 1.6 % (general rule) or 2.2 % (if employees are employed on the basis of civil contracts);
- Social accident fund - 0.56-6.52 % or 13.5 % (depending on the type of activity of the company-employer and the class of risk at work; i.e. 13.5 % - coal mining activity).

Note that all payments are made on top of employees’ wages, not out of their paycheck. Therefore, the total payment for one normal employee (employed on the base of a labour agreement) who is not involved in coal production may vary from 36.76 % to 42.72 % of his/her monthly wage.

3. STARTING A BUSINESS

3.1. Establishing a limited liability company

Investors entering the Ukrainian market may choose between several corporate forms introduced either by the Civil Code of Ukraine¹⁵ or by the Law of Ukraine “On Business Companies”¹⁶, such as limited-liability company, additional-liability company, joint-stock company, general partnership and special partnership.

¹³ The Decree of the Cabinet of Ministers of Ukraine “On the System of Currency Regulation” No. 15-93 of February 19, 1993

¹⁴ The Resolution of the Cabinet of Ministers of Ukraine “On the Procedure for Issuance, Prolongation and Cancellation of Work Permits for Foreigners and Stateless Individuals” No. 322 of April 8, 2009

¹⁵ The Civil Code of Ukraine No. 435-IV of January 16, 2003

¹⁶ The Law of Ukraine “On Business Companies” No. 1576-XII of September 19, 1991

There are no limitations for foreign investors when it comes to setting up business companies in Ukraine. A foreign natural and legal person may establish any form of company either together with other foreign or Ukrainian persons or alone as a sole shareholder. In this respect foreign natural and legal persons enjoy the same rights and bear the same obligations as Ukrainian persons and may not be discriminated against.

The limited liability company is the most commonly used corporate form and is therefore dealt with in detail in this chapter.

The number of shareholders of a limited liability company may not exceed 10 persons. Therefore, if a business company is to be established with more than 10 shareholders it must use another corporate form rather than that of a limited liability company.

Additionally, a company owned by a sole shareholder must not be a sole shareholder in another limited liability company. However, where necessary there are legal options to avoid this limitation.

A limited liability company is a company with the liability of its shareholders limited to their respective contribution to the share capital of the company.

According to Article 52 of the Law of Ukraine “On Business Companies”, a minimum registered capital in the amount of 1 minimum monthly salary is required (approx. EUR 100) provided that at least 50 % is to be paid prior to the state registration of the limited liability company. The share capital must be paid in full within 1 (one) year from state registration of the company and may be increased at any time provided that the initial share capital was paid in full.

It is interesting to note that in 2010 the minimum registered capital required for a limited liability company was decreased to one hundredth of that required in 2009 (i.e. in 2009 minimum registered capital constituted approx. EUR 10,000).

The sole foundation document for a limited liability company is the Charter. It must contain all conditions required for the company’s operation and must be prepared in Ukrainian. If necessary the Charter may be translated into other languages.

The supreme body of a limited liability company is the general meeting of its shareholders. Where there is a sole shareholder (owner of a company), the decisions of this shareholder shall be considered the decisions of the sole shareholder represented at the general meeting of shareholders of a company. The general meeting of shareholders decides on all major issues including the appointment and dismissal of the executive body, modifications to the Charter, increases and decreases in the share capital, etc. The Law of Ukraine “On Business Companies” contains detailed regulations on how sessions of general meetings of shareholders are to be convened and organized.

The executive body of a limited liability company may be led solely (by a director) or collectively (by a board of directors). The director decides all issues of the company’s operation except for issues that fall within the reserved matters of the general meeting of shareholders. The director acts on behalf of the company within the scope established by the Charter of the company.

At its establishment, a company's director must be a Ukrainian citizen. After state registration of a company and also upon obtaining the relevant work permit, a foreign citizen may be appointed the director of a company.

Establishment of a supervisory board is optional. The shareholders may decide to establish a supervisory board in the Charter. If one is established, the supervisory board must be composed of at least three members elected from among the shareholders of the company.

Although a company can be incorporated in about 3 business days, the full registration process takes about three weeks, and includes state registration in the Unified State Register, registration with the state tax inspectorate and social funds, acquisition of a stamp, and opening of a bank account. It is important to note that a limited liability company acquires legal capacity upon its registration in the State Unified Register.

Furthermore, certain types of business activities can be performed not only after state registration of a company but also after a licence or special permission has been obtained.

3.2. ESTABLISHING BUSINESS PREMISES

3.2.1. Purchase of real estate

The Roman principle of “superficies solo credit” is not reflected in the Ukrainian legal system. As a result, land and buildings can be acquired separately by different entities.

The Civil Code of Ukraine specifies several possible ways of acquiring the title to real estate, such as a written contract, inheritance, the decision of a public authority, or by other means stipulated in the law. In most cases, real estate is acquired on the basis of a written contract and the title to real estate is acquired only upon constitutive registration in the State Proprietorship Register of Immovable Property. The official registration procedure takes a minimum of 30 days.

Registration in the State Proprietorship Register of Immovable Property is obligatory unless otherwise provided by the law. It is therefore possible for anybody to claim “real” ownership of a property, even though there is a valid registration of the title in the State Proprietorship Register of Immovable Property. To avoid any difficulties it is recommended that purchasers undertake a detailed due diligence of title transfers during the previous 10 years as this period corresponds to the 10-year ownership prescription period.

According to general principles introduced by Article 13 of the Law of Ukraine “On Legal Status of Foreigners and Stateless Persons”¹⁷, foreign natural persons may own real estate in Ukraine without any limitations. There is only one small limitation: the relevant natural person must obtain a Ukrainian ID number. In any case, such a procedure is not difficult and does not require a lot of time. Foreign legal

¹⁷ The Law of Ukraine “On Legal Status of Foreigners and Stateless Persons” No. 3929-XII of February 4, 1994

persons may also acquire real estate in Ukraine without limitation, in accordance with Article 392 of the Commercial Code of Ukraine.

As for acquisition of land plots by foreign natural and legal persons, Ukrainian legislation, including the Land Code of Ukraine¹⁸, sets some limitations. In accordance with Article 22 par. 4 of the Land Code of Ukraine agricultural land plots may not be transferred to the ownership of foreign natural or legal persons. However, where necessary there are legal options to avoid this limitation. Additional limitations apply to land owned solely by Ukraine and to forest land.

As far as non-agricultural land plots are concerned these may be acquired by foreign legal persons within the territory of urban areas in Ukraine when purchasing real estate located on such land plots, as well as for the construction of objects connected with the provision of commercial activity in Ukraine. In other cases it may be acquired only when acquiring real estate located on such land plots.

3.2.2. Lease of business premises and land

Foreign natural and legal persons are not limited in their freedom to lease real estate and land in Ukraine. The lease of a land plot may be a short lease - no more than 5 years - or long lease - no more than 50 years. Lease contracts for buildings or their parts need to be certified by a notary and are subject to state registration if such a contract is concluded for a term of no less than three years. Lease contracts for land plots are subject to state registration irrespective of their term.

3.2.3. Construction and reconstruction

According to Ukrainian law, structures may be erected only after the acquisition of a building permit issued by a competent Building Authority. Such a permit may be applied for by the owner of the land on which the structure will be built or by another person having special rights to the land resulting from a lease contract or easement.

The building procedure has several separate stages: building permit and use permit, as well as building licence, in the case of construction businesses.

In the building permit procedure the Building Office undertakes an in-depth examination of the project documentation, with architectural designs being a part of the project documentation.

Note that before a building permit is issued, the Building Office canvasses the opinions of a large number of diverse public authorities. If any of these authorities object, it may significantly complicate the procedure. Once a building permit is obtained, construction work may begin. After construction work is terminated, a use permit must be applied for. According to Ukrainian law, structures may not be used without a valid use permit.

The entire building permit procedure takes approximately 8 to 16 months depending on different factors and possible complications.

¹⁸ The Land Code of Ukraine No. 2768-III of October 25, 2001

4. CLOSING A BUSINESS

4.1. GENERAL OVERVIEW

The procedure for termination of foreign investors' business activity in Ukraine is similar to that applied to termination of business activity by residents of Ukraine.

Such procedure is regulated by several legislative acts of Ukraine, namely by the Civil Code of Ukraine, by the Commercial Code of Ukraine as well as by the Law of Ukraine "On Business Companies".

The above-mentioned legislative acts provide foreign investors who wish to terminate their business activities in Ukraine with several exit mechanisms. The first and perhaps the easiest method is the transfer of business shares in a Ukrainian company with foreign investments to another legal or natural person either resident or non-resident in Ukraine. A foreign investor may also decide to dissolve a Ukrainian company with liquidation or without liquidation, depending on whether the company has any assets.

A liquidation procedure may be launched upon the decision of the general meeting of shareholders of a company or upon a court judgment. Additionally, the decision to appoint a Liquidation Committee for a company as well as approval of its liquidation balance sheet falls within the reserved powers of the general meeting of its shareholders.

According to Article 104 par. 1 of the Civil Code of Ukraine, a company ceases to exist on the date of the insertion of the information on dissolution of the company into the Unified State Register.

As the limited liability company is the most commonly used corporate form, exit mechanisms for dissolution of this corporate form will be dealt with in the following chapters.

4.2. TRANSFER OF BUSINESS SHARES

A shareholder in a limited liability company may transfer his/her business share in the company to another shareholder of the same company or to the company itself, which requires amendment of the Charter of the company upon approval of the relevant decisions by the general meeting of its shareholders. Additionally, business shares may be transferred only if they were paid in full as well as upon obtaining consent of the shareholder's spouse (if any) for their transfer.

Transfer of business shares to a third party is more complicated. According to Article 53 par. 2 of the Law of Ukraine "On Business Companies", a shareholder may transfer his/her share in a business to a third party only if the Charter of the company does not prohibit such a transfer. It is therefore recommended that such provisions be taken into consideration when drafting a Charter.

Since shareholders of the company have a pre-emptive right to acquire the business shares of other shareholders in the same company, the consent of all shareholders is required when transferring business shares to a third party.

4.3. DISSOLUTION OF A COMPANY

4.3.1. Dissolution of a company without liquidation

Dissolution of a company without liquidation is possible if the assets and liabilities of the Ukrainian company have been transferred to its legal successor.

According to Article 104 par. 1 of the Civil Code of Ukraine, assets and liabilities are transferred to the legal successor in the case of a merger (in Ukrainian: *zlittya*), a take-over (in Ukrainian: *priednannya*) or a split (in Ukrainian: *podil*). In the case of a merger, the assets of one or more dissolved companies are transferred to another pre-existing company, which becomes the legal successor of the dissolved companies. In the case of a take-over, the assets of at least two dissolved companies are jointly transferred to a newly established company, which becomes the legal successor of the dissolved companies. In the case of a split, the assets of one or several dissolved companies are divided and transferred to several other companies.

The relevant decisions on dissolution of a company in a merger, take-over or split procedure are approved by the general meeting of shareholders of the dissolved company as well as by shareholders' meetings of the participating companies. An application for insertion of the information about dissolution of a company in connection with its reorganization (i.e. by merger, take-over or split) in the Unified State Register may be submitted by the Head of the Dissolution Committee (elected by the general meeting of shareholders) or its authorized person.

4.3.2. Dissolution of a company by liquidation

Dissolution of a company by liquidation takes place if the assets of the company have not been transferred to its legal successor and there are no reasons for a bankruptcy procedure to be initiated. The main objective of liquidation is to settle all the economic relationships of a company in a definite way.

A company enters liquidation on the date of the adoption of its shareholders' decision to dissolve the company. The power to act on behalf of the company is transferred from the executive body to the Liquidation Committee (or Liquidator) appointed by the shareholders' meeting. Upon a resolution of the shareholders' meeting and pursuant to Article 105 par. 2 of the Civil Code of Ukraine, fulfilment of the functions of the Liquidation Committee may be transferred to the relevant management body of a company.

The Liquidation Committee must notify all creditors of the company about the commencement of liquidation and must publish this information in the State Registration Bulletin of Ukraine with a call for creditors to notify their claims against the company within a period of at least 2 months. Once the

claims are satisfied, remaining assets are divided between the shareholders on the basis of a resolution of the shareholders' meeting. Subsequently, the Head of the Liquidation Committee or its authorized person must apply for the insertion of information on the dissolution of a company in the Unified State Register.

5. DISPUTE RESOLUTION

5.1. ARBITRATION

5.1.1. Domestic arbitral awards

In Ukraine, domestic arbitration is governed by the Law of Ukraine "On Arbitration Courts"¹⁹.

The dispute may be passed to an arbitration court in Ukraine for its consideration if there is an arbitration agreement between the parties or an arbitral clause in the relevant agreement between the parties. The Law requires such an agreement to be in writing, under sanction of invalidity. According to Article 12 of the Law, an agreement is in writing if it is contained in a document signed by the parties or via an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

The dispute may be passed to an arbitration court providing a dispute between the same parties on the same subject and on the same grounds is not being considered by a competent court of Ukraine.

In the procedure stipulated by the above-mentioned Law, arbitration courts may consider any case which arises out of civil and commercial relations, except the following:

- cases in disputes that arise while concluding, amending, cancelling or implementing commercial agreements related to the satisfaction of state needs;
- cases renewing the solvency of a debtor or declaring it bankrupt;
- cases in which one party is a state or municipal body, its officials or other related persons;
- cases in which one party is non-resident;
- cases in disputes on immovable property, including land plots;
- cases in disputes which arise out of corporate relations between legal entities and their shareholders;
- cases, awards in which require the application of relevant acts by state or municipal bodies, their officials or other related persons;
- other cases, not directly related to investment activities (disputes arising in connection with public relations, labour relationships or personal status, etc.).

¹⁹ The Law of Ukraine "On Arbitration Courts" No.1701-IV of May 11, 2004

According to the Law of Ukraine “On International Commercial Arbitration”²⁰ the following disputes may be subject to consideration by the International Commercial Arbitration Court seated in Ukraine (hereinafter referred to as “the ICAC”) by agreement between the parties:

- disputes which arise out of contractual and other civil relations within the provision of foreign economic and other international activity, when one party - legal entity is a non-resident of Ukraine;
- disputes which arise between foreign investment enterprises and international associations and organizations established within Ukraine, between themselves, their shareholders and with other Ukrainian entities.

According to the Ukrainian legislation in force the arbitral award adopted both by an arbitration court of Ukraine or by the ICAC is final and is not subject to any appeal unless directly provided for by the above-mentioned laws.

A relevant decision on enforcement of an arbitral award may be adopted upon relevant consideration by a competent court of Ukraine. Additionally the competent court of Ukraine shall issue a relevant court order. A relevant court order is grounds for application of the applicant to the relevant Executive Office in order to enforce an executive title against the debtor if the award was not voluntarily delivered by the debtor.

5.1.2. Foreign arbitral awards

Ukraine is a party to the Convention “On Recognition and Enforcement of Foreign Arbitral Awards” signed on June 10, 1958 in New York (hereinafter referred to as “the New York Convention”)²¹. The recognition and enforcement of foreign arbitral awards is also governed by the Law of Ukraine “On International Commercial Arbitration”. However, in the event of conflict the New York Convention prevails.

Please note that Ukraine has adopted the reciprocity reservation previewed by Article 1 par. 3 of the New York Convention, therefore the New York Convention is applied only to awards issued by another contracting state. Ukraine also applies the New York Convention with respect to the enforcement of arbitral awards from non-contracting states provided that such states also apply the New York Convention in relation to arbitral awards issued by Ukraine.

An arbitral award is considered foreign if it is issued in a country other than Ukraine. Foreign arbitral awards must be executed under the same conditions as domestic arbitral awards. No specific recognition decision is required and a foreign arbitral award is recognized simply by the competent execution court taking the award into consideration as if it were a domestic arbitral award. The provisions of Article 36 of the Law of Ukraine “On International Commercial Arbitration” regarding refusal of the recognition and enforcement of foreign arbitral awards correspond to those of Article 5 of the New York Convention.

²⁰ The Law of Ukraine “On International Commercial Arbitration” No. 4003-XII of February 24, 1994

²¹ The Convention “On Recognition and Enforcement of Foreign Arbitral Awards” became effective in Ukraine as of November 22, 1960

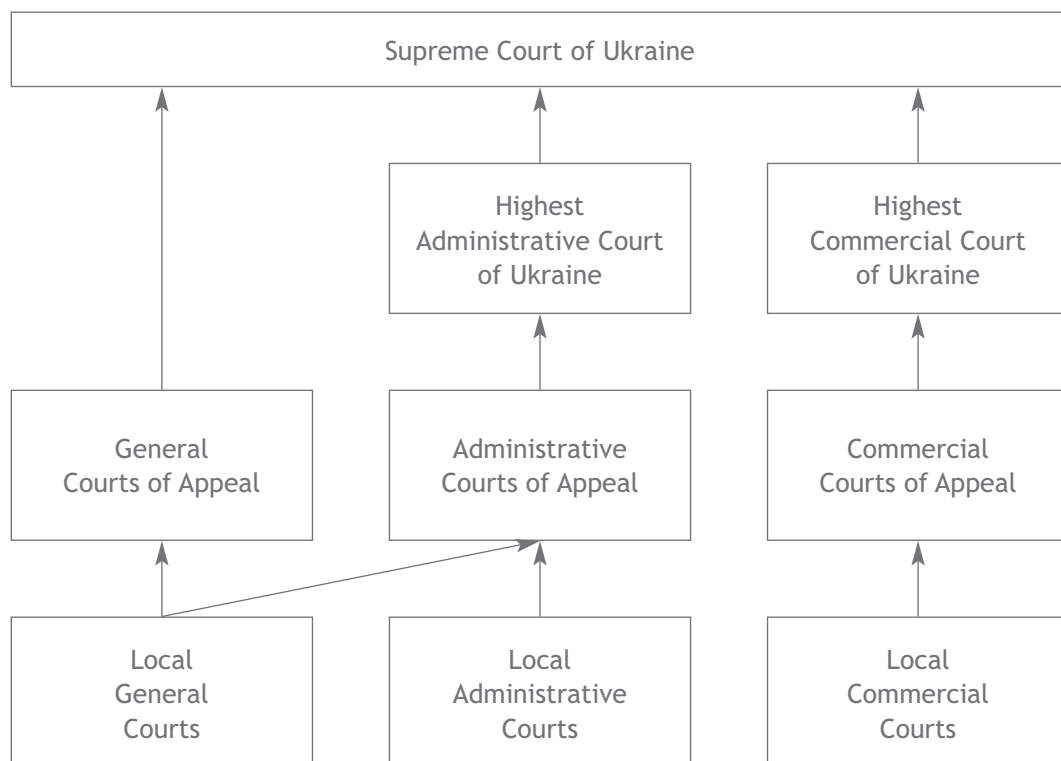
5.2. LITIGATION

Ukraine has a Roman legal system. Statutory acts are the main sources of law. The cornerstone acts that govern proceedings are:

- the Civil Procedure Code of Ukraine;
- the Criminal Procedure Code of Ukraine;
- the Code of Administrative Court Procedure of Ukraine;
- the Commercial Procedure Code of Ukraine;
- the Code of Administrative Violations of Ukraine;
- the Law of Ukraine “On the Constitutional Court of Ukraine”²².

The types of proceedings represented by the respective acts are known as civil, criminal, administrative, commercial, administrative violation and constitutional procedures. Each procedure has its own terms and rules. This variety has given birth to a complex court system.

The court system of Ukraine consists of the Constitutional Court of Ukraine and the courts of general jurisdiction. Courts of general jurisdiction include general and specialized (i.e. commercial or administrative) courts. General courts consider civil and criminal cases and cases involving administrative violations, as well as certain other administrative matters, whereas the two types of specialized courts resolve commercial and administrative disputes. In this paper we will not concentrate on the Constitutional Court.



²² The Law of Ukraine "On the Constitutional Court of Ukraine" No. 422/96-BP of October 16, 1996

Ukraine has a three-level system of general courts and a four-level system of specialized courts. The general branch of courts includes local courts and courts of appeal. Commercial and administrative courts besides local courts and courts of appeal incorporate the highest specialized courts (i.e. the Highest Commercial Court of Ukraine and the Highest Administrative Court of Ukraine). In some circumstances administrative cases can be delivered to a local general court as the first instance court of administrative jurisdiction.

Also, the provisions of Article 31 of the Law of Ukraine “On the Judicial System and Standing of Judges”²³ envisage the formation of a Superior Civil and Criminal Court of Ukraine.

The Supreme Court of Ukraine is the top level for all branches of courts. The Supreme Court of Ukraine serves as a cassation court for general jurisdiction courts and as an extraordinary instance cassation court for the commercial and administrative branches. Among other functions, the Supreme Court summarizes court practice and provides the lower courts with clarifications on how to apply various rules of law.

²³ The Law of Ukraine “On the Judicial System and Standing of Judges” No. 2453-VI of July 7, 2010

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