

UKRAINE: INVESTMENT GUIDE





Think Business

Antitrust and Competition Law Tax Law
Advertising Law Real Estate Law
Renewable Energy Law Corporate Law / M&A
Intellectual Property Law Labour Law
Privatization Litigation and Dispute Resolution
Insolvency and Restructuring Contract Law

DLF attorneys-at-law

+380 44 384 24 54
info@DLF.ua
www.DLF.ua

UKRAINE: INVESTMENT GUIDE

Table of Contents

1	Ukraine. General information	10
1.1.	Area and location	10
1.2.	Minerals.....	10
1.3.	Land use	11
1.4.	Population	11
1.5.	Religion	11
1.6.	Language	11
1.7.	Education	11
1.8.	Employment	12
1.9.	Living standards.....	12
1.10.	Political system	12
1.11.	Ukrainian economy.....	12
1.12.	Foreign trade.....	13
1.13.	Transport.....	14
1.14.	Economic and political ties	14
1.15.	Tourism	15

2	Foreign investment protection	16
2.1.	International agreements.....	16
2.2.	Ukrainian legal guarantees.....	17
2.2.1.	State guarantees against changes in legislation.....	18
2.2.2.	Guarantees against seizure and unlawful acts of state bodies and state officials.....	18
2.2.3.	Compensation and reimbursement of losses incurred by foreign investors due to the acts of state bodies and state officials.....	18
2.2.4.	Guarantees in the event of investment activity termination	18
2.2.5.	Guarantees for the remittance of profits and other sums resulted from foreign investments	18
2.3.	Contractual protection	19
2.3.1.	Applicable law.....	19
2.3.2.	Submission to jurisdiction	19

3	General customs regulations and trade finance	20
3.1.	Customs control	20
3.2.	Required documents	21
3.3.	Customs regimes	21
3.4.	Applicable taxes and duties	22
3.5.	Methods of payment for goods	23
3.6.	Prepayment	23
3.7.	Letter of credit	23
3.8.	Documentary collection	24
3.9.	Currency regulations	24

4	Setting up a business in Ukraine	25
4.1.	Private entrepreneur	25
4.2.	Limited liability company (LLC) ...	26
4.2.1.	LLC registration	26
4.2.2.	Authorized capital	26
4.2.3.	Shareholders of the company ..	26
4.2.4.	Liability of the shareholder	27
4.2.5.	Governing bodies	27
4.2.6.	Funding of activities	27
4.3.	Joint stock company	28
4.4.	Representative office of a foreign company	28
4.5.	Mergers and Acquisitions	28

5	Bankruptcy procedure	30
5.1.	General provisions	30
5.2.	Parties to the bankruptcy	31
5.2.1.	Insolvency officer	31
5.2.2.	Debtor	31
5.2.3.	Creditors	32
5.2.4.	State	32
5.2.5.	Other parties to the proceedings	33
5.3.	Types of bankruptcy	33
5.3.1.	Pre-trial proceedings	33
5.3.2.	Disposition of debtor's property	34
5.3.3.	The procedure of bailout of the debtor	34
5.3.4.	The liquidation procedure	35
5.3.5.	The settlement agreement	36
5.3.6.	Special procedures in bankruptcy	36

6 Ukrainian taxation system 38

6.1. Corporate income tax	38	6.4. Personal income tax	42
6.1.1. Taxpayers and tax base	38	6.5. Single social contribution	43
6.1.2. Taxation of non-residents	39	6.6. Military duty	43
6.1.3. Transfer pricing	39	6.7. Property tax	43
6.1.4. Thin capitalization rules	39	6.7.1. Buildings and land plots	43
6.2. Value-added tax	40	6.7.2. Vehicles	43
6.2.1. Taxpayers	40	6.7.3. Tax rate and tax base	43
6.2.2. Tax base	40	6.8. Duties	44
6.3. Simplified tax system	41		

7 Labour relations 45

7.1. Labour agreement	45	7.6. Remuneration of labour	48
7.2. Labour contract	46	7.7. Leave	48
7.3. Collective contract	46	7.8. Termination of labour relations	48
7.4. Probation period	47	7.9. Employment of foreign employees	49
7.5. Working hours	47		

8 Immigration issues 51

8.1. Immigration to Ukraine	51	8.4. Permanent residence permit	53
8.2. Obtaining immigration permit	52	8.5. Temporary residence permit	54
8.3. Visas for entering Ukraine	53		

9 Real estate 57

9.1. Real estate concept	57	9.3. Real estate use	60
9.2. Real estate acquisition	57	9.4. Lease of buildings	60
9.2.1. Acquisition of buildings	58	9.5. Land plot lease	61
9.2.2. Acquisition of land plots	58		

10 Privatization in Ukraine 63

10.1. Objects of privatization	63	10.3.2. Privatization of leased property	66
10.2. Purchasers	64	10.4. Information on privatization	66
10.3. The methods, procedures and process of privatization	65	10.5. Requirements for protection of economic competition	66
10.3.1. Sale of privatization targets at auctions, by tender, on stock exchanges	65	10.6. Registration of privatization deals	66

11 Natural resources & mining 68

11.1. General provisions	68	11.5. Obtaining a mining allotment..	72
11.2. Types of minerals	68	11.6. The use of mineral resources without a special permit and a mining allotment	72
11.3. The right to use subsoil mineral resources	69	11.7. Registering a land plot for mining	72
11.3.1. The procedure for granting the right to use mineral resources for mining	69	11.8. Other permits related to mining	73
11.3.2. Licensing regime	70	11.9. Payment for subsoil mineral resources use	73
11.3.3. Regime of production sharing agreements	70	11.10. The completion of mining. Land remediation	74
11.4. Transfer of rights to use subsoil mineral resources to the third parties	71		

12 Intellectual property rights 75

12.1. General provisions	75	12.3. Personal non-property rights of intellectual property	79
12.2. Subject of intellectual property right	76	12.4. Use and transfer of the object of intellectual property right ...	80
12.2.1. Copyright and related rights ...	77	12.5. Appeal to the Antimonopoly Committee of Ukraine	81
12.2.2. Industrial property	77	12.6. Protection of intellectual property rights by court	81
12.2.3. Intellectual property right to a trademark	78		
12.2.4. IP rights to the objects created in connection with employment agreement performance	78		

13 Advertising relations

82

13.1. Advertising and advertising activities	82	13.4.3. Advertising of services related to the involvement of public funds	85
13.2. Language of advertising	83	13.4.4. Advertising of construction projects	85
13.3. Prohibitions on the use of advertising	83	13.4.5. Advertising and children	85
13.4. Features of certain types of advertising	84	13.5. Types of advertising contracts	86
13.4.1. Advertising of medicines and medical equipment	84	13.6. Advertising on TV	87
13.4.2. Advertising of weapons	85	13.7. Outdoor advertising	87
		13.8. Adaptation of advertising	88

14 Dispute resolution

89

14.1. General courts	89	14.1.5. Dispute review in the Supreme Court of Ukraine	92
14.1.1. Measures for securing a claim	90	14.2. Courts of arbitration	93
14.1.2. Case hearing in the trial court	90	14.3. Enforcement of decisions	94
14.1.3. Consideration of disputes on appeal	91	14.4. The recognition of foreign courts decisions in Ukraine	95
14.1.4. Resolution of disputes on cassation	92		

Introduction

As an experienced and reliable Ukrainian law firm, we often deal with various enquiries from the foreign investors, who want to start business in Ukraine or seek to establish business relations with Ukrainian companies. We note that lately the number of such enquiries has significantly increased, which we attribute to gradual recovery of the Ukrainian economy, conclusion of important international trade agreements, and positive changes in the Ukrainian legislation, which is currently going through important stages of its development.

At the same time, the essence of many enquiries remains quite similar in most of the cases and represents the general issues arising from matters on establishing a business presence in Ukraine, employment of staff, protection of foreign investment, applicable customs regulation, taxation rules, purchase of real estate, dispute resolution, etc.

Therefore, we decided to issue this guide for foreign investors, wherein we describe general regulations in the most commonly referred areas of the Ukrainian law. The guide centres only on the most crucial aspects of regulations, so it is not overwhelming in legal details and rules, which makes it a very flexible reading for a person with a non-legal background. Thus, this guide will be useful not only to legal professionals, but also to business people, companies and various specialists, who often deal with or are interested in the Ukrainian market and applicable rules.

We hope that this guide will be useful to you and your business and will assist you in understanding peculiarities of the Ukrainian legislation when planning your business activity in Ukraine. If any information, data or issues covered in this publication require additional clarification, please, do not hesitate to contact lawyers at DLF attorneys-at-law, who will be glad to provide you with specific and detailed advice regarding your case.

January 2017

Igor Dykunskyy, LL.M.
Partner

Mag. Dmitriy Sykaluk
Senior Associate



Ukraine.

General information

1.1. Area and location

Ukraine area totals 603,628 sq. km, and thus Ukraine is the second largest country on the territory of Europe. Ukraine is at the heart of the Eastern Europe with its territory washed by the Black and Azov Seas in the south. Ukraine borders the Russian Federation, Belarus, Poland, Slovakia, Hungary, Romania and Moldova.

Due to its favourable geographical location, Ukraine has close economic ties with the countries of the region. Thus, through the Danube river Ukraine is closely related to Romania, Bulgaria and other countries of the Danube basin and through the ports of the Black Sea and the Sea of Azov Ukraine maintains trade relations with many countries in Europe, Asia, Africa, Australia, North and South America. The territory of Ukraine is crossed by numerous Trans-European oil pipelines, gas pipelines, high-voltage power lines, electrified railways connecting Ukraine with its neighbours.

The largest Black Sea ports of Ukraine are Odessa, Kherson and Chornomorsk. The largest Sea of Azov ports are Mariupol and Berdyansk.

The main rivers in Ukraine are the Danube, Dniipro, Dnister and Southern Bug.

1.2. Minerals

Ukraine is among the leading countries in terms of the amount of minerals. In Ukraine, the minerals with the greatest economic value are primarily coal, iron and manganese ores, rock salt, potassium salt, mineral water, gas and oil. Ukraine occupies the leading position in the world in relation to the reserves of some minerals, such as iron, manganese, titanium and zinc ores.

1.3. Land use

As of 2016, 70.8% of the territory of Ukraine was classified as agricultural land and 17.6% of the area was covered by forests.

1.4. Population

According to the official data, Ukraine's population as of 2016 was approximately 42.5 million people. Kyiv, Kharkiv, Odessa and Dnipro belong to cities with the highest population. Population of these cities exceeds or is close to 1 million. In total, urban population of Ukraine is 67.2%.

Ethnic Ukrainians comprise about 78% of the population of Ukraine. The rest of the population accounts for ethnic minorities such as Russians, Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles and others. Officially, Ukraine prohibits dual citizenship, but it is not uncommon in practice.

1.5. Religion

Ukraine is a secular state, where the church is separated from the state. Most of the population of Ukraine are members of the Orthodox Church, which has a special place in the country. The second one in terms of the scope of congregation is the Greek Catholic Church, with the majority of its followers residing in the western regions of Ukraine. About 4% of Ukraine's population consist of Muslims, mainly living on the Crimean Peninsula.

1.6. Language

The official language of Ukraine is Ukrainian. It should be noted that the majority of the population is fluent in both Ukrainian and Russian. In regions, where the number of ethnic minorities is more than 10% of the local population, the language of such minorities may acquire the status of a regional language. The number of population speaking English, which is the common language of business communication, is growing in big cities of Ukraine.

1.7. Education

Ukraine is a country with a traditionally high level of education. Today its literacy rate amounts to 99.7%. The Constitution of Ukraine guarantees the right to free higher education at state and municipal educational institutions. The organization of higher education in Ukraine is based on the global structure of developed countries as defined by UNESCO and the UN. The high level of education provided by the Ukrainian universities has always attracted foreign students, particularly from the Middle East, who as of now study in abundance at engineering and medical faculties of the Ukrainian universities.

1.8. Employment

The number of gainfully employed population in Ukraine is about 18 million people. The employment rate among the working-age population totals 56.9%. The highest employment rate among the regions is in Kyiv and amounts to 62.3%. This is primarily due to the administrative functions performed by this region.

As of 2016, the unemployment rate in Ukraine was 9.9%, but depending on the region it may vary significantly.

1.9. Living standards

Despite the fact that income of Ukrainian population constantly grows, its size compared to the European standards is quite low. The official average monthly salary throughout 2016 amounted to approximately USD 200. The size of the average monthly salary is almost twice that amount in Kyiv. A part of the economy is in the shade. Therefore, the official statistics do not always accurately reflect the real level of income.

1.10. Political system

Ukraine is a parliamentary-presidential republic with the Constitution as its fundamental law. The territory of Ukraine consists of 24 regions, the Autonomous Republic of Crimea and 2 cities with a special status (Kyiv and Sevastopol). The Ukrainian Parliament is the highest body of legislative state power, and the President of Ukraine is the Head of State. The executive power is represented by the Cabinet of Ministers of Ukraine.

1.11. Ukrainian economy

Since 1991, Ukraine has continued a long period of transition from the planned economy model to approximation to the elements of the market economy of capitalist countries. Today, Ukraine is an industrial and agricultural country with the GDP per capita at about USD 2,000.

One of the main economic indicators of the country is the size of the gross domestic product. For it Ukraine ranks 66th in the world; the gross domestic product of Ukraine amounted to USD 87.198 billion in 2016.

The gross domestic product by sector is distributed as follows: 13.3% accounts for agriculture, 24.0% for industry and 62.7% for services.

The key sectors of the Ukrainian economy, playing a crucial role in determining the economic indicators of the country, are heavy industry (mining and metals), machinery and metal working, oil and gas production and energy industry, chemicals and pharmaceuticals, wood-working and pulp and paper industry, light industry, agriculture, food processing, freight and passenger transport and tourism.

Ukraine holds a strong position in agriculture and is an important player in the global agricultural market. Ukraine is the world's largest producer of sunflower oil and has a large share in the production of grain, sugar, meat and dairy products.



Doing agricultural business in Ukraine

This brochure provides a complex analysis of the current Ukrainian legislation applicable to agribusiness, including legislative framework for sale and purchase and lease of agricultural land, regulation of employment relations and taxation.

View [Doing agricultural business in Ukraine](#).

Ukraine pays much attention to the development of space exploration and aircraft. Each year Ukraine enters into approximately 400 contracts to provide launch services on Ukrainian launch vehicles. Besides, Ukraine produces satellites and assembly joints for all the space-ships docking at the International Space Station. Ukraine is a major producer of weapons, such as tanks, military transport aircraft, anti-aircraft missile systems and optical equipment.

Ukraine cooperates with the international financial institutions, including the IMF, World Bank, International Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, International Centre for Settlement of Investment Disputes, etc.

1.12. Foreign trade

With regard to the foreign trade indicators, the restorative balance of exports and imports should be noted. Thus, exports of goods and services from Ukraine and imports to Ukraine in 2016 were distributed at the following ratio:

Export (USD 33.6 billion). Export items: ferrous and nonferrous metals, fuel and petroleum products, chemicals, machinery and transport equipment, foodstuffs.

Key export partners with traditionally active trade relations with Ukraine are the European Union, China, Turkey, Russia, Egypt.

Import (USD 40.4 billion). Import column contains basic goods imported to Ukraine that are energy (primarily natural gas), machinery and equipment, chemicals.

Key import partners: Germany, China, Russia, Poland, Belarus. The European Union member states and the CIS countries accounted for about 70% of the total foreign trade of Ukraine.

1.13. Transport

The transport system of Ukraine is represented by almost all types of land (rail, road), water (sea, river), air (aircraft, helicopter) and pipeline (oil, gas pipelines and ammonia lines, transportation of chemicals) transport. Ukraine has a developed rail and water transport infrastructure. The favourable geographical position of Ukraine determines the passage of international transport corridors.

Operating length of the main railway lines is 22,300 km, including 9,978 km (44.7%) of electrified tracks. Track width is normally 1,520 mm, while there are also narrow-gauge areas (most with the width of 750 mm) and small border areas of the European standard (1,435 mm). The number of railway stations totals 1,648 (126 main railroad terminals).

The bedrock of marine transport of Ukraine is formed by the Black Sea, the Sea of Azov and Ukrainian Danube shipping companies that have a transportation fleet with the total capacity of 5 million tons and a passenger fleet of 9,900 jobs. In Ukraine, there are 18 ports, including 175 trans-shipping complexes and 8 shipyards.

The internal navigable river ways of Ukraine are mostly located in water areas of the Dnipro and Danube rivers. The main water-carrying artery of Ukraine is the Dnipro waterway, where freight and passenger transportation is carried out. The navigable Dnipro lanes intersect with highways and railways and are an integral part of the national network of international transport corridors. The largest river shipping company is Ukrzichflot. It consists of Dnipro, Zaporizhia, Mykolaiv, Kherson and Chernihiv river ports with a total capacity of cargo handling about 24 million tons.

Ukraine has a wide network of airlines and airports. Some of them have the international status. More than 13 million passengers used air transportation in 2016. The largest centres of air transport are Kyiv, Odessa, Kharkiv and Lviv.

The pipeline transport in Ukraine is one of the most developed types of transportation and consists of two parts: a gas pipeline system and an oil pipeline system. The pipeline transport of Ukraine includes 12 major oil pipelines with the total length of about 3,000 km. The oil pipeline network is represented by the Druzhba Trans-European oil pipeline, the length of which in Ukraine amounts to 680 km. Via this pipeline oil from Russia comes to the Central Europe through Ukraine's territory. The remaining oil pipelines are domestic and transnational, and provide oil to refineries of Ukraine.

34,000 km of gas pipelines are laid on the territory of Ukraine. Ukraine recovers only 25% of consumed gas; the rest of the gas is purchased. In addition, 12 storage facilities with the total volume of 35.3 billion cubic meters of gas have been built in Ukraine.

1.14. Economic and political ties

Ukraine has close economic and political ties with the neighbouring countries. Ukraine and the EU have signed an agreement on free trade regime, which has significantly improved trade relations between Ukraine and the EU member states and increased the volume of trade. Ukraine also signed a free trade agreement with Canada in 2016, and it is negotiating terms of trade with other countries.

Ukraine maintains a close relationship with NATO in the areas of security, technical cooperation, scientific research, defence systems and rapid response in case of emergency.

Ukraine maintains diplomatic relations with over 170 countries. Ukraine is a member of the UN, the Council of Europe, the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development, the World Trade Organization. In addition, Ukraine is a non-permanent member of the UN Security Council.

1.15. Tourism

Ukraine is a country with a developed tourism industry, and each year it is visited by a large number of tourists, especially from the Eastern and Western Europe, the USA and Japan. With its advantageous geopolitical location, Ukraine has a large tourist and recreation potential, a favourable climate, rich flora and fauna, cultural and world-class historical monuments and a tourism industry, which is rapidly growing.

Ukraine is teeming with a huge number of cultural and historical complexes. Thus, the Central Ukraine is rich in historical sites associated with the introduction and development of Ukrainian statehood and culture, the Southern Ukraine is the area where many monuments of ancient culture have been discovered, the Western Ukraine stands for its ethnic features, folklore sights and folk architecture.

In Ukraine, there are over 200,000 sites for tourism and more than 300 museums. Historical and cultural reserves (Kyiv Pechersk Lavra, Pereyaslav-Khmelnyskyi, Khortytsia) and historical and architectural reserves (Lviv, Kamianets-Podilskyi, Novhorod-Siverskyi) have risen to the international fame. Palace and park complexes, castles, fortresses, remains of ancient cities, pilgrimage sites (Pechersk and Pochayiv Lavras) are of equal importance.

Ukraine has 45 resorts of national and international importance and 13 local resorts. There are more than 400 health centres that may undertake to treat more than 600,000 vacationers.



Foreign investment protection

The vast majority of foreign investors evaluate the predictability of policies and acts of the authorities of the country they want to invest in, as well as the consistency of legislation as a crucial aspect when deciding to invest capital in the country. These two factors are the main activities of the Ukrainian authorities on the foreign investment protection.

Foreign investment in Ukraine is quite reliably protected at the legislative level. This applies both to the international level, where Ukraine has signed several international agreements on the foreign investment protection, and to the national level that establishes a list of state guarantees, which serve as a basis for the foreign investment protection in Ukraine.

2.1. International agreements

The means to be used for protecting foreign investments are signed international agreements on promotion and protection of investments. Since Ukraine has ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 2000, the Convention members have the opportunity to contact the International Centre for Settlement of Investment Disputes to protect their investments.

Investors may address the International Centre for Settlement of Investment Disputes with regards to the protection of their rights in connection with the confiscation of their property, unequal treatment in terms of domestic and foreign investors.

International agreements on promotion and protection of investments have been signed with numerous countries, including the United States, Canada, Germany, Great Britain, France, Switzerland, the Netherlands, Denmark, Poland, Turkey, China, Japan, the UAE, Saudi Arabia, Egypt and others.



Arabic-English issue of Ukraine: Investment Guide

The English-Arabic issue focuses on the general regulations in the most commonly referred areas of the Ukrainian law, including foreign investment protection, corporate law, M&A, customs regulations, labour law, real estate, taxes, privatization, renewable energy, etc.

View [Arabic-English issue of Ukraine: Investment Guide](#).

The terms of bilateral agreements on promotion and protection of investments are not unified and may vary significantly.

In addition, it should be noted that foreign investment protection in Ukraine has received additional support in view of the ratification of a number of international agreements on recognition and enforcement of foreign awards by the Government of Ukraine. The procedure for foreign awards recognition and enforcement is specified in the civil procedural legislation of Ukraine and is an effective tool for foreign investors, who are able to resolve the dispute pursuant to their own legal order.

Thus, in case of violation of the rights of foreign investors in Ukraine, they may use the legal mechanisms under the Ukrainian law envisaged for the effective protection of the invested capital in Ukraine.

2.2. Ukrainian legal guarantees

The overall protection of foreign investments in Ukraine is governed by the Law of Ukraine "On Foreign Investment" and the Law of Ukraine "On Protection of Foreign Investments". These regulatory acts define basic guarantees for the protection of foreign investments in Ukraine.

Key types of guarantees that Ukraine offers to foreign investors are:

- 1) state guarantees against changes in legislation;
- 2) guarantees against seizure and unlawful acts of state bodies and state officials;
- 3) compensation and reimbursement of losses incurred by foreign investors due to the acts of state bodies and state officials;
- 4) guarantees in the event of investment activity termination;

- 5) guarantees for the remittance of profits, and other sums resulted from foreign investments.

2.2.1. State guarantees against changes in legislation

The principle of guaranteeing the protection of foreign investments against changes in the Ukrainian legislation provides that in case the guarantees on foreign investment protection are subject to change, the state guarantees shall be used to protect foreign investment at the request of a foreign investor within ten years from the date of entry into force of such a legislation. Thus, the provisions of the Ukrainian laws in force at the time of investment shall be applied.

2.2.2. Guarantees against seizure and unlawful acts of state bodies and state officials

State bodies may not seize foreign investments, with the exception of emergency measures in the event of natural disasters, accidents, epidemics or epizootics. The abovementioned seizures may be carried out on the basis of decisions of bodies authorized to do so by the Cabinet of Ministers of Ukraine. Decisions about the seizure of foreign investments and the compensation terms and conditions can be appealed in court. The legislation provides for compensation related to the seizure of foreign investments.

2.2.3. Compensation and reimbursement of losses incurred by foreign investors due to the acts of state bodies and state officials

Foreign investors shall be entitled to receive compensation of their losses, including lost profit and moral damage incurred as a result of acts, inaction or improper fulfilment by the state bodies of Ukraine or their officials of the responsibilities in relation to foreign investors or entities with foreign investment as provided by the legislation of Ukraine.

All expenses and losses incurred by foreign investors as a result of such an activity shall be compensated on the basis of the current market prices or substantiated valuation certified by an auditing company. Compensation paid to the foreign investor shall be prompt, adequate and efficient.

2.2.4. Guarantees in the event of investment activity termination

In the event of investment activity termination, a foreign investor shall be entitled within 6 months following the day of termination of such an activity to recoup any investment in-kind or in the currency of investment in the amount of the actual contribution without payment of duty, along with profits from those investments in monetary form or in goods at the actual market value at the time of investment activity termination.

2.2.5. Guarantees for the remittance of profits and other sums resulted from foreign investments

Upon payment of taxes, duties, and other mandatory payments, foreign investors shall be guaranteed unimpeded and prompt remittance abroad of their profits and other sums in foreign currency obtained legally as a result of foreign investments.

Procedures for the remittance of profits received in Ukraine as a result of foreign investments is determined by the National Bank of Ukraine. It should be noted that to prevent the massive outflow of investment from the country and in the event of substantial currency fluctuations the National Bank of Ukraine may set certain exchange restrictions.

Exchange restrictions often relate to, first of all, dividend maturity, foreign currency purchase and transfer of currency abroad. The existence of such exchange restrictions makes foreign investors seek for alternative mechanisms of transactions.

2.3. Contractual protection

Effective protection of foreign investments is established upon the wording of the provisions of contracts with Ukrainian partners. That is, the correct formulation of contractual relations may protect foreign investors from illegal acts in the future. Therefore, structuring contractual and corporate relationships is essential at the investment stage planning.

Crucial provisions to be considered upon entering into an investment agreement are the place and time of the agreement, and the official names of the parties to the agreement. The accuracy of the information about the companies entering into the agreement has to be verified with the public register. An important step of signing the agreement is also a verification of the powers of persons authorized to sign it.

Important elements of the agreement to be considered are the subject of the agreement and its detailed description, as well as the term of the agreement and the terms of payment and fulfilment of contractual obligations, price of the agreement, terms and type of payment, rights and obligations, liability in case of breach of the agreement, law applicable to the agreement, place of dispute settlement and conditions of force majeure. One also needs to check the accuracy of banking details and consider the language that will govern the agreement's interpretation.

2.3.1. Applicable law

Upon entering into a foreign economic contract, the parties shall be entitled to determine the governing law. Thus, the foreign investor may settle the terms of the contract within the law, which is familiar or best suited for any specific needs. In this case, it is essential to check that the content and form of contract corresponds to the chosen legal order. In addition, one needs to consider mandatory rules of the Ukrainian legislation, which in case of recognition and enforcement of foreign judgments may prohibit the use of provisions of international legal orders in Ukraine.

2.3.2. Submission to jurisdiction

Parties to foreign economic contracts may agree to settle disputes related to the implementation of this contract in international arbitration institutions. Thus, a foreign investor will be able to avoid settling the case in Ukrainian courts. This possibility is available due to the fact that Ukraine is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, one should take into consideration that in certain cases, such as disputes over property located in Ukraine, Ukrainian courts have an exclusive jurisdiction.

3

General customs regulations and trade finance

The Ukrainian customs regulation gradually transforms into a body of law, which complies with and absorbs most of the best international practices in the Customs Code of Ukraine. This process began in 2008 following accession of Ukraine to the World Trade Organization. Some major changes and incentives were implemented when the EU-Ukraine Association Agreement was signed, which resulted in establishment of the EU-Ukraine Free Trade Zone and the necessity to harmonize the applicable Ukrainian law with the EU regulatory acts.

3.1. Customs control

The Ukrainian customs authorities exercise customs control in order to ensure that the goods imported to or exported from Ukraine comply with the required standards. As the customs authorities are authorized to conduct various types of control, such as sanitary, veterinary, phytosanitary, radiological, ecological, etc., this process used to be conducted with a significant delay and no clear timeframe.

However, on 1 August 2016, the Cabinet of Ministers of Ukraine implemented the system of the 'single window' for customs, which resulted in all kinds of control being exercised simultaneously. Introducing this unified electronic system significantly facilitates timeframe for customs control, increases quality of service at customs posts and minimizes corruption and violations during customs control. The 'single window' electronic system unifies all controlling authorities and is mandatory for use. Such a system allows the controlling authorities to exchange data on goods which will ensure their coordinated actions and processing speed.

Furthermore, under the simplified control system, if there is no decision made on completion of customs control within four hours following submission of required documents, the system will automatically issue a document on successful completion of customs control and registration of goods.

3.2. Required documents

Any goods imported to the territory of Ukraine shall undergo registration with the customs authorities. Usually such a registration is conducted by the importer or a licensed customs broker on behalf of the importer. Failure to provide any of the documents listed below may result in a significant delay of registration.

Generally, the following import documents are required for import shipments of goods to Ukraine:

- 1) an import-export (cross-border) contract;
- 2) an invoice and a waybill;
- 3) an import customs declaration;
- 4) a declaration of customs value;
- 5) a compliance certificate;
- 6) a certificate of origin;
- 7) evidence of customs duty and tax payment.

Furthermore, the customs authorities may require any additional documents not listed above.

3.3. Customs regimes

A customs regime consists of the interrelated legal rules that determine customs-approved treatment or use to be assigned to the goods, their legal status, terms of taxation in accordance with the declared purposes following their crossing the customs border of Ukraine, as well as their post-clearance use.

As provided in the Customs Code of Ukraine, the following customs regimes are used on the territory of Ukraine:

- 1) import (release for free circulation);
- 2) re-import;
- 3) export (final leave);
- 4) re-export;
- 5) transit;
- 6) temporary import;

- 7) temporary export;
- 8) customs warehousing;
- 9) a free customs zone;
- 10) a duty-free trade;
- 11) inward processing;
- 12) outward processing;
- 13) destruction or elimination;
- 14) abandonment to the State.

The Customs Code of Ukraine contains a detailed explanation and features of each of the regimes. The most commonly used regimes are mentioned in 1) – 5) above.

3.4. Applicable taxes and duties

VAT is applied to transactions on supply of goods and services to the customs territory of Ukraine, as well as to transactions related to import and export of goods in Ukraine. The VAT rate is 20%. For pharmaceutical products, the VAT rate is 7%. It should be noted that 0% VAT rate is applied to export of goods in the customs regime from the territory of Ukraine.

The excise tax applies to excise goods imported to the customs territory of Ukraine. The excise tax is levied upon excise goods, which include:

- 1) ethyl alcohol and other distillates, alcohol drinks, beer;
- 2) tobacco products, tobacco and manufactured tobacco substitutes;
- 3) fuel;
- 4) cars, trailers and semi-trailers, motorcycles, vehicles for transportation of 10 persons or more, vehicles for goods transportation.

The excise tax rates are specified in the Tax Code of Ukraine for each type of excise goods.

The importers shall pay the import duty. The import duty is calculated based on the type of goods, their origin and CIF value (the sum of the value of the imported goods and the cost of shipping and insurance). The amount of the import duty varies accordingly between 0% for some preferential goods or under certain international agreements to 60% with an average rate of 10%.

It is also worth mentioning that any imported goods with the product value of less than EUR 150 are exempt from the import duty and VAT.

3.5. Methods of payment for goods

In Ukraine, it is possible to use various methods of payment for transactions on sale and purchase of goods and services under a cross-border contract. These include prepayment, letters of credit, documentary collections, payment orders, and other methods used under the conventional business practice.

3.6. Prepayment

The most common way of monetary settlements in Ukraine for shipment of goods and rendering services is prepayment. This is predominantly due to the fact of frequent currency exchange rate fluctuations of UAH and peculiar legislation regulating settlements in foreign currency, introduced by the National Bank of Ukraine.

Thus, Ukrainian exporters selling goods abroad in foreign currency must receive payment within 120 days from the date of the goods customs clearance. In addition, Ukrainian importers, paying for goods on conditions of deferred delivery, must receive such goods within 120 days or obtain the approval of the Ministry of Economy of Ukraine, if the period between the prepayment for goods and their delivery exceeds 120 days.

Failure to comply with the abovementioned requirements results in imposition of a penalty for each day of delay in the amount of 0.3% of non-received proceeds in foreign currency (value of non-delivered goods) calculated in UAH at the date of indebtedness occurrence (the amount of penalty shall not exceed the sum of non-delivered goods). Moreover, the Ministry of Economy of Ukraine will sanction Ukrainian and foreign companies, parties to the relevant transaction, by way of imposing a special individual licensing regime. The individual licensing regime means that both the Ukrainian company and the foreign company shall be obliged to apply to the Ministry of Economy of Ukraine for its approval for each trade transaction on the territory of Ukraine. The Ministry of Economy of Ukraine will individually license each foreign economic transaction of such companies. Such consequences of currency regulations breach lead to an unfavourable position of Ukrainian importers and their foreign counterparties as they significantly complicate the economic activity.

Of course, there are certain goods which cannot be produced and delivered within the specified 120-days period. In these cases, it is possible to file an application to the Ministry of Economy of Ukraine for extension of the settlements term. The Ministry then issues a special document allowing the parties to avoid any penalties and imposition of the individual licensing regime.

3.7. Letter of credit

The regulation of letters of credit in Ukraine consists of general provisions of the Civil Code of Ukraine and some regulatory acts of the National Bank of Ukraine. In addition, Ukraine recognizes the Uniform Customs and Practice for Documentary Credits 600 and International Standby Practices 98, which are often used in the international trade.

However, it is worth mentioning that any provisions, contradicting the mandatory require-

ments of the Ukrainian law, shall be deemed as invalid. Thus, the Civil Code of Ukraine provides that the letter of credit shall be closed in the following cases:

- 1) expiration of the letter of credit;
- 2) refusal of the funds recipient to use the letter of credit before it expires in case this is specified in the provisions of the letter of credit;
- 3) full or partial revocation of the letter of credit by the payer in case such a revocation is specified in the provisions of the letter of credit.

Therefore, it is not clear whether the Ukrainian law recognizes exclusively these three cases of closing the letter of credit, or also includes grounds specified in the Uniform Customs and Practice for Documentary Credits 600 and International Standby Practices 98 and other international trade finance best practices.

Both revocable and irrevocable letters of credit are used in Ukraine. Additionally, letters of credit are compulsory in any trade transactions the amount of which exceeds USD 1 million.

3.8. Documentary collection

There are a couple of general provisions regarding regulation of documentary collections in Ukraine included in the Civil Code of Ukraine. Additionally, ICC Uniform Rules for Collections 522 are recognized in Ukraine. However, documentary collections are quite rarely used as means of payment for goods and services in Ukraine in comparison to other methods of payment.

3.9. Currency regulations

For the purposes of stabilizing the currency market of Ukraine, the National Bank of Ukraine from time to time introduces certain restrictions, which shall be taken into consideration when doing business with foreign counterparties. Thus, there is a mandatory requirement for legal entities, private entrepreneurs and representative offices (except for official representative offices) to sell 65% of the foreign currency proceeds received from abroad. Gradually, the percentage rate for mandatory sell of currency proceeds is being decreased.

Furthermore, the National Bank of Ukraine exercises certain control over foreign currency purchase for the purposes of dividends repatriation to foreign investors abroad, as well as foreign currency purchase for the purposes of repatriation of proceeds received by foreign investors from the sale of corporate rights, other than shares, of legal entities, decrease in the authorized capital of legal entities, withdrawal from a legal entity.

4

Setting up a business in Ukraine

The regulatory environment and terms of registering and doing business in Ukraine improve every year, which is evidenced by the steady rising of Ukraine's rank for conducting business in many international organizations. As of today, the scope of documents and terms of registration of companies in Ukraine is reduced and usually does not cause much difficulty. These changes alter the attitude of foreign investors to Ukraine and increase the presence of foreign business in the country.

The most popular types of business companies that have shown themselves to good advantage in the eyes of foreign investors is a limited liability company, joint stock company, representative offices of a foreign company in Ukraine and sole proprietorship.

4.1. Private entrepreneur

The easiest way to carry out an economic activity in Ukraine is registration of an individual, including a non-resident, as a private entrepreneur. Registration as a private entrepreneur means that such a person shall own business without establishing a legal entity. Information about the private entrepreneur is entered into the Unified State Register, it is public and may be verified at any stage of activity of such a person.

The main advantage of registering as a private entrepreneur is the option to choose the simplified tax system, which greatly facilitates financial reporting to the regulatory authorities and allows individuals to apply reduced fixed tax rates on income. However, this type of business is not for all market actors, as it sets certain limitations on the amount of allowable annual turnover, the number of employees and admissible activities.

Although carrying out economic activities as a private entrepreneur with or without use of the simplified tax system provides several advantages, one should not forget about liability related to the activities of an individual in such a legal status. Private entrepreneurs are responsible for liabilities associated with business activities for the full extent of their assets. At that, the Ukrainian law does not provide for apportion of property used by the entrepreneur

for his/her business activity from the bulk of assets owned by an individual. Therefore, on the basis of a court ruling a penalty may be charged on all the debtor's property, regardless of whether it is used for business purposes or not.

In any case, a private entrepreneurship is the most mobile way of doing business in Ukraine, which does not require complex preparation of financial statements.

4.2. Limited liability company (LLC)

In Ukraine, entities may be established with a view to go beyond the limits set out for carrying out economic activities by private entrepreneurs, reduce the risk of the investor's personal liability and be able to combine equity and assets to achieve common financial goals. The most common legal type of a legal entity for doing business is a limited liability company.

4.2.1. LLC registration

Registration of a limited liability company may be carried out in electronic form and, provided there are no comments from the state registrar to the documents submitted by the applicant, it shall be completed within one business day. If past experience is any guide, obtaining all registration documents, opening a bank account, obtaining a seal (if desired) and customs registration take about one week.

When registering a limited liability company, such a company shall comply with certain formal requirements: the founders of a limited liability company need to develop a charter (the main statutory document of a company), in which the name, location, activities, rights and obligations of the members, share size, the director's rights and obligations, authorized capital and profit distribution methods are specified. The founders shall appoint the director and determine the person in charge of the state registration with the state authorities in the protocol (minutes) on the company establishment.

The founders' presence while the charter and protocols being signed as well as at the registration procedure itself is not required. Signing statutory documents, registering the company, as well as receiving all the necessary documents may be exercised by an authorized representative on the basis of a notarized (legalized/apostilled) power of attorney.

4.2.2. Authorized capital

The legislation of Ukraine does not establish requirements for the minimum authorized capital amount of a limited liability company. The authorized capital of a limited liability company may be set up on the basis of the asset, non-asset and non-cash contributions. In case of contribution to the authorized capital in the form of assets or property rights, a monetary valuation of such items shall be carried out. In turn, the members' financial contributions are transferred to the bank account of the company.

4.2.3. Shareholders of the company

Shareholders of a limited liability company may be individuals and legal entities, including non-residents. In addition, these persons do not necessarily have to be located or reside on the territory of Ukraine. To confirm the data on the non-resident legal entities as sharehold-

ers, the state registrar shall be provided with an extract from the commercial, banking or other registry of the country of registration of such persons, which, if necessary, shall undergo the legalization or apostillization procedure.

A limited liability company may be established by one shareholder, and the sole shareholder of a limited liability company (an individual) may act as the director of the company. It is also worth mentioning that a limited liability company may not have another business entity as its sole member, which has a sole member in turn. The maximum number of members of a limited liability company is 100 persons.

4.2.4. Liability of the shareholder

Opting for a limited liability company as a legal type of business activity in Ukraine is attractive primarily due to the fact that shareholders are not liable for the obligations of the company. The shareholders assume the risk of loss related to the company's activities within the scope of their contributions.

However, it should be noted that in the event of a shareholder's personal debt, such as in case of his/her failure to satisfy creditors' claims by his/her other assets, an enforced collection of the property of a limited liability company proportionate to the share of such a shareholder in the authorized capital is allowed. Thus, personal debts of a shareholder of a limited liability company may lead to cessation of her/his participation in the company.

4.2.5. Governing bodies

The governing bodies of a limited liability company are the general meeting, the audit commission and the director. The supreme body of a limited liability company is the general meeting. The general meeting of shareholders determines the company's main activities and appoints the director of the company in charge of management over the company's operational activities.

The director on behalf of the company shall sign any contracts. Therefore, upon the appointment of the director, the charter and the employment contract shall clearly stipulate the powers of the director in order to prevent abuse on his/her part.

The audit commission may be established to monitor the director's activities in a limited liability company. Results obtained by the audit commission based on its inspection shall be submitted to the general meeting.

4.2.6. Funding of activities

Upon establishment, as well as at further stages of a limited liability company's activity, its funding may be carried out in several ways. This shall be done primarily by its shareholders' contributions to the authorized capital, non-repayable financial assistance from the company's shareholders or by providing a credit/loan by any of the shareholders to the company. The Ukrainian law does not stipulate limits on the amount of credit that may be provided by shareholders to their company, but the shareholder granting loans shall take into account peculiarities of taxation of such loans and adhere to thin capitalization rules, as well as consider the requirements of the currency regulation of Ukraine, if such a loan is granted by a non-resident.

4.3. Joint stock company

Another legal type that protects members against any personal liability for the company's debts is a joint stock company. The legal regulation of joint stock companies is very similar to the limited liability companies' regulation. However, joint stock companies have their own features, such as an amount of the authorized capital (the minimum amount equals to approximately USD 76,000), the requirement to register and submit reports to the National Commission on Securities and Stock Market.

It should be noted that the joint stock company registration procedure is more complicated than that of a limited liability company. To establish a joint stock company the founders shall make notification of intent to create a joint-stock company, subscribe for shares, hold a statutory meeting and carry out a joint stock company state registration with a number of regulatory authorities.

A joint stock company is also distinguished by the special requirements to the content of the charter. The charter shall contain information on the types of shares issued, their nominal value, ratio of different types of shares, the number of shares purchased by the founders, consequences of default on the redemption of shares, the term and procedure for annual payment of dividends at the end of a year, etc.

4.4. Representative office of a foreign company

A foreign company may exercise certain activities in Ukraine without establishing a legal entity. Such activities are carried out through representative offices of a foreign company in Ukraine, acting on behalf of the foreign company they represent. A representative office of a foreign company does not have its own charter, as it acts as a separate unit of a foreign company. A head of a representative office acts under the power of attorney issued by a foreign company.

The procedure for registration of a foreign company representative office significantly differs from the procedure of business entities registration. Thus, the Ministry of Economy of Ukraine carries out registration of representative offices by adopting a decision on registration within 60 working days. The state duty for registration of a representative office of a foreign company in Ukraine totals USD 2,500.

Foreign companies open their representative offices in Ukraine usually for the purpose of non-commercial activities, such as representation of their interests, data collection, market analysis or monitoring.

4.5. Mergers and Acquisitions

Additionally, one may enter the Ukrainian market by purchasing shares in an already established company in Ukraine. The main advantage of the purchase of shares in an existing company is the fact that it has already built a management structure, it has assets necessary for its activity, contractual relationships with partners and customers, as well as experience in specific areas and a certain market share. To reduce the risk of hidden liabilities a purchaser needs to conduct a detailed legal and financial audit (due diligence) of the firm.

When purchasing a stake in a Ukrainian company one needs to remember to follow the provisions of the Ukrainian antimonopoly law.



M&A transactions in Ukraine: antimonopoly aspects

This brochure provides a detailed description of the legal basis for the antimonopoly control over economic concentrations in Ukraine, incl. the structure and functions of the controlling authorities and principles of their functioning, liability for breach of antimonopoly law, etc.

View [M&A transactions in Ukraine: antimonopoly aspects.](#)

5

Bankruptcy procedure

5.1. General provisions

Bankruptcy is recognized by a commercial court as debtor's failure to restore its solvency through procedures of reorganization and settlement agreement and to repay creditors' monetary claims other than through the liquidation procedure.

Thus, the insolvency should be understood as debtor's failure to meet its financial obligations to creditors when due other than through the restoration of its solvency.

Bankruptcy is aimed at restoring the debtor's solvency, which requires introducing additional protection for the debtor and its property, and appointing an insolvency officer to protect the interests of the parties to the proceedings.

Bankruptcy in Ukraine is governed by the basic laws:

- the Law of Ukraine "On Restoring Debtor's Solvency or Declaring it Bankrupt";
- the Civil Code of Ukraine;
- the Commercial Code of Ukraine.

In addition, certain issues of bankruptcy proceedings are governed by other laws and regulations. Court practice and explanatory statements of the higher courts are also important to be considered.

An important law, aimed at restoring the solvency of the debtor through the negotiation process is the Law of Ukraine "On Financial Restructuring".

5.2. Parties to the bankruptcy

None but legal entity or private entrepreneur may be a bankrupt. Bankruptcy is classified as an economic case subject to proceedings in commercial courts. Courts are governed by the provisions of the Commercial Procedure Code of Ukraine in the proceedings.

The parties to the proceedings in bankruptcy cases are the following: parties, secured creditors, an insolvency officer, the owner of the debtor's property, the state body for bankruptcy (the Ministry of Justice of Ukraine), the State Property Fund of Ukraine, representatives of local authorities, representatives of debtor's employees, an authorized person of debtor's founders and, in some cases, other persons.

The parties to the bankruptcy are the unsecured creditors (or a representative of the creditors' committee) and the debtor (a bankrupt).

5.2.1. Insolvency officer

An insolvency officer is a special figure in bankruptcy proceedings. An insolvency officer is a subject of an independent professional activity. He is equated to the debtor's official. It should be noted that an insolvency officer shall be selected before the initiation of the proceedings by an automated system, in order to ensure his/her independence.

An insolvency officer shall be appointed by the commercial court in order to protect the interests of the parties to the proceedings and supervise law observance. An insolvency officer has a number of rights and duties, which empower him/her to take all possible steps to restore the debtor's solvency and repay its debts.

5.2.2. Debtor

A debtor is a business entity or an individual failing to perform its overdue liabilities within three months confirmed by a court decision.

Pursuant to the Ukrainian law, the bankrupts are only those individuals who have monetary liability. The debtor in respect of which judicial bankruptcy procedures have been applied is considered to be a person who has no outstanding liabilities.

If appealing to the court for bankruptcy is the creditor's right, this is a duty for a debtor. Thus, the debtor is obliged to appeal to court subject to the following circumstances:

- satisfying claims of one or more creditors will result in the debtor's inability to perform monetary obligations to other creditors in full;
- during the debtor's liquidation on the grounds other than insolvency proceedings, the debtor's inability to satisfy the creditors' claims in full has been established.

The law provides the debtor's liability in case of violation of this duty. In particular, the owner of the debtor's property (the person authorized thereby), the head of the debtor, the chairman of the liquidation commission (the commission on termination) who violated the requirements of the law, are jointly liable for the dissatisfaction of creditors.

Upon introducing the procedure of disposition of property and appointment of an insolvency officer – a property administrator of the debtor shall be subject to a number of restrictions on operations. In particular, only subject to the consent of the property administrator shall be taken the decisions on actions, reorganization, establishment of legal entities, establishment of subsidiaries, payment of dividends, issue of securities, alienation of real estate by all means, receiving and issuing any loans or guarantees, as well as administering the debtor's property the balance cost of which exceeds 1% of assets.

In such a case, the property administrator is not entitled to interfere in the debtor's economic activity.

5.2.3. Creditors

Creditor is a legal person or an individual, as well as tax or other state authorities who have documented claims for monetary obligations to the debtor according to the procedures.

The law specifies that a debtor or a creditor is entitled to apply to the court for bankruptcy.

A creditor is entitled to apply to the court if the debtor fails to perform its due liabilities within three months upon the obligation maturity. Such circumstances shall be confirmed by the court decision and decision on initiating enforcement proceedings. The amount of outstanding obligations shall be not less than 300 minimum salaries on the date of application (equal to approximately USD 35,500). It should be noted that this amount shall not include penalties.

Secured creditors are creditors whose claims are secured by pledge of the debtor's (the property guarantor's) property. A peculiar feature of secured creditors is that they have an advisory vote only, i.e. they do not directly affect the decision of the unsecured creditors.

Unsecured creditors are creditors by claims against the debtor that arose before the initiation of proceedings in bankruptcy and execution of which is not secured by pledge of the debtor's property.

Post-bankruptcy creditors are creditors by claims against the debtor that arose after the initiation of proceedings in bankruptcy.

5.2.4. State

In bankruptcy, the State performs three functions: of a creditor, the property owner and the controlling authority.

As a creditor, the State acts in case of some of creditor claims against the debtor, such as those of fiscal agencies, pension and other social funds, local executive bodies and others. As a creditor, the State enjoys the same rights as other creditors.

As a property owner, the State acts in case of bankruptcy of enterprises the state share in which exceeds 50%. As for the bankruptcy of such enterprises, the increased state control is established. In particular, if such an enterprise is a debtor, the commercial court shall involve members of the body authorized to manage the state property to a bankruptcy case with the notification on initiating proceedings in a bankruptcy case of such a company.

Government representatives are entitled to participate (with a deliberative vote) in the creditors' meeting and creditors' committee. An insolvency officer shall be appointed upon the consent of the state body. Plans of reorganization, settlement agreements and lists of liquidation estate and amendments thereto in bankruptcy cases of such enterprises shall be subject to approval by the body authorized to manage the state property. In the absence of such an approval, the plan of reorganization and settlement agreement shall not be approved by the commercial court, and the property included in the list of liquidation estate cannot be sold. Thus, the State protects its interests and prevents the state enterprises bankruptcy.

As the controlling authority, the State acts through the Ministry of Justice of Ukraine, which is the controlling body of insolvency officers, and in the face of law enforcement.

5.2.5. Other parties to the proceedings

Other parties to the proceedings are the following: the owner of the debtor's property, local public authorities, a representative of debtor's employees, an authorized person of the debtor's founders and, in some cases, other persons.

They take part in judicial proceedings and have an advisory capacity at creditors' meetings and creditors' committee.

Other members have no influence on the decisions of judgment creditors of the debtor but are entitled to judicial protection of their interests, including the appeal of judgments in bankruptcy proceedings.

In addition, since filing an application for acknowledging creditors and by the time of the judicial acknowledgment, the creditors are also considered as parties to the proceedings and enjoy the parties' procedural rights.

5.3. Types of bankruptcy

Pre-trial and court proceedings shall be applied to the debtor. The court proceedings are: disposition of the debtor's property, bailout, liquidation and settlement agreement.

It should be noted that changes to the status of bankruptcy procedure shall be published on the website of the Supreme Commercial Court (www.arbitr.gov.ua), so that every interested person can track the debtor's bankruptcy.

5.3.1. Pre-trial proceedings

Pre-trial and court proceedings may be applied to a debtor. Pre-trial proceedings are bailout of the debtor before initiating the proceedings in the bankruptcy and financial restructuring process, which are regulated by the Law of Ukraine "On Financial Restructuring". Bailout of the debtor prior to the initiation of proceedings makes the attempts to restore the solvency of the debtor possible without the use of bankruptcy procedures.

Introducing a pre-trial restructuring requires the consent of the owner of the debtor's property, of the creditors who collectively own more than 50% of the total debt; a plan of bailout of the debtor agreed with the secured creditors and approved by the creditors' meeting. The

term for introducing pre-trial restructuring may not exceed 12 months. The peculiarity is a moratorium on creditors' claims during the pre-trial restructuring.

5.3.2. Disposition of debtor's property

As a general rule, after the initiation of the proceedings, the procedure of disposition of the debtor's property and moratorium on creditors' claims are introduced. This procedure may be called a transition because, on the one hand, the debtor continues to perform economic activity, on the other hand, – a moratorium is valid and there are restrictions on the debtor's property operations. The main goal is to examine the debtor's property and determine the possibility of restoring the debtor's solvency. Also, the aim is to protect the interests of creditors, to which purpose this moratorium is introduced.

During the disposition of property procedure, the debtor shall be prohibited to satisfy the demands of creditors, except for post-bankruptcy creditors and salary payments. To determine the debtor's amount outstanding, the announcement of the initiation of the bankruptcy shall be published on the website of the Supreme Commercial Court. Within 30 days after the publication, creditors should contact the competent commercial court that initiated the proceedings with creditor claims against the debtor. Upon reviewing these applications a registry of creditors of the debtor shall be drawn up, which is the basic document for determining due amounts and the number of votes of each creditor.

It should be noted that creditor's claims, filed upon the expiration of the deadline set for submitting or failed to be filed at all, are not the unsecured creditor's claims, and so such creditor's claims are paid on a sixth-priority basis in the liquidation procedure.

The body that represents creditors' interests in the procedure is the committee of creditors, which is formed of up to 7 people at the general meeting of creditors.

As a result of the property disposition procedure, the decision to transfer to one of the procedures – bailout or liquidation – shall be made.

5.3.3. The procedure of bailout of the debtor

Bailout shall be introduced by the court for up to 18 months if there is a reason to believe that the debtor's solvency can be restored.

Since the introduction of the bailout procedure, the powers of the bankrupt's director shall be terminated and transferred to the bailout manager. During the bailout procedure the debtor together with an investor, involving creditors, develop a plan of bailout – the main procedural document.

The law provides for a number of procedures using which restoration of the debtor's solvency can be scheduled, i.e. increasing the authorized capital of the debtor, sale of property as an integral property complex, disposal of property by replacing assets, sale of part of the debtor's property, restructuring or conversion of production, extension or deferral or indulgence of a part of a debt (via a special settlement agreement).

Following the bailout procedure, the debtor solvency shall either be restored, or if it is impossible to be restored, the debtor passes on to the next procedure – liquidation.

An interesting measure to restore the debtor's solvency is an opportunity for the property owner to drive a debtor out of bankruptcy at any stage of the bailout or liquidation procedure through meeting the requirements of all creditors listed in the registry. It is also an instrument of protecting the owner's property interests as it allows him/her to pay off debt without wasting time and saving assets.

5.3.4. The liquidation procedure

Bankruptcy and transition to the liquidation procedure shall be performed when the debtor's inability to restore its solvency through the procedures of the bailout or settlement agreement was determined, and shall satisfy monetary claims of creditors not only through the application of the liquidation procedure.

After the resolution of the commercial court on declaring the debtor a bankrupt, the post-bankruptcy creditors are entitled to state their claims to be included in the list of creditors.

After commencement of the liquidation procedure, no additional commitments accrue and all arrests of the debtor's property are lifted.

During the liquidation procedure the debtor's assets shall be disposed of in order to satisfy creditors' claims to the full.

Disposition of assets shall be made through an auction process (a public tender). Direct sales to individuals and legal entities shall be an exception for low-value assets or assets not sold at auction. The announcement of the auction shall be published on the website of the Supreme Commercial Court and on the website of the Ministry of Justice of Ukraine (www.minjust.gov.ua/en).

In case if the founders or directors of a debtor are proved guilty in bankruptcy, they shall bear a subsidiary liability.

The law stipulates the order of creditors' claims repayment:

- 1) the first turn: salary claims (including that of an insolvency officer); court fees; procedure costs;
- 2) the second turn: claims of the Social Insurance Fund and repayment for the harm to life and health of citizens;
- 3) the third turn: tax claims and claims on state reserve;
- 4) the fourth turn: claims of bankruptcy creditors;
- 5) the fifth turn: return of the staff contributions and additional remuneration for an insolvency officer;
- 6) the sixth turn: all other claims.

5.3.5. The settlement agreement

The settlement agreement is an agreement between a debtor and creditors on deferral or instalments and debt release. Its special feature is that the settlement agreement may be executed at any stage of bankruptcy proceedings, but no sooner than the list of creditors is approved. The settlement agreement cannot be executed in respect of the first-priority claims, claims of the salaries and similar payments, as well as claims of pension and social insurance premiums. The settlement agreement shall be approved by the court and shall be a ground for termination of the bankruptcy proceeding. In case of failure to fulfil an agreement or its termination the bankruptcy proceeding shall be renewed.

5.3.6. Special procedures in bankruptcy

Individual debtors. The law provides for the peculiarities of the bankruptcy proceedings of certain categories of debtors. These categories are the following: entities with social or another value or a special status, agricultural enterprises, insurance companies, participants of the securities market and joint investment institutions, trustees in charge of real estate development, private entrepreneurs and farm enterprises.

The law also provides for simplified bankruptcy proceedings in case of bankruptcy following the liquidation procedure subject to normal procedure. In this case, insolvency officer's duties may be assigned to the debtor's head official, and the procedure shall commence immediately with the liquidation procedure.

Enterprises with social, another value or a special status. Under the law, enterprises with a special status are city-forming and extremely hazardous enterprises.

When examining a bankruptcy case of such an enterprise, the local public authorities may file to the court a request not to use bankruptcy proceedings to such a company. The request should include the resolution of the entities as well as guarantees for discharge of creditors' claims.

Agriculture enterprises. The feature of their bankruptcy is that in case of sale of real estate used for agricultural purposes and possessed by the agricultural enterprise declared bankrupt, with all other conditions being equal, preferential right to purchase specified facilities is vested in local agriculture and farming enterprises, located in the area.

It should be noted that no benefits are applicable to purchasers under the usual procedure.

Insurance companies. As for managing the bankruptcy of insurers special knowledge is required, none but insolvency officer, additionally trained and having passed the exam program upon bankruptcy of insurance organizations shall participate in the proceedings.

The features are the following: the insurer's integral property complex can be purchased by an insurer only; the integral property complex can be purchased only by the purchaser, who agrees to be bound by the debtor's insurance contracts and statutory requirements for redemption priority for insurance contracts.

Professional participants of securities market. The participant in bankruptcy is the National Commission on Securities and Stock Market. The insolvency officer (a property administrator) shall have a certificate issued by the National Commission on Securities and Stock Mar-

ket. Securities and funds belonging to members (customers) shall not be included in the debtor's liquidation estate and shall be subject to return.

The issuer or the trustee of mortgage certificates. Mortgage assets shall not be included in the liquidation estate.

Private entrepreneur. The law governs only the debts arising in relation to business activities. The application of the debtor may be supplemented with the debt repayment plan to adjourn bankruptcy for up to three months. A businessman shall bear liability to the extent of all of his/her property, except for the property, which subject to the civil procedural law of Ukraine cannot be seized.

Also, the law provides the features of priority of creditors.

Farm enterprise. In case of failure to meet creditors' claims within six months following the end of the period of agricultural works, the debtor's head may within two months bring an action plan to restore solvency to the court. The procedure for disposition of property shall be introduced at the end of the period of agricultural work, taking into account the time required to sell grown agricultural products, for 15 months at the most.

6

Ukrainian taxation system

Pursuant to the Tax Code of Ukraine, all taxes and duties in Ukraine are classified into state and local ones. The most important state taxes and duties in Ukraine are as follows: a corporate income tax, a value added tax, a personal income tax, a single social contribution, an excise tax, an ecological tax and rent payments. The local taxes and duties of particular importance include a property tax, a single tax, a vehicle parking place duty and a tourist duty.

6.1. Corporate income tax

Currently, a flat rate of 18% is established for all corporate income tax (CIT) taxpayers.

For some activities, a separate rate is applicable. These include: 3% rate for insurance activities regarding the non-life insurance, 0% rate for insurance activities regarding the long-term life insurance, voluntary medical insurance and non-state pension schemes, 0%, 4% and 12% for non-resident insurers based on an insurance agreement (depending on the insurance accident case), 6% for a freight amount paid by a resident to a non-resident under freight contracts, 15% for residents or permanent representative offices in Ukraine, making payments to non-residents from the income derived from Ukrainian sources of origin, 20% for residents, making payments to non-residents for advertising production or its distribution.

6.1.1. Taxpayers and tax base

CIT is paid by resident companies, receiving income both in Ukraine and abroad. CIT is also paid by non-resident companies, receiving income from Ukrainian sources.

The CIT base is the income derived from Ukrainian sources of origin and from abroad. The amount of tax is determined by adjustment of financial result (profit or loss) before taxation, as calculated in accordance with the Ukrainian accounting standards or IFRS.

6.1.2. Taxation of non-residents

The income of non-resident legal entities derived from Ukrainian sources of origin is taxed by CIT at the rate of 15%. The CIT tax base is the income from dividends, royalties, freight, proceeds of engineering, leasing and rent, profits from sale of real estate, securities and corporate rights, proceeds of joint activities and entertainment activities, etc.

In relation to the income from Ukrainian sources of origin, the following rates are applied: dividends – 15%, interest – 15%, royalty – 15%, freight – 6%, and other profits from Ukrainian sources of origin – 15%.

In certain cases, the lower tax rate might be applied under the double taxation agreements. Ukraine has valid double taxation agreements with approximately 75 countries. It should also be noted that double taxation agreements with specific countries may provide for more favourable taxation arrangements.

6.1.3. Transfer pricing

For the purposes of correct CIT taxation, control has been established over related-party transactions. In addition, such a control is exercised over transactions with non-residents in low-tax jurisdictions.

Low-tax jurisdictions are determined on the basis of the following criteria:

- the general CIT rate in such countries is by 5 or more percentage points lower than in Ukraine;
- Ukraine does not have any agreements on information exchange with such countries;
- states, the competent authorities of which do not provide timely and complete exchange of tax and financial information.

The transfer pricing control is exercised over transactions, where:

- the taxpayer's revenue exceeds UAH 150 million (approximately USD 5.4 million) for the tax year;
- the annual volume of the transactions with one counterparty (a related person) exceeds UAH 10 million (approximately USD 340,000).

6.1.4. Thin capitalization rules

In order to prevent tax base erosion and profit outflow from the country, there are the thin capitalization rules effective in Ukraine.

Under the thin capitalization rules, expenses of the resident in the current tax period include the amount of interest paid on loans, which does not exceed 50% of profits, expenses on repayment of interests. It should be noted that a non-resident is deemed to be a related party if the amount of taxpayer's liabilities with such a non-resident exceeds the equity ratio by more than 3.5 times.



Taxes in Ukraine 2017

This brochure deals with general information about tax rates, objects and bases of taxation in Ukraine, as well as peculiarities of taxation of certain categories of taxpayers. Taxation of non-residents is considered in detail.

View [Taxes in Ukraine 2017](#).

6.2. Value-added tax

The value-added tax (VAT) rate is 20%. For pharmaceutical products, the VAT rate is 7%. It should be noted that 0% VAT rate is applied to export of goods in the customs regime from the territory of Ukraine.

6.2.1. Taxpayers

The taxpayer is obliged to register as a VAT payer if the aggregate value of supplied goods or services exceeds UAH 1 million (approximately USD 35,700) for the last 12 months. However, if the value of taxable transactions does not exceed UAH 1 million (approximately USD 35,700), voluntary registration as a VAT payer is available.

6.2.2. Tax base

VAT is applied to transactions on supply of goods and services on the customs territory of Ukraine, as well as to transactions related to import and export of goods in Ukraine. In addition, services on international transportation of passengers and luggage by sea, river and air transport are also subject to VAT.

The following transactions are not subject to VAT:

- issue of securities by business entities;
- provision of insurance services by the licensed organizations;
- provision of services of payment systems related to transfer of funds, encashment, cash management services, attraction, placement and refund under loans, deposit and securities management agreements, management and assignment of claims to financial institutions;

- payment of salary in cash;
- provision of educational services;
- provision of administrative services;
- provision of banking services;
- import and export of goods up to the amount less than EUR 150;
- payment under lease or concession agreements;
- reorganization (merger, accession, division, separation and transformation) of legal entities.

6.3. Simplified tax system

With the aim of facilitation and easement of small and medium business accounting, Ukraine introduced special taxation terms for such businesses. Taxpayers, both private entrepreneurs and legal entities, may choose to apply for a simplified taxation system in one of the following categories:

	I group	II group	III group
Taxpayer	private entrepreneur	private entrepreneur	private entrepreneur/ legal entity
Number of employees	0	up to 10	no restrictions
Max. profit per one calendar year	UAH 300,000 (approx. USD 10,700)	UAH 1.5 million (approx. USD 53,600)	UAH 5 million (approx. USD 178,600)
Single tax rate	up to 10% of subsistence minimum	up to 20% of minimal salary	3% of income (VAT excluded) or 5% of income (VAT included)

The IV group is designed for agricultural producers. The tax rate depends on the category of land, its location and amounts. Legal persons have the right to choose the fourth group of the single tax provided that their share of agricultural commodity production in the previous year amounted to at least 75%. This is applicable to:

- all entities separately, which carry out merger or acquisition. In this case, it is possible to become a single tax payer in the year of the incorporation, if the share of agricultural commodity production for the previous tax year by all commodity producers involved in their incorporation equals to or exceeds 75%;
- each individual entity created by split-up or spin-off. In this case, it is possible to become a single tax payer from the next year, if the share of agricultural commodity

production for the previous tax year equals to or exceeds 75%;

- an entity created by transformation. In this case, it is possible to become a single tax payer in the year of transformation, if the share of agricultural commodity obtained for the previous tax year equals to or exceeds 75%.

Newly created agricultural commodity producers may become single tax payers from the next year, if the share of agricultural commodity production obtained for the previous tax year equals to or exceeds 75%.

6.4. Personal income tax

The personal income tax (PIT) is 18%, while the PIT rate for dividend payments is 5%. The personal income tax is paid by resident and non-resident individuals.

PIT is applied to the resident's:

- monthly (annual) taxable income;
- income from Ukrainian sources of origin, taxable at the time of its accrual (payments, compensation);
- income from foreign sources of origin.

PIT is applied to the non-resident's:

- monthly (annual) taxable income from Ukrainian sources of origin;
- income from Ukrainian sources of origin, taxable at the time of its accrual (payments, compensation).

The monthly (annual) taxable income of taxpayer does not include:

- the interest accrued on certain state securities issued by the National Bank of Ukraine;
- the alimony received in accordance with the court ruling or voluntary arrangement of the parties as provided by the Family Code of Ukraine;
- body of the deposit at a bank or a non-bank financial institution;
- the income of a private entrepreneur, which is subject to single tax;
- insurance payments, pension payments, etc., received under the long-term life insurance agreement;
- amounts forgiven (annulled) by the lender;
- the income from financial (including international) organizations under the framework of implementation of energy efficiency and energy saving projects;

- the amount of property and non-property contribution to the authorized capital of a legal entity;
- the charity aid amounts.

6.5. Single social contribution

The single social contribution is paid by employers, private entrepreneurs, self-employed citizens. The single social contribution rate is established at 22%. However, the maximum taxable amount of the single social contribution shall not exceed 25 minimal salaries.

6.6. Military duty

The military duty has been made effective in Ukraine for two years now and amounts to 1.5%.

The military duty is paid by residents and non-residents. The military duty is paid from salaries, other incentive and compensation payments or benefits, which are paid to the taxpayer on the basis of his/her employment relations or civil agreements. These include for residents overall monthly (annual) taxable income, income from Ukrainian sources of origin taxable at the time of its accrual (payments, compensation), income from foreign sources of origin and for non-residents overall monthly (annual) taxable income from Ukrainian sources of origin, income from Ukrainian sources of origin taxable at the time of its accrual (payments, compensation).

6.7. Property tax

The property tax is paid for real estate and movable property.

6.7.1. Buildings and land plots

The real estate tax on buildings and land plots is paid by individuals and legal entities, including non-residents.

6.7.2. Vehicles

The transport tax is paid by individuals and legal entities, including non-residents, who own vehicles that are registered in Ukraine.

6.7.3. Tax rate and tax base

The amount of real estate tax on buildings is determined by the municipal authorities. However, the tax rate shall not exceed 1.5% of the minimal salary per 1 sq. m. of residential and non-residential property.

The real estate tax is paid per each sq. m. of residential and non-residential property. Owners of apartments of less than 60 sq. m. and houses less than 120 sq. m. (or houses and

apartments with a total area of 180 sq. m.) are exempt from tax.

The additional tax rate in the amount of UAH 25,000 (approximately USD 900) is applied for apartments of more than 300 sq. m. and houses of more than 500 sq. m.

The amount of the real estate tax on land plots is determined by the municipal authorities. The rate shall not exceed 3% of the normative evaluation of a land plot and 1% for agricultural land plots of general use. For land plots, which are under permanent use by business entities, the rate shall not exceed 12% of the normative evaluation.

The tax base is land plots in ownership or use.

The rate of transport tax is established in the amount of UAH 25,000 (approximately USD 900) per year per each vehicle. The transport tax is paid per each vehicle, which has been used for up to five years from the date of its manufacture with the average market price of more than 375 minimal salaries (approximately USD 43,000).

6.8. Duties

In addition to the abovementioned taxes, the Tax Code of Ukraine provides for the following duties to be applied in Ukraine:

- a customs duty, which includes:
 - an import duty;
 - an export duty;
 - a seasonal duty;
 - specific kinds of a duty: special, anti-dumping, countervailing.
- a tourist duty;
- a vehicle parking place duty.

We also note that further to duties provided in the Tax Code of Ukraine, the state duty is charged in case of certain actions to be performed by the state authorities and their officials, such as for acts of public notary offices, public registration of civil acts, submission of legal claims, etc.



Labour relations

7.1. Labour agreement

The main agreement that regulates relations between the employee and the owner of an enterprise is a labour agreement. Under the terms of such an agreement, the employee shall undertake to perform work determined in the agreement, and the owner of an enterprise shall pay salary to the employee and provide working conditions required for performance of work.

The labour agreement may be entered into in the verbal or written form. However, Article 24 of the Labour Code of Ukraine stipulates cases where the written form of a labour agreement is mandatory. This applies in particular to the following cases:

- entering into a labour agreement in the regions with specific natural geographical and geological conditions and conditions of an increased risk for health;
- entering into a labour contract;
- if an employee insists on entering into a labour agreement in writing;
- entering into a labour agreement with a minor;
- organized recruitment of employees.

Pursuant to Article 24 of the Labour Code of Ukraine, the labour agreement may be:

- termless, that is entered into for an indefinite period of time;
- entered into for the definite period of time when labour relations may not be established for an indefinite period of time due to the nature of subsequent work or conditions of its performance;

- entered into for the period of performance of certain work.

However, it should be noted that the fixed-term labour agreement may be entered into only in certain cases prescribed by law, such as when the labour relations may not be established for an indefinite period of time, given the nature of the work or the conditions of its performance, or the interests of the employee.

7.2. Labour contract

A special form of the labour agreement is the labour contract. The labour contract provisions may envisage its validity, rights, duties and responsibilities of the parties (including financial ones), benefits and conditions of employees, termination of the contract. Cancellation terms may also be set by contract of the parties thereto.

The scope of the labour contract is determined by law. Thus, paragraph 4 of Article 65 of the Commercial Code of Ukraine stipulates that the labour contract shall be concluded with the head of an enterprise.

The labour contract may not be entered into with the head of a representative office of a foreign company in Ukraine. Paragraph 4 of Article 65 of the Commercial Code of Ukraine envisages the option of conclusion of the labour contract between the head and an enterprise, i.e. a legal entity. Since a representative office of a foreign company in Ukraine is not a legal entity, the head of the representative office is entitled only to conclude a written labour agreement.

The labour contract is essentially an agreement between a highly qualified employee and an organization for which he/she shall perform important work at a high level, achieve certain specific results crucial for the organization, while the organization shall undertake to agree to certain conditions for remuneration, powers, labour conditions, etc.

7.3. Collective contract

Collective contracts shall be mandatory entered into at any enterprise irrespective of the ownership form, which employs hired labour and has the status of a legal entity. Such a collective contract shall be subject to registration with the state authorities. A collective contract shall be entered into between the employer and one or several trade union organizations (or other organizations authorized by the labour collective), or, in case they are unavailable, by the representatives elected and authorized by the labour collective.

A collective contract shall come into force from the date of signing by the parties, or from the date set forth therein. Parties shall independently determine the term of the contract, taking into account peculiarities of a particular enterprise. It is worth mentioning that upon its termination a collective contract shall continue to be valid until the parties enter into a new collective contract or revise the previous one.

A collective contract shall specify mutual liabilities of the parties, in particular changes in production and labour organization, work measurement and remuneration of labour, establishment of forms, system and amounts of salary and other kinds of labour payments, participation of a labour collective in formation, allocation and use of profits gained by the

enterprise, work schedule, working and rest hours, conditions and protection of labour, ensuring housing, cultural, medical services, organization of employees' health improvement and rest, etc.

A collective contract may provide for other provisions as well, however, one should keep in mind that provisions of a collective contract that deteriorate the position of employees as compared to the labour legislation in force are null and void.

7.4. Probation period

When entering into a labour agreement the parties may agree on establishment of a probation period for the purposes of verification of the employee's relevance to the job entrusted thereto. That said, a provision of probation shall be specified in the order (an instruction) on employment. If the employee refuses to undergo the probation, the labour agreement shall not be deemed as concluded.

Within the probation period, employees shall be governed by the labour legislation. This means that on the one hand, the employee is required to perform all work duties assigned to him/her by law and a labour agreement, and on the other hand, the probation does not entail any restrictions of labour rights, including in salaries as well.

The probation period at employment may not exceed three months, and in certain cases, as agreed upon with the respective body of a trade union organization, six months. If the employee was absent from work within the probation period due to a temporary disablement or for other good reasons, the probation period may be extended for the respective number of days, within which the employee was absent.

If the probation period is over, and the employee continues to work, he/she is considered to have passed probation successfully, and subsequent termination of a labour agreement shall be allowed only on common basis. If within the probation period the employee's inconsistency with the job, for which he/she was employed, was established, the employer shall be entitled to terminate a labour agreement.

7.5. Working hours

Normal working hours of employees may not exceed 40 hours per week. This being the case, working hours may not exceed the established periods for certain categories of employees. Thus, for workers aged 16 to 18, as well as workers employed in jobs with hazardous working conditions, working hours may not exceed 36 hours per week.

A five-day working week with two days-off shall be established for employees as a rule. In exceptional cases where the introduction of a five-day working week is impractical, a six-day working week with one day-off may be established. Duration of a working week shall be determined by the employer or the body authorized by the employer as agreed upon with the elective body of a primary trade union organization.

As a rule, overtime work shall not be allowed. The owner or the body authorized by the owner may use overtime work only in exceptional cases such as in case of necessity to complete the work started due to the result of unforeseen circumstances or accidental delay due to production conditions, which cannot be completed within normal working hours.

7.6. Remuneration of labour

The remuneration that the employer shall pay the employee for the performed work is determined by the parties to the labour agreement. This remuneration may not be lower than the minimum salary. It is worth noting that the minimum salary is a legally set amount of salary for simple, unqualified labour.

Salaries in Ukraine are paid in the Ukrainian currency. As for payment of salaries or bonuses to foreign workers, who entered into a labour agreement, such payment may also be in a foreign currency.

Salaries shall be paid to the employee regularly on working days in the period established by the collective contract or a normative act of the employer, at least twice a month, not more than after 16 calendar days. If the pay day coincides with a day-off, holiday or non-working day, salaries shall be paid in advance.

7.7. Leave

Employees are entitled to a leave. In this case, employees shall be given both annual and additional leaves. The annual basic leave shall be given to employees for the period of at least 24 calendar days per working year worked. The annual additional leave shall be given to employees for work in harmful and severe working conditions, for specific character of work and in certain other cases. The legislation of Ukraine also stipulates a compensation for all unused days of the annual leave.

7.8. Termination of labour relations

The important issue in labour relations is the procedure of dismissal, which involves several grounds, such as expiration of the labour agreement or work permit or early termination of the labour agreement on the grounds provided by law at the initiative of the employee or the employer.

The procedure of termination of a labour agreement on the employee's initiative depends on whether such an agreement is entered into for an indefinite or the definite (termed) period of time. The employee shall be entitled to terminate a labour agreement entered into for an indefinite period of time by way of sending a two-week notice to the employer in writing.

In case the employee's letter of resignation was caused by impossibility to continue working (movement to a new place of residence; transfer of a spouse to a job in another locality; entry to an educational institution; impossibility to live in this locality proven by the medical opinion; pregnancy; care of a child until it reaches the age of fourteen years old, or of a disabled child; care of an ill family member according to the medical opinion, or of a person of the first disability group; retirement; competitive employment, as well as for other good reasons), the employer shall terminate the labour agreement within the period requested by the employee.

The termed labour agreement shall be subject to early termination at the employee's request in case of his/her disease or disablement, which prevents performance of work, violation of the labour legislation, a collective or a labour agreement (a contract) by the employer,

and in cases, provided for termination of a labour agreement entered into for an indefinite period of time on the employee's initiative.

As for the dismissal on the initiative of the employer, the labour legislation of Ukraine defines a number of reasons for this, in particular:

- changes in production and labour organization, including liquidation, reorganization, bankruptcy or conversion of an enterprise, reduction of the number or staff of employees;
- revealed inconsistency of the employee with the job or with the work performed (an insufficient qualification or state of health, which prevents the employee from continuing this work);
- absence from work (including absence from work for over three hours during a working day) without good reasons;
- showing up for work intoxicated with alcohol, narcotics or other toxic substances;
- on-the-job embezzlement (including a petty one) of the employer's property;
- guilty actions of the director of an enterprise (which resulted in untimely salary payment or in the amounts lower than the minimum salary amount established by the legislation);
- reinstatement in the job of the employee who has been previously performing this work.

The employee dismissal on the employer's initiative shall not be allowed within the period of the employee's temporary disablement (except for dismissal in case of absence from work within more than four successive months as a result of temporary disablement), as well as within the period of his/her staying on leave. This rule, however, shall not apply to cases of full liquidation of an enterprise.

7.9. Employment of foreign employees

To start working in Ukraine a foreign employee shall obtain a work permit in Ukraine. Getting a work permit is required also for employees of foreign companies sent to Ukraine to perform certain work or provide services under contracts with Ukrainian companies.

A company (an employer) shall apply for a work permit on behalf of a foreign employee. Thus, upon registration of a company in Ukraine, a citizen of Ukraine may be appointed as its director, and only following the obtaining a work permit, a labour relationship between such a company and a foreigner may take place.

A work permit is valid for the period specified in the labour agreement (the contract), but not more than for one year. A work permit may be extended on the employer's initiative, who applies to the relevant employment centre with an application statement, two photographs and a certificate of no criminal record within at least 20 days before the expiration of the permit.

A work permit fee amounts to UAH 6,400 (approximately USD 250). Having obtained a work permit, a foreign citizen and an employer (a company) shall enter into a labour agreement (a contract) and submit a certified copy of such an agreement to the employment centre within 7 working days from the date of the agreement (the contract).

Foreigners shall have an advantage in obtaining work permits if:

- they apply for a job involving creation of copyright and related rights items as the primary duty of labour; notarized copies of documents that identify the copyright object and (or) the author's related rights and certify the copyright shall be further submitted;
- they are seconded by a foreign employer to Ukraine to carry out certain work on the basis of agreements (contracts) concluded between Ukrainian and foreign enterprises, provided that the number of foreign employees engaged under such agreements (contracts) will not exceed half the total number of employees; a copy of the agreement (the contract) concluded between domestic and foreign enterprises shall be submitted, which provide employment of foreigners sent by a foreign enterprise to Ukraine for performing certain work;
- they belong to the category of "intra-company assignees" (individuals who work at an enterprise in a foreign country and are temporarily assigned for economic activity to the territory of Ukraine); a decision of a foreign enterprise on transfer of a foreigner to work in Ukraine and a copy of the contract concluded between the foreigner and an enterprise on transfer to work in Ukraine with the definition of the term for working in Ukraine shall be submitted as well.



Immigration issues

Fundamental regulatory acts governing immigration to Ukraine is the Constitution of Ukraine and the Law of Ukraine "On Immigration".

8.1. Immigration to Ukraine

Pursuant to the legal definition, immigration is entry of foreign nationals and stateless persons to Ukraine for permanent residence.

To immigrate to Ukraine, foreign nationals shall obtain permission for immigration provided for certain categories of immigrants. Immigrants in Ukraine are divided into two groups. The first group includes individuals within immigration quotas established by the Cabinet of Ministers of Ukraine. These include:

- scientists and artists, whose immigration corresponds to the interests of Ukraine;
- highly skilled specialists and workers, who are in high demand by the Ukrainian economy;
- foreign nationals, having made foreign investments into the economy of Ukraine amounting to not less than USD 100,000 in hard currency;
- individuals, who are full sisters, brothers, grandparents or grandchildren of citizens of Ukraine;
- foreign nationals, who used to be citizens of Ukraine;
- parents, spouses of immigrants and their children under legal age;
- foreign nationals, having permanently stayed on the territory of Ukraine for five

- years from the dates of granting them a refugee status or an asylum in Ukraine, and their parents, spouses and children under legal age, staying with them;
- foreign nationals, having permanently stayed on the territory of Ukraine for three years from the dates of granting them a status of a person, who has suffered from trafficking in human beings.

The second group includes individuals who may get an immigration permit out of the immigration quota:

- one of the spouses, if the other spouse, whom the first one is married to for more than two years, is a citizen of Ukraine; children and parents of citizens of Ukraine;
- foreign nationals, who are guardians or wards of citizens of Ukraine or are under guardianship/wardship of citizens of Ukraine;
- individuals, having the right to be admitted to citizenship of Ukraine by the territorial origin;
- foreign nationals, whose immigration corresponds to the national interests of Ukraine.

This list of grounds for permit for immigration to Ukraine is exhaustive.

8.2. Obtaining immigration permit

If there are grounds for immigration to Ukraine, a foreign national shall submit an exhaustive list of the following documents:

- an application for the immigration permit. The application shall be addressed to embassies and consular services of Ukraine (if a person resides permanently outside Ukraine) or to the local office of the State Migration Service (at the place of the person's residence). The best option shall be applying for the immigration permit in the country, because it takes much less time. The application shall be submitted in person by migrants, although in some cases it may be filed by a third party on the basis of a power of attorney;
- three photos (3.5 x 4.5 cm);
- a copy of an ID document with a stamp on crossing the Ukrainian border;
- a document on a place of residence of the applicant;
- information on the applicant's family composition;
- data on the applicant's chronic diseases;
- a receipt of payment of state duties or consular fees.

All documents issued by foreign state authorities shall be translated into Ukrainian. More-

over, these documents shall be either legalized or apostilled.

The term of consideration of an application on issuance of the immigration permit shall not exceed one year following the date of its submission. In effect, the State Migration Service of Ukraine usually considers the application within 3-6 months.

8.3. Visas for entering Ukraine

Visas for foreign nationals depend on the planned duration of their stay in Ukraine and on availability of relevant documents.

Visas for entering Ukraine are divided into:

- a transit visa (type B, for the stay duration less than five days);
- a short-term visa (type C, if the duration of a foreign national's stay in Ukraine does not exceed 90 days in a given 180-day period from the date of first entry);
- a long-term visa (type D, issued for entering Ukraine with a view to process documents that give the right to stay or reside in Ukraine for a period exceeding 90 days).

A visa shall be issued within 15 calendar days from the date of receipt of the visa application and documents required for a visa. This period may be extended to 30 calendar days if there is a need for further verification of the documents submitted.

8.4. Permanent residence permit

Permanent residence permit is a document confirming the right of a foreign national or a stateless person for permanent residence in Ukraine.

Getting a permit for permanent residence in Ukraine provides significant benefits to foreigners. One advantage is that a foreign national may freely enter Ukraine at any time without a visa, and there is no need to obtain a work permit for foreign nationals provided they are formally employed in Ukraine. The validity of the permanent residence permit in Ukraine is not limited.

To obtain a permanent residence permit a foreign national shall apply to the territorial authority of the State Migration Service of Ukraine at the place of the person's residence with an application on granting a permanent residence permit. The application shall be accompanied by:

- the original passport of a foreign national and a copy of pages with personal data, a visa and a stamp on crossing the Ukrainian border;
- a notarized Ukrainian translation of the passport page with personal data;
- a notarized copy of the decision on issuing the immigration permit;

- documents on availability of housing in Ukraine, where the person is entitled to registration. It should be noted that provided there are no such documents, the registration shall be carried out with the consent of the owner/co-owners of housing, a tenant and his family members for the registration of residence;
- a receipt of state duties payment;
- a receipt of payment for services rendered by the State Migration Service of Ukraine;
- four photos 3.5 x 4.5 cm (matte paper) and a copy of the identification number certificate issued by the tax authority (if any).

Thus, after a successful submission of the aforementioned documents the territorial body of the State Migration Service shall issue the original certificate of permanent residence to the applicant (a foreign national) within one week following receipt of the application. A relevant mark shall be also stamped onto the last free page of the immigrant's passport, which certifies availability of a permanent residence permit in Ukraine.

8.5. Temporary residence permit

A temporary residence permit in Ukraine confirms the legal right of a foreigner for temporary residence in Ukraine provided certain terms and conditions are met.

Pursuant to the Ukrainian law, a person, having arrived to the country with one of the purposes listed below, shall be entitled to apply for registration for temporary residence permit in Ukraine:

- employment in Ukraine;
- family reunion with persons who are citizens of Ukraine;
- family reunion with persons who have a temporary residence permit in Ukraine;
- implementation of an international technical assistance project;
- employment with a religious organization (preaching of religious beliefs, performance of religious rites or other canonical activities);
- work in offices and representative offices of foreign organizations, companies or banks;
- cultural, educational, scientific work and volunteering;
- work as a correspondent or a representative of foreign mass media;
- education and training.

Therefore, a foreign national shall submit to the State Migration Service of Ukraine the following documents:

- an application form for registration of a temporary residence permit in Ukraine;
- a passport or an ID document including a visa type D, copies of passport pages with the personal data and a visa, a notarized translation into Ukrainian of the passport page with personal data;
- a petition of the receiving party;
- a valid medical insurance policy;
- certificate of no criminal record;
- four photos 3.5 x 4.5 cm;
- a copy of the identification number (if any) certified by the holder's signature;
- a receipt of payment of state duty for temporary residence permit form and services rendered by the State Migration Service of Ukraine;
- any additional documents, relating to the objectives (the purpose) of coming to Ukraine such as in case of:
 - a) employment – a work permit for foreigners and its copy;
 - b) participation in the implementation of international technical assistance projects – a copy of the registration card of an international technical assistance project issued by the Ministry of Economic Development and Trade of Ukraine;
 - c) preaching of religious beliefs, performance of religious rites or other canonical activities – an invitation of a religious organization and approval of the governmental body, having registered the respective religious organization for issuing a temporary residence permit for a foreign national;
 - d) participation in the activities of branches, representative offices and other structural units of public (governmental) organizations of foreign countries registered in Ukraine – an original copy and a copy of the certificate on registration of the structural unit of public (governmental) organizations of foreign countries in Ukraine;
 - e) work in offices and representative offices of foreign organizations, companies or banks registered in Ukraine – an original copy and a copy of a branch or representative office accreditation;
 - f) work as a correspondent or a representative of foreign mass media – a submission from the State Committee for Television and Radio Broadcasting of Ukraine regarding the registration of a temporary residence permit for foreigners or stateless persons in Ukraine;
 - g) education – a document confirming actual studies in Ukraine and commitment of the institution to report on expulsion from this institution;

- h) family reunion with persons who are citizens of Ukraine or who married citizens of Ukraine while legally staying within the territory of Ukraine – an original copy and a copy of the document confirming the fact of being married to a citizen of Ukraine.

Thus, following the receipt of the documents by the State Migration Service of Ukraine, a residence permit shall be issued within 15 calendar days.

Having obtained a residence permit, a foreign national must register at the address provided in the documents submitted to the migration authorities. The term within which a foreign national must register shall be 10 days from the date of actual receipt of a temporary residence permit. A penalty shall be paid if this term is not observed.

9

Real estate

Fundamental principles of titles to real estate property, such as guaranteeing private property rights to immovable property and inviolability of private property rights, are defined in the Constitution of Ukraine. Transactions with real estate and other property related aspects are regulated, inter alia, by the Civil Code of Ukraine, the Land Code of Ukraine, the Law of Ukraine “On State Registration of Titles to Real Estate and Their Encumbrances”, the Law of Ukraine “On Mortgage” and the Law of Ukraine “On Land Lease”.

9.1. Real estate concept

The Civil Code of Ukraine defines real estate as land plots and facilities located on them, which may not be moved without their devaluation and change of their target use.

In practice, buildings are divided into residential and commercial real estate. The commercial real estate includes commercial, retail, warehouse and office premises. Residential buildings and premises are considered as the residential real estate.

The enterprise as an integral property complex is also considered as real estate in legal terms. The enterprise as an integral property complex includes all types of property intended for its activities, including land, buildings, equipment, inventory, raw materials, products, claims, debts and rights to trademarks or other marks and other rights.

In terms of legal regulation, land plots and buildings shall be paid a special attention, and they are subject to a special registration procedure.

9.2. Real estate acquisition

Real estate in Ukraine, as a rule, may easily be purchased and sold. Certain restrictions are applied to foreign individuals and legal entities, such as purchase of agricultural land plots. In

addition, there are certain features when buying land of state and municipal property.

The peculiarity of the Ukrainian law on real estate is that a building as property in relation to land is of paramount importance. In this manner, the Civil Code of Ukraine and the Land Code of Ukraine stipulate that the buyer acquires the title to the land where the building is located.

9.2.1. Acquisition of buildings

Pursuant to the Ukrainian legislation, a building is a construction system that consists of bearing and enclosing structures or interconnects that form the ground or underground facilities intended for residence or stay of people, placement of equipment, management of animals, plants and labour objects.

In practice, a title to a building is obtained on the basis of a civil agreement or by law under the state act. The most common form of acquisition of ownership of a building is a purchase and sale agreement.

The purchase and sale agreement of the building shall be in written form and is subject to notarization. Before signing the purchase and sale agreement one shall verify encumbrances and restrictions on alienation on the real estate item. To this end, before notarizing a purchase and sale agreement of the building a notary shall verify the information in the public registers. First of all, these are the State Register of Mortgages, the Unified Register of Prohibitions of Alienation of Real Estate and the State Register of Titles to Real Estate.

The title to the real estate item shall be transferred to the buyer from the date of the purchase and sale agreement registration. A notary with the buyer's ID document shall perform registration of the real estate purchase and sale agreement. On the basis of the purchase and sale agreement, a notary or a state registrar shall enter information about the real estate item into the electronic State Register of Titles to Real Estate. The title to real estate shall be deemed as registered when the relevant decision is published in the register.

As noted, pursuant to the Ukrainian legislation, a building is considered to be prevalent to a land plot. According to the Land Code of Ukraine, the title to a land plot shall be transferred to the buyer along with transfer of ownership of the building located on that plot.

The size of a land plot transferred to the buyer shall be stipulated by the purchase and sale agreement of the building. If the purchase and sale agreement of the building does not provide for the size of a land plot transferred to the buyer, then the title shall be transferred to the land plot where the building is situated and to the part of the land plot required for servicing the building. In the event that the building is in an alien land plot, the buyer acquires the right to use the land plot where the building is located and the part of the land plot required for servicing the building.

9.2.2. Acquisition of land plots

Under the Ukrainian law, a land plot is a portion of the earth's surface with established boundaries and particular location, to which rights are assigned.

Pursuant to their intended purposes, all land plots are classified into nine categories:

- 1) agricultural lands;
- 2) residential and public building lands;
- 3) lands of a nature reserve and another environmental protection purpose;
- 4) lands of health purpose;
- 5) recreational lands;
- 6) lands of historical and cultural purpose;
- 7) forest fund lands;
- 8) water fund lands;
- 9) lands of industrial, transportation, communications, energy, defence and other purposes.

Land plots shall be used only for their intended purpose. However, the Land Code of Ukraine allows changing the intended purpose of a land plot. Such being the case, the land plot owner shall explain the reasons for changing the intended purpose. Duration of the procedure for changing the intended purpose of a land plot is not defined in the legislation, but in practice, this takes quite long.

Both Ukrainian and foreign individuals and legal entities are entitled to acquire land plots. However, there are certain limitations for foreign nationals. The Land Code of Ukraine prohibits the sale of agricultural land to foreign nationals.

Foreign nationals may acquire the ownership right to non-agricultural land plots within the boundaries of settled areas, as well as non-agricultural land plots outside settled areas, on which the buildings, acquired by them, are located.

Foreign legal entities may acquire the ownership right to non-agricultural land plots:

- within the boundaries of settled areas either if they acquire real estate items or items for construction of facilities related to the business activity in Ukraine;
- outside settled areas if they acquire real estate items.

State-owned land plots may be sold to foreign nationals by the Cabinet of Ministers of Ukraine in coordination with the Parliament of Ukraine. The sale of land plots owned by the State and territorial communities to foreign legal entities shall be allowed on condition that the foreign legal entity has registered its permanent representative office and is entitled to conduct the business activity on the territory of Ukraine.

As in case of sale of buildings, the most common type of land acquisition is a purchase and sale agreement. The purchase and sale agreement of a land plot shall be in writing and is subject to notarization. Prior to purchasing a land plot one shall verify encumbrances and restrictions on its alienation. The title to the land plot shall arise from its state registration.



DLF Newsletter Ukraine

Monthly legal alert covering the most recent changes in the Ukrainian legislation, including latest developments in doing business in Ukraine, taxes, corporate law, M&A, antitrust aspects, real estate, labour law, renewable energy law, intellectual property rights, dispute resolution, etc.

View [DLF Newsletter Ukraine](#).

9.3. Real estate use

The right to use real estate depending on the item (building or land plot) is divided into two groups:

- the right to use a building: lease, leasing and mortgage;
- the right to use a land plot: lease, easement, emphyteusis, superficies and mortgage.

9.4. Lease of buildings

Lease of buildings and parts thereof is governed by the Civil Code of Ukraine. Privately owned buildings and parts thereof are free to be leased to individuals and legal entities.

The right to lease shall arise from a written lease agreement. The lease agreement shall be subject to notarization and state registration, having been entered into for more than three years. A notary shall carry out the state registration of a lease agreement following its notarization. Upon the transfer of the leased item, the parties shall sign the acceptance act certifying the transfer. The same act shall be signed when returning the leased item after the termination of the lease.

In case of sale of the subject of the lease agreement, the buyer shall acquire all rights and obligations under the lease. The parties may also agree that the lease agreement shall be terminated upon the sale of the leased item.

Sublease shall be allowed only with the consent of the lessor. Such a consent may be envisaged in the lease agreement or in the form attached thereto after the conclusion of the lease agreement.

The lessor shall be entitled to request termination of the lease agreement if:

- the lessee uses the leased item contrary to the agreement's scope or item's intended purpose;
- the lessee without the lessor's consent has given the subject of the lease to another person;
- negligent behaviour of the lessee threatens damage to the subject of the lease;
- the lessee has not started structural repairs of the subject of the lease unless the lessee bears no responsibility ensuring such structural repairs.

At the same time, the lessor may terminate the lease agreement if the lessee has delayed lease payments for more than three months.

The lessee shall be entitled to request termination of the lease if:

- the lessor has provided for use the subject of lease that does not comply with the scope of the agreement and its intended purpose;
- the lessor does not comply with its responsibility of carrying out structural repairs of the subject of the lease agreement.

The special regulation of the state-owned and municipal property lease is set out in the Law of Ukraine "On Lease of State-owned and Municipal Property". The law, inter alia, stipulates conditions of lease of state-owned and municipal communal property complexes and their structural units, specific facilities of state-owned and municipal property.

Communal property complexes and individual buildings, which are state-owned, shall be leased by the State Property Fund of Ukraine and its local bodies.

9.5. Land plot lease

The issue of land lease in Ukraine is governed by the Law of Ukraine "On Land Lease". Land plot lease shall mean a contractually based fixed-term paid ownership and use of the land plot required by the lessee for business and other activities.

Lessors of land plots are individuals and legal entities, owning land plots, or persons authorized by them. Lessors of the municipal land plots are rural, village and city councils within their powers. Lessors of the state-owned land plots are the executive authorities that transfer land plots for ownership or use pursuant to the law.

The term of land lease shall be determined by an agreement, but it may not exceed 50 years. This provision shall be applied to all land plots regardless of their ownership.

A land lease agreement shall be concluded in writing and, at the request of one party, may be certified by a notary.

The substantive provisions of the land lease agreement are:

- subject of the lease (the cadastral number, land plot location and size);
- a lease agreement term;
- lease payments with indication of their size, indexing method and terms of payment, terms, procedure for their introduction and revision and liability for default in payments.

The parties to the lease of the land plot may indicate other conditions in the agreement.

Land plots that are state-owned or municipal property shall be leased on the basis of decisions of state authorities.

10

Privatization in Ukraine

Realizing the importance of privatization process impact on the companies' performance efficiency, as well as the effect of the positive-going signal being sent through successful privatization of state and municipal facilities to foreign investors, Ukraine improves its legal and administrative framework for privatization. Privatization of about 450 facilities of state and municipal property will run for the next few years, 70 of them are large and medium-sized companies.

10.1. Objects of privatization

The objects of state property subject to privatization include companies as integral property complexes, construction in progress, individual objects, shares, and objects of social and cultural purpose.

In order to employ privatization methods rationally and efficiently, privatization objects are classified into the following groups:

- A – single asset complexes of state companies, their structural units that can be separated into independent companies, including during the restructuring of public companies. The average number of employees at such facilities shall not exceed 100 people, and gross income from sales shall not exceed UAH 70 million (approximately USD 2.5 million);
- B – single asset complexes of state companies, their structural units, with average number of employees exceeding 100 people, and gross income from sales exceeding UAH 70 million (approximately USD 2.5 million). The property value of such facilities is sufficient for the formation of the company share capital;
- C – single asset complexes of state companies and shares of joint stock companies, which at the moment of privatization are of strategic importance for the state economy and security or the national product market. This group also includes the

companies of military-industrial complex, as well as facilities, requiring the special privatization procedure.

Privatization of the facilities of this group is carried out on the basis of the special privatization procedure. The special privatization procedure includes examination of the demand for a particular privatization facility taking into account the current market situation.

An important factor is determining the method of sale, taking into account all the peculiarities of production and technical, financial and property condition of each company subject to privatization, the sale of an integral property complex or stocks of shares in public companies. This approach shall ensure the capital concentration and effective company performance in the post-privatization period;

- D – construction in progress, inactive facilities. These include buildings, constructions, transmission devices not in operation, including together with the land in the state property, they are located on;
- E – shares owned by the State in the companies' share capital (including foreign-owned companies) located on the territory of Ukraine or abroad;
- F – objects of social and cultural designation. This group includes primarily objects of press, television, radio broadcasting, sanatorium-resort facilities, etc.

10.2. Purchasers

Purchasers of privatization facilities may be citizens of Ukraine, foreigners and stateless persons, legal entities registered in Ukraine, as well as foreign legal entities.

However, it should be noted that the privatization legislation identifies the list of persons, not able to be purchasers of state and municipal property facilities. These include:

- legal entities with the share of state ownership exceeding 25%;
- legal entities with a shareholder or the final beneficiary owner (or any related persons) from the country, which is recognized by the Parliament of Ukraine as the aggressor country or in respect of which the sanctions are imposed in accordance with the law;
- public authorities;
- employees of privatization state agencies;
- persons registered in an offshore zone or countries included by the FATF into the list of countries, failing to cooperate in the field of counteracting money laundering;
- persons being directly or indirectly under control of the ultimate beneficiary owners or their related persons.

Thus, important requirements, applied to purchasers in the privatization process are the disclosure of final beneficiaries-investors, purchasing shares in state companies. These requirements are aimed at ensuring transparency of privatization and avoiding re-sale of privatization facilities to related parties at bargain prices.

10.3. The methods, procedures and process of privatization

Each group of privatization facilities might be privatized using certain methods. A decision on approval of a privatization method shall be made by the privatization body. The procedure for determining methods of privatization of various groups of facilities is governed by the law and the State Privatization Program.

Privatization of state property is performed through:

- sale of privatization facilities at the auction;
- sale of privatization facilities on a competitive basis with the opening price offering under the auction principle;
- sale of shares (stocks) owned by the state in entities at the auction, by tender, on the stock exchanges;
- sale of integral property complexes of state companies by tender;
- buy-out of privatization target;
- sale of shares on international stock markets, including the form of depositary receipts.

10.3.1. Sale of privatization targets at auctions, by tender, on stock exchanges

Sale of privatization targets at auction, by tender and on stock exchanges shall be performed under the procedure approved by the State Property Fund of Ukraine, the Antimonopoly Committee of Ukraine, the National Commission on Securities and Stock Market.

If an integral property complex, proposed for sale at auction or by tender, has not been sold, a decision on its restructuring shall be made.

If the facility proposed for sale at auction or by tender has not been sold, the public privatization authority may decide on selling such a facility at auction by reducing the initial bid price.

A selling price at the auction may be reduced to the level of actual demand with no restriction on minimum selling bid price. Facilities not sold at auction by reducing the price of the stock exchange, including by fragmentation, are proposed for sale at auction without price announcement. An auction without price announcement shall be conducted up to the final sale of the facility.

10.3.2. Privatization of leased property

Privatization of leased integral property complexes of state companies, organizations and their departments, except for small public companies, shall be performed by selling state's shares in public companies.

10.4. Information on privatization

The State Property Fund of Ukraine provides transparency of privatization and announces notifications on the process and results of privatization. This is substantially the case of information related to facilities to be prepared for privatization and facilities in respect of which a decision on privatization is made as well as on conditions of their sale.

The results of the privatization of a facility (the winner of the tender, an auction, change of privatization procedure; price of the purchased privatization object; information about purchasers, distribution of privatized shares between new owners) shall be published in the official printed publications of state bodies on privatization, as well as on the official website of the State Property Fund of Ukraine (www.spfu.gov.ua/en/). Such a publication is made within 30 days following approval of the sale results or within 30 calendar days following the date of the purchase and sale agreement.

10.5. Requirements for protection of economic competition

Privatization of companies, having signs of dominance on the national or regional goods (works, services) market, shall be performed subject to approval of the appropriate authority of the Antimonopoly Committee of Ukraine.

The participants of the auction for sale of shares, which results in achieving or exceeding 25% or 50% of the votes in the supreme governing body of the relevant business entity, as well as assets in an integral property complex or a structural unit of a business entity of strategic importance for the economy and state security or which contains signs of dominance on the national market for goods (works, services), shall submit during these procedures the information about the relationship of control. In certain cases, the purchaser must obtain permission from the Antimonopoly Committee of Ukraine for concentration.

10.6. Registration of privatization deals

For privatization of a state property facility through its buying-out, sale at auction, by tender, the relevant purchase and sale agreement shall be concluded between the purchaser and the seller.

The purchase and sale agreement shall include obligations envisaged in the business plan or privatization plan or obligations of the parties identified by the terms of the auction, tender or buying-out on keeping main types of the activity, technical re-equipment, modernization of production, performance of set mobilization tasks, repayment of debt, provision of social protection to workers, requirements and additional restrictions of the environmental legislation on the facility use.

The purchase and sale agreement must be notarized and registered in certain cases. The facility ownership is passed to the purchaser following payment of sale price in full.

At the discretion of the privatization body, the opportunity to resolve disputes arising between the seller and the purchaser in connection with the purchase and sale agreement of the privatization facility or on its basis in the international commercial arbitration court may be provided in the purchase and sale agreement of the privatization facility.

11

Natural resources & mining

11.1. General provisions

The basic regulatory acts governing relations in the field of mining in Ukraine are the Code of Ukraine on Mineral Resources, the Mining Law of Ukraine, the Law of Ukraine “On State Geological Service”, the Law of Ukraine “On Production Sharing Agreements”, other laws and regulations. Features of certain minerals extraction may be governed by special laws. In addition, some laws govern the relationships in certain sectors, such as the Law of Ukraine “On Oil and Gas”, the Law of Ukraine “On the Natural Gas Market”, etc.

11.2. Types of minerals

Pursuant to the Code of Ukraine on Mineral Resources, mineral resources are the part of the earth shell, located under the surface of land and basins beds, and extends down to the depths, that are accessible for geological exploration and development. Mineral resources are the property of the Ukrainian people and are provided for use only. The State Fund of Mineral Resources includes mineral deposits that are the pile of minerals in the subsoil, on the land surface, in the sources of water and gas, at the basins beds, that in terms of quantity, quality and modes of occurrence are suitable for industrial use.

In terms of their importance mineral resources are divided into two groups:

- 1) mineral resources of national significance (such as natural gas, oil, coal, ferrous and nonferrous metal ores, granite, gravel, etc.);
- 2) mineral resources of local significance (e.g., limestone, gypsum, chalk, sand, etc.).

The distribution of mineral resources into the mentioned groups is important in particular when deciding on the need to obtain a license for extraction of such minerals through an auction or without it, which will be specified below. The Cabinet of Ministers of Ukraine qual-

ifies mineral resources as those of the first or second group. In particular, the distribution of mineral resources by the specified criteria is set in the Resolution of the Cabinet of Ministers of Ukraine of December 12, 1994 No. 827 "On Approval of the List of Mineral Resources of National and Local Significance."

In addition, mineral resources are classified into two groups depending on the volume of their reserves, namely:

- 1) substantial mineral reserves and
- 2) minor mineral reserves.

Quantitative criteria for determining minor mineral resources are provided in the Resolution of the Cabinet of Ministers of Ukraine of August 11, 2000 No. 1257 "On Approval of the Criteria for Determination of Minor Mineral Reserves".

11.3. The right to use subsoil mineral resources

11.3.1. The procedure for granting the right to use mineral resources for mining

The mineral resources of Ukraine are provided for use for the following purposes:

- geological study, including exploratory and industrial development of the national significance deposits of mineral resources;
- mining;
- construction and operation of underground facilities not related to mining;
- construction of geological areas and facilities of great scientific, cultural, health and recreational value (a scientific testing range, geological preserves, wildlife reserves, natural monuments, health, recreational facilities and others);
- performance of works (activities) provided by the production sharing agreement;
- satisfaction of other needs.

As a general rule, the Ukrainian legislation does not provide specific requirements for individuals (investors) authorized to use mineral resources, including for mining. Enterprises, institutions, organizations, citizens of Ukraine and foreigners as well as stateless persons and foreign legal entities may be the users of mineral resources.

The mineral resources are provided to investors for permanent or temporary use. Use of mineral resources without pre-set deadline is permanent. Temporary use of mineral resources may be short-term (up to 5 years) and long term (up to 50 years). If necessary, the period of temporary use of mineral resources may be extended.

The use of mineral resources is based on two legal regimes:

- 1) a licensing regime;
- 2) a regime of production sharing agreements.

11.3.2. Licensing regime

A licensing regime requires obtaining a special permit for use of mineral resources. Such permits are usually granted on a competitive basis to the winners of special auctions (except when such permits are granted without auction).

Special permits for use of mineral resources without an auction are granted in particular in the following cases:

- if an investor has made a geological survey of the subsurface site and calculation of mineral reserves at the investor's own expense and applied for a special permit no later than three years after the approval of reserves;
- extension of boundaries for no more than 50% of the subsurface site previously provided in use for the purpose of its geological exploration as well as increase in volume of extraction of mineral resources by expanding the site boundaries, but not more than 50% of stocks previously specified by permits, provided that an adjacent site has not been provided for use;
- a geological survey and mining of local importance (e.g., limestone, gypsum, chalk, sand, etc.), except where the application is filed by more applicants;
- in other cases, provided by the law.

An integral part of the permission for the use of subsoil is an agreement on the terms of subsoil use, executed between the authority, responsible for issuing permits, and a subsoil user, and contains the work program, issued as a supplement, and specific conditions of subsoil use stipulating, in particular, requirements on work performance, modern technologies of extraction and processing of mineral resources, mining order, etc.

Special permits for subsoil use, except for subsoil use under the terms of production sharing agreements executed under the Law of Ukraine "On Production Sharing Agreements", shall be granted upon the prior approval by the local government on allotment of land plot for these purposes, except when allotment of land is not required.

A fee shall be charged for granting a permit, the amount of which is determined by the results of the auction. A fee shall be charged for granting a permit without an auction, the amount of which is calculated based on the starting sell price of such a permit at the auction according to the approved methods.

11.3.3. Regime of production sharing agreements

The regime of production sharing agreement provides execution of the respective agreement between the investor and the Cabinet of Ministers of Ukraine, representing the State of Ukraine. Pursuant to the production sharing agreement, one party, Ukraine, entrusts the other party, the investor, to search, explore and produce mineral resources (both of national and local significance) on a defined area (areas) of subsoil and perform activities related to

the agreement; and the investor undertakes an obligation to perform the assigned works at its own expense and at the sole risk with further compensation of expenses and receiving payments (compensation) in the form of a part of the manufactured products.

Production sharing agreements are executed on a competitive basis with the winner, offering the most favourable terms of cooperation in mining. The production sharing agreement may be executed by the Cabinet of Ministers of Ukraine and the local government without a tender on subsoil areas with few mineral resources. The production sharing agreement may also be executed by the decision of the Cabinet of Ministers of Ukraine without a tender, if an investor who has previously received a special permission for subsoil use and started activities in accordance with the permission granted expressed a desire to execute the agreement.

The production sharing agreement can be executed at the initiative of the investor. An investor, who wishes to enter into the production sharing agreement, may apply to the Cabinet of Ministers of Ukraine with a proposal for a decision on the tender to execute production sharing agreements regarding a separate subsoil area. An investor shall be informed about the results of such a proposal review within 3 months.

Mining operation under the production sharing agreement also requires obtaining a special permit for subsoil use. But in this case such a permission is granted without an auction.

A fee for granting permits for subsoil use without an auction in order to implement production sharing agreements shall be paid equal to 1% from the starting sell price of such a permit at the auction.

By entering into production sharing agreements, the investor receives certain guarantees from the State against legislative amendments. In particular, the State ensures that the law as of the time of the transaction shall be applied to the rights and duties of the investor as defined by the production sharing agreement during its term, except for the legislation reducing the amount of a tax or a duty or cancelling them, simplifying regulation of business activities in searching, exploration and producing mineral resources, reducing procedures of state supervision (control) in the economic activity, etc.

11.4. Transfer of rights to use subsoil mineral resources to the third parties

The Code of Ukraine on Mineral Resources stipulates that the holder of a special permit for subsoil use cannot present as a gift, sell or otherwise dispose of the rights, granted him/her by a special permit for subsoil use, to another legal person or an individual, including the rights transfer to the authorized capital of legal entities established with its participation or contribute them to the joint activity.

However, the law allows for transfer of the rights for mineral production on the basis of production sharing agreements. Thus, according to the Code of Ukraine on Mineral Resources, the rights for subsoil use may be transferred to third parties along with transfer of rights and obligations under the production sharing agreement. However, such a transfer requires a special permit for subsoil use to be reissued for a new investor.

11.5. Obtaining a mining allotment

In order to obtain the right to mining, an investor should get a mining allotment, in addition to the aforementioned special permit.

A mining allotment is a part of subsoil provided to users for industrial development of mineral deposits and purposes other than mining. Subsoil use outside the mining allotment is prohibited.

Mining allotments may be granted to investors only provided they have special permits for subsoil use, the mineral deposit development project, approved under the prescribed procedure, the examination of mineral reserves and, in some cases, an expert opinion on the safety of mining operations and absence of the applied production technologies effect on the neighbouring deposits.

Mining allotments to investors, having signed production sharing agreements, shall be granted on the basis of production sharing agreements.

11.6. The use of mineral resources without a special permit and a mining allotment

According to the Code of Ukraine on Mineral Resources, landowners and land users within their land plots are entitled without special licenses and mining allotments to mine minerals of local significance (e.g., limestone, gypsum, chalk, sand, etc.) and peat of total mining depth of up to two meters, and groundwater (except for mineral) for all purposes other than the production of bottled drinking water, provided that the volume of the groundwater extraction from each intake does not exceed 300 cubic meters per day.

Extraction of minerals of local significance and peat with the use of special equipment that may cause undesirable changes in the environment shall be agreed with the local authorities.

11.7. Registering a land plot for mining

In order to obtain an opportunity to use mineral resources (including mining), the investor has to register land use (as a property or on a leasehold basis). As a rule, investors enter into agreements on land lease within their mining allotment, which may turn out to be a cheaper way. The use of land in Ukraine is charged. The payment shall be made in accordance with agreements on land lease.

Registration of land use for mining is carried out pursuant to the Land Code of Ukraine. Allocation of land plots for the needs related to subsoil use shall be made after the registration of subsoil use rights according to the procedure.

As a general rule, the land plots are allocated for rent in Ukraine on a competitive basis at an auction. However, if the investor obtains a special permit for subsoil use, such an investor is entitled to lease the land as authorized by the permit without an auction.

Attention shall be drawn to the fact that the purpose of the land plot, which the investor

intends to get in order to perform mining, must correspond to the type of activity which he/she is going to implement. Therefore, if a desired land plot has a different intended use (for example, agriculture, etc.), the procedures to change the intended use of the land plot for the desired one shall be completed before it. It should be noted that currently Ukraine has introduced a moratorium on changing the intended use of agricultural land. The specified moratorium shall not be applied to the production sharing agreement.

11.8. Other permits related to mining

The mining activity also requires obtaining other permits and approvals of the Ukrainian authorities. In particular, a plan for the development of mining for the calendar year should be developed and approved, the proper documentation for the industrial facility construction (when mining is followed by industrial facilities construction, such as a plant for break stone production from the extracted mine rock) should be developed and approved, such a facility should be placed into operation, the permission to perform dangerous work should be obtained, and permits should be obtained also for waste disposal, releases into the atmosphere, removal of fertile soil layer (if necessary) and others.

A series of internal regulations regarding work safety at mining should also be developed.

In some cases, upon achieving the parameters established by the law, a permit of the Antimonopoly Committee of Ukraine to start economic activities in mining may be required.

The procedure for obtaining required permits, development and approval of required technical documentation is governed by various regulatory acts.

11.9. Payment for subsoil mineral resources use

Subsoil use is commercial. The fee for subsoil use shall be charged within the territory of Ukraine, its continental shelf and the exclusive (maritime) economic zone. The fee for subsoil use shall be charged in the form of the rent specified under the Tax Code of Ukraine.

The rent payable by the subsoil user is calculated as follows:

$$\text{Rent payment} = \text{Output} \times \text{Price} \times \text{Rate} \times \text{Factor}$$

Output – the output of extracted minerals.

Price – cost per unit of the relevant type of the extracted mineral (mineral raw material), calculated pursuant to the norms of the Tax Code of Ukraine.

Rate – the value of rent rate for subsoil use for mining (in percentage), set by the Tax Code of Ukraine for each type of mineral resources, including:

- oil – 14 and 29%;
- gas – from 11 to 70%;
- coal – from 0.75 to 1.5%;

- iron ore – from 5 to 8%;
- amber – 25%;
- other mineral products – 5%.

Factor – is an adjusting factor, provided by the Tax Code of Ukraine and used in some cases, depending on the type of minerals and extraction conditions. Factors are set at a rate of 0.01-2.0.

11.10. The completion of mining. Land remediation

After the mineral resources exhaustion, as well as when further mining for some reason is unreasonable or impossible, mining facilities or sections of the sites thereof are subject to liquidation or conservation.

In the case of a full or partial liquidation or conservation of the mining facility mine workings and wells should be brought in the condition that guarantees the safety of people, property and the environment, as well as in case of conservation ensures the preservation of deposits, mine workings and wells throughout the period of conservation.

The liquidation and conservation of mining facilities is carried out subject to coordination with the state controlling bodies in the manner prescribed by the central executive authority, providing the public policy making in the field of mining supervision and industrial safety.

After completion of mining, the investor is also required to carry out remediation of the land used for business activities. According to the Code of Ukraine on Mineral Resources, the subsoil users are required to bring land plots, faulted during the subsoil use, in the condition suitable for their further use. Land remediation after the mining is based on the remediation working project.

12

Intellectual property rights

12.1. General provisions

The law of Ukraine defines an intellectual property right as a right of a person to a result of intellectual, creative activity or to another object of intellectual property. Intellectual property comprises the results of intellectual and creative activity of a person, such as computer programs, inventions, utility models, trademarks, trade names, literary, artistic or scientific works, etc.

The protection of intellectual property rights is carried out both at the national legislative level and in accordance with the international agreements and treaties, ratified by Ukraine, that are an integral part of the Ukrainian law.

In the field of the intellectual property right protection Ukraine has ratified several international treaties and agreements, including:

- 1) the Convention Establishing the World Intellectual Property Organization;
- 2) the Universal Copyright Convention;
- 3) the Berne Convention for the Protection of Literary and Artistic Works;
- 4) the Paris Convention for the Protection of Industrial Property;
- 5) the Patent Cooperation Treaty;
- 6) the Madrid Agreement Concerning the International Registration of Marks;
- 7) the Protocol to the Madrid Agreement Concerning the International Registration of Marks;

- 8) the Trademark Law Treaty;
- 9) the Nice Agreement Concerning the International Classification of Goods and Services for the Registration of Marks;
- 10) the International Convention for the Protection of New Varieties of Plants;
- 11) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

According to Article 41 of the Constitution of Ukraine, everyone has the right to own, use and dispose of his/her property, the results of his/her intellectual and creative activity.

The author of the object of intellectual property (the performer, the inventor, etc.) and others possessing personal non-property or proprietary rights under the legislation or the agreement are considered the subject of the intellectual property right.

According to Article 29 of the Law of Ukraine "On Copyright and Related Rights", property rights of authors and other persons, having the exclusive copyright, are inheritable. Personal non-property rights are not inheritable. However, the successors have the right to protect the authorship of the work and to resist distortion, corruption or other modification of the work, as well as any other offence against the work that may inflict harm to the author's honour and reputation.

12.2. Subject of intellectual property right

The results of a person's intellectual and creative activity are the subject of the intellectual property right. Thus, the results of this activity (regardless of the form, purpose, value and method of display) include the inventions, utility models, as well as scientific, literary and artistic works.

Subjects of intellectual property right are divided into four groups:

- 1) copyright and related rights, which include, in particular, literary and artistic works, audio-visual works, works of painting, architecture, sculpture and graphic arts, photographic works, translations, computer programs, databases if, according to the selection or arrangement of their components, they are the result of an intellectual activity;
- 2) objects of the industrial property right (inventions, utility models, industrial designs);
- 3) plant varieties and animal breeds;
- 4) the brand identity of products and economic turnover participants, such as domain names, trademarks for goods and services, trade names, geographical indications and trade secrets.



USE OF IMAGE FOR COMMERCIAL PURPOSES IN UKRAINE

Use of image for commercial purposes in Ukraine

The publication discusses legal basis of use of images for commercial purposes, including use of images from photobanks and fair use for commercial purposes. In addition, the issue of liability for breach of intellectual property rights is also covered.

View [Use of image for commercial purposes in Ukraine](#).

12.2.1. Copyright and related rights

The copyright arises at the moment of the work creation. The Copyright does not cover ideas, processes, business methods or mathematical concepts as such.

The author of the work is the primary subject of copyright. Unless the contrary is proved, the individual, mentioned on the original or copy of the work (presumption of authorship) in the ordinary manner is considered to be the author of the work. Other individuals and legal entities, having acquired rights to the work under the agreement or law, are also subjects of copyright.

The Copyright also covers the protection of related rights. The objects of related rights are: literary, musical, theatrical works, phonograms, video grams, programs of broadcasting organizations, etc.

12.2.2. Industrial property

Industrial property covers rights and objects of intellectual property, such as inventions, utility models, industrial designs.

The invention is considered suitable for the acquisition of intellectual property right, if, under the law it is new, involves an inventive level and is suitable for industrial use. A product (a device, a substance, etc.) or process in any field of technology can be the object of the invention.

The utility model is considered allowable for the acquisition of the intellectual property right if under the law, it is new and suitable for industrial use. As for the industrial design, it is considered appropriate for the acquisition of the intellectual property right, if according to the law, it is new.

The scope of legal protection is defined by the claims, a utility model, and a set of essential features of the industrial design.

Compared to the copyright, the acquisition of the intellectual property right to an invention, a utility model or an industrial design is certified by a patent.

12.2.3. Intellectual property right to a trademark

Any designation or any combination of signs suitable for distinguishing goods (services) produced (provided) by one person from goods (services) produced (provided) by others can be a trademark. In particular, these designations may be: words, letters, numerals, figurative elements, combinations of colours.

Acquisition of the intellectual property right to the trademark needs to be certified. The scope of legal protection of a trademark is defined by its image and by the goods and services listed in a certificate, unless otherwise provided by law.

Acquisition of the intellectual property right to the trademark, which has the international registration or is recognized, in the manner prescribed by the law, as well known, does not require certification.

A proprietary right to a trademark is the right to use the trademark, the exclusive right of authorizing to use the trademark, the exclusive right to prevent unauthorized use of the trademark, including prohibition of such use, and other proprietary rights established by the law.

Proprietary rights to the trademark belong to the holder of a relevant certificate, to the holder of an international registration, to a person, whose trademark is recognized, in the manner prescribed by the law as well known, unless otherwise provided by an agreement.



Trademark protection in Ukraine

In this brochure, general guidance on legal protection of trademark in Ukraine is provided, incl. with regard to the process and requirements for proper registration, possible court actions for protection, fair use conditions, criminal, antimonopoly, and customs aspects of trademark usage.

View [Trademark protection in Ukraine](#).

12.2.4. IP rights to the objects created in connection with employment agreement performance

Personal non-property rights to the object created in connection with performance of an employment agreement belong to the employee, having created such an object. In the cases provided by the law, certain personal non-property rights to that object may belong to a legal entity or a private entrepreneur, where the employee works/is hired by.

Proprietary rights to an object created in connection with the performance of an employment agreement belong to the employee, having created this object, and to a legal entity

or a private entrepreneur, where the employee works/is hired by, jointly, unless otherwise provided by the agreement.

Features of realization of proprietary rights to the object created in connection with the performance of an employment agreement may be prescribed by the law.

12.3. Personal non-property rights of intellectual property

Intellectual property rights comprise a personal non-property right and a proprietary right.

Personal non-property rights are:

- 1) the right to recognize a person as a creator (author, artist, inventor, etc.) of an object of the intellectual property right;
- 2) the right to prevent any offence against the intellectual property right that may inflict harm to the honour and reputation of the holder of the intellectual property right;
- 3) other personal non-property rights established by the law.

Personal non-property rights belong to the creator of the object of the intellectual property right. In the cases provided by the law, personal non-property rights may belong to others.

Personal non-property rights remain in force without time limit, unless otherwise provided by the law.

Proprietary rights are:

- 1) the right to use the object of intellectual property right;
- 2) the exclusive right to authorize the use of the object of intellectual property right;
- 3) the exclusive right to prevent unauthorized use of the object of intellectual property right, including prohibition of such use;
- 4) other proprietary rights established by the law.

The law may establish exceptions and limitations to proprietary rights, provided that such limitations and exceptions do not create significant difficulties for the normal implementation of proprietary rights of intellectual property and implementation of interests of the holders of those rights.

Proprietary rights, under the law, can be a contribution to the authorized capital of a legal entity, subject of the pledge agreement and other obligations, etc.

Proprietary rights are valid within the time limits prescribed by the law or an agreement.

12.4. Use and transfer of the object of intellectual property right

The person, who has the exclusive right to authorize the use of the object of intellectual property right, can use this object at his/her own convenience, in compliance with the rights of others.

The use of the object of intellectual property right by another person is carried out with the permission of the person, who has the exclusive right to authorize the use of intellectual property right, except in cases of the legitimate use without the authorization provided by the law.

Terms of permission issue (license issue) for the use of the object of the intellectual property right can be defined by a license agreement.

Proprietary rights may be transferred in whole or in part to another person. The terms of the intellectual property rights transfer may be determined by an agreement.

Disposal of proprietary rights is carried out on the basis of the following agreements:

- 1) an operating license for objects of intellectual property rights;
- 2) a license agreement;
- 3) an agreement on use of objects of intellectual property right;
- 4) an agreement on the exclusive intellectual property rights transfer;
- 5) another agreement on disposition of intellectual property rights.

An agreement on disposal of proprietary rights is concluded in writing. In the event of non-compliance with the written form of the disposal agreement of the intellectual property rights, such an agreement is void. However, the law may establish cases, in which the agreement on disposal of proprietary rights may be concluded verbally.

The person, who has the exclusive right to authorize the use of the object of intellectual property, can provide a written commission to another person, which gives the right to use this object in a certain limited area. An operating license for the object of intellectual property right may be issued as a separate document or can be a part of a license agreement.

The license agreement determines the type of a license, operating area of the object of intellectual property right (the specific rights granted under the agreement, application of an object, the area and period for which the rights are granted, etc.), size, procedure and terms of fee payment for disposal of the intellectual property right, as well as other conditions, which the parties consider to be included into the agreement. If no term regarding the intellectual property rights disposal is included in the license agreement, the license agreement is deemed to be applicable on the territory of Ukraine.

The license agreement is concluded for the period established by the agreement, which must expire no later than the expiry of the validity period of the exclusive proprietary right to the object of intellectual property, specified in the agreement. If the term about the agree-

ment validity is absent in the license agreement, it is considered to be concluded for the period remaining until the expiry of the validity period of the exclusive proprietary right to the object of intellectual property, specified in the agreement, but not more than for five years.

An operating license for the object of intellectual property right and license agreements are not subject to the mandatory state registration. Their state registration is carried out at the request of the licensor or licensee.

The absence of state registration does not affect the validity of the rights granted under a license or another agreement, and other rights to the appropriate object of intellectual property right, including the right of the licensee to apply to court for his/her rights protection.

12.5. Appeal to the Antimonopoly Committee of Ukraine

Persons, whose rights have been violated as a result of acts of unfair competition (e.g. an abuse of a trade mark or a trade name and unlawful collection, publication and use of trade secrets), are entitled to file an application to the Antimonopoly Committee of Ukraine for their rights protection.

The Antimonopoly Committee of Ukraine is entitled, in addition to acknowledgement of an unfair competition or prohibition of an unfair competition, to take a decision on imposing a fine.

12.6. Protection of intellectual property rights by court

Every person is entitled to apply to court to protect his/her intellectual property. The court, in cases and according to the procedure prescribed by the law, may decide, in particular, to:

- 1) take immediate measures to prevent infringement of intellectual property rights and preservation of evidence;
- 2) suspend customs clearance of goods, imports or exports of which are carried out with the violation of intellectual property rights, across the customs border of Ukraine;
- 3) withdraw the goods, manufactured or put in public circulation with the violation of intellectual property rights, from civil circulation and to destroy such goods;
- 4) withdraw the materials and tools, used primarily for the manufacture of goods with the violation of intellectual property rights, from civil circulation or remove and destroy such materials and tools;
- 5) impose single money penalties instead of the compensation of losses for the unauthorized use of intellectual property rights. The size of the penalty is determined in accordance with the law on the basis of guilt and other circumstances, which are essential;
- 6) publish information about violations of intellectual property rights and content of the court decision for such violations in the media.

Also, in some cases of such violations, administrative or criminal liability for the intellectual property rights violation can be applied.

13

Advertising relations

Considering that advertising is the engine of trade around the world and of markets competition efficient development, every country has relevant legislative requirements to advertising of certain types of goods, works and services. Ukraine is no exception in this regard. Provisions on advertising in Ukraine are enshrined in numerous legal acts, in particular in the specialized Law of Ukraine “On Advertising”.

All economic entities shall be obliged to adhere to legislative requirements on advertising as their breach may cause considerable damage, including penalties imposed on the economic entity acting as an advertiser, an advertising producer or a distributor.

13.1. Advertising and advertising activities

The legislation of Ukraine provides a definition of advertising as information about a person or a product distributed in any form and in any way in order to promote awareness among advertising consumers and support their interest to certain persons or goods. Based on this definition, any goods, work or services comprising the trademark image, slogan or sign that economic entity wants to make available to the public shall be considered as advertising.

Parties to advertising relations in Ukraine are: an advertiser, an advertising producer, an advertising distributor and a consumer of advertising.

An advertiser is a customer of advertising, organizing the production of advertising and its further distribution. An advertising distributor is a person performing distribution of advertising. A consumer of advertising in turn is an uncertain circle of persons who are advertising addressees.

Foreign economic entities that have an official representation or a branch in Ukraine are the participants of advertising relationships, and can be both advertisers and advertising producers or distributors. The requirements of advertising legislation are applicable to such economic entities.

Basic requirements to advertising, requirements to advertising for advertisers, advertising producers, and advertising distributors are enshrined in the Law of Ukraine “On Advertising”.

13.2. Language of advertising

Pursuant to the Law of Ukraine “On Principles of the State Language Policy”, advertisements, messages and other forms of audio and visual advertising products shall be performed in Ukrainian or in another language, selected by an advertiser.

It should be realized that some territories of Ukraine are home to the vast majority of consumers of advertising speaking a language other than Ukrainian, therefore, according to such statistical information, the advertiser may distribute advertisements in this area in the language spoken by a large part of the population of the area (a regional language or a language of minorities). Subtitling of advertising information in the official language is also possible if such information is provided in the regional language or the language of minorities.

In most cases, advertising in Ukraine is provided as promotional materials in Ukrainian.

Trademarks shall be produced in advertising in the form enjoying legal protection in Ukraine or pursuant to the international registration.

Marking of goods, instructions on their use shall be produced in Ukrainian, regional or minority language. By the decision of manufacturers of goods, translation into other languages can be placed along with the text in Ukrainian. Marking medicines for export shall be done in any language. Marking medicines, medical devices and instructions (for use of such medicines and medical devices) for import into Ukraine shall be performed in the original language.

13.3. Prohibitions on the use of advertising

Pursuant to the applicable legislation of Ukraine, when placing advertisements, it is forbidden:

- to disseminate information about the goods which are subjects to prohibition for production, circulation or entry into the customs territory of Ukraine;
- to place statements which are discriminatory on the grounds of human origin, social and economic status, race, ethnicity, sex, education, political views, attitude towards religion, language, type or nature of occupation, place of residence or other circumstances as well as those discrediting the products of others;
- to place data or call to actions which may cause breach of the law, cause or may cause harm to the health or life of people or the environment, and encourage the safety facilities neglect;
- to use tools and technologies affecting advertising consumers subconscious;
- to use a discriminatory statement in respect of persons not using the advertised product;

- to use or imitate images of state symbols of other states and international organizations as well as the official name of the government bodies and local governments;
- to advertise products subject to obligatory certification, or production or sales of which requires a special permit, a license in case of absence of the respective certificate, permit or license; to place a picture of an individual or use his/her name without his/her prior written consent;
- to imitate or copy texts, images, music or sound effects used in advertising of other goods, unless otherwise provided by laws of Ukraine in the field of intellectual property;
- to advertise services related to a concert, touring, touring and a concert, a competition, a festival activity, without information on use or non-use of phonograms by performers of music. This information shall take at least 5% of the total area of the whole advertising volume on posters and other advertising materials concerning a particular service;
- to distribute advertising (including cinema and TV films trailers), containing elements of cruelty and violence, pornography, cynicism, denigration of human honour and dignity. Film trailers having restrictions on the viewing audience shall be placed only during the time allowed for showing such films;
- to distribute advertising on construction of a residential house using private funds, involved from physical and business entities, including that in operation without acquiring by business entities involved in its construction or investment, or financing of proprietary or usage right for the land plot, licenses for construction activities, permission for construction works or permission/license on delivery of financial services or a certificate for registration of targeted bond issue, performance of commitments by which shall be secured by a real estate unit under construction;
- to distribute advertising services of divination and fortune-telling.

13.4. Features of certain types of advertising

13.4.1. Advertising of medicines and medical equipment

When advertising medicines and medical equipment the following principal requirements shall be taken into account.

Only those medicines and medical devices are possible for advertising, the use of which is permitted by the Ministry of Health of Ukraine, as well as medicines sold without prescription and not included to the list of drugs prohibited for advertising by the Ministry of Health of Ukraine.

Advertising of drugs, administration and sales of which are allowed by prescription only as well as listed as medicines prohibited for advertising, is prohibited. Advertising of doping substances and methods for their use in sports is prohibited.

13.4.2. Advertising of weapons

Advertising of weapons may be possible only in relevant specialized publications on weapons, or directly in the premises of commercial entities (companies) selling weapons or at the relevant exhibitions (events). Advertising using images of real or toy weapons, explosive devices in any form, is prohibited.

13.4.3. Advertising of services related to the involvement of public funds

Advertising of services (banking, insurance, investment, etc.) related to the involvement of public funds, or funds of persons providing them, is allowed only subject to a special permit, or a license, confirming the right to pursue such an activity. Such advertising shall include the number of the permit, the license, the date of issue and the name of the authority, having issued the permit or the license. Advertising of trademarks, names of persons (without advertising of services) is possible.

13.4.4. Advertising of construction projects

Advertising of construction projects for the purpose of selling residential or non-residential premises, including those associated with the involvement of public funds is allowed only subject to the license (permit) for construction activities and permit for construction work on a specific site advertised. Such advertising shall include the number of the license (permit), the date of its issue and the name of the authority, having issued the license (the permit).

13.4.5. Advertising and children

Attention shall be drawn to the requirements of advertising in respect of children who are the most vulnerable for advertising consumption as compared to adult consumers of advertising. Thus, according to the Law of Ukraine "On Advertising", it is prohibited:

- to use images of children consuming or using products intended for adults only or products the purchase or consumption of which by minors is prohibited by law;
- to include information that could undermine parents', guardians', caregivers', teachers' authority and children's trust in them;
- to include calls to children to buy products or apply to the third parties with a request to make a purchase.

Pursuant to the Law of Ukraine "On Advertising", advertising for children shall not:

- include images of children in dangerous situations or under circumstances which in case of their imitation may harm children or other persons, as well as information that may cause children's negligence to situations hazardous for life and health;
- cause moral or physical harm to children, cause a feeling of inferiority in them;
- show the possibility of purchasing the advertised product, designed primarily for children, by each family with no regard to their budget;

- create the impression in children that the possession of advertised products gives them an advantage over other children.

13.5. Types of advertising contracts

The main types of contracts in advertising are the following:

- a contract on advertising services for the development/adaptation of promotional materials;
- a contract on advertising services for advertising materials placement;
- contract on advertising services for the organization of promotional activities (contests, quizzes);
- license agreements for the use of intellectual property in advertising.

Mixed contracts which include elements of various contracts, such as a contract on supply of promotional materials, a contract on creation of intellectual property, a licensing contract, an agency contract for the organization of promotional events, etc. may be used in the advertising activity.

The subject of the contract on advertising services for the advertising materials development and adaptation is performance of works and services, in particular, creation of advertising clip, an advertising design, an advertising layout, synchronization of an advertising clip in Ukrainian, integration of the new video frames or pictures in the existing advertising clip, creation of computer graphics with the advertiser's advertising, creation of promotional web banners.

The subject of the contract on advertising services for advertising materials placement is providing services in the created advertising material placement on television, radio, outdoor advertising constructions, various Internet websites, trade areas, transport, architectural objects, etc.

The subject of the contract on advertising services for the organization of promotional activities (contests, quizzes) is the organization of promotional contests in the Internet on an advertiser's website or on a specially created website, procurement and awarding prizes (gifts) to the winners of promotions, delivery, installation and maintenance of advertising structures to carry out an advertising event outdoors or indoors, organizing promotional contests in the course of different events.

The subject of the license agreement is obtaining a permission (a license) from the owner of the intellectual property, such as music, photos, design, font, text advertising, actor's performance, image of an individual, for its further use in the advertiser's promotional materials under the terms of use (time, area, method), referred to in such an authorization (a license).

During the promotional activities other business contracts are possible to be executed, depending on the advertiser's advertising activity.

13.6. Advertising on TV

Time allocated for advertising and shopping on TV shall not exceed 15% for each actual clock hour of the broadcast. Advertising shall be placed in breaks between programs and shows.

Advertising may be placed during the program and show broadcast so as not to harm the integrity and content of the program, show and the rights of their owners.

Broadcast of concert and entertainment programs, shows may be broken by advertising provided that the program or show lasts for at least 20 minutes between the advertising breaks. Advertising during broadcasting of sports programs, shows shall be placed in breaks between their parts. Broadcasting programs, shows for children (lasting up to 30 minutes) cannot be interrupted by advertising. Broadcasting programs, shows for children (lasting for more than 30 minutes) and programs, news broadcasts may be interrupted by advertising no more than once every 30 minutes.

For the purposes of advertising on TV the following shall not be considered as advertising:

- disclosure, announcement in the program, show of the name of the sponsor, intellectual property belonging to it;
- broadcasting social advertising if it is distributed by TV and radio organization free of charge;
- announcements of own broadcasting programs, shows of TV and radio organization.

The anchor, speaker and other participants of information, information and analytical programs, shows are prohibited to provide direct consumer properties of goods or specify bank accounts, contact numbers, address of the manufacturer of the goods, the price of goods.

Broadcast (rebroadcast) of the advertising contained in programs and shows of foreign broadcasters broadcast (rebroadcast) to Ukraine, provided that the foreign broadcasters do not fall under the jurisdiction of the European Union member states or the states, having ratified the European Convention on Transfrontier Television, is prohibited.

Broadcast (rebroadcast) of the advertising contained in programs and shows of foreign broadcasting organizations falling under the jurisdiction of the European Union member states, or the states, having ratified the European Convention on Transfrontier Television, broadcast (rebroadcast) to the territory of Ukraine shall be allowed, provided only broadcasting (rebroadcasting) of such advertising is paid to a legal person of Ukraine, regardless of the method of implementation of such broadcasting (rebroadcasting). Placing advertising by program service providers in programs and shows of foreign broadcasters is prohibited.

The responsibility for meeting the requirements on the advertising placement and distribution in programs and shows shall be borne by TV and radio broadcaster.

13.7. Outdoor advertising

Outdoor advertising is advertising placed on special temporary and permanent structures – advertising media located in open areas and on the outer surface of buildings, structures,

elements of street furniture, above the roadway of streets and roads. Outdoor advertising is governed by the contract on the placement of the corresponding type of advertising material.

Outdoor advertising shall meet the following requirements:

- being placed subject to the requirements of safety rules and providing visibility of the road signs, traffic lights, intersections, pedestrian crossings, stops for public transport of general use and representing no images of road signs; outdoor advertising lighting should not dazzle road users as well should not illuminate apartments in dwelling houses;
- foundation of the ground external advertising, located above the earth surface, may have ornamental design;
- pylon of the ground external advertising located along the roadway of streets and roads, should have vertical road markings laid by reflective material of 2 meters height above the ground;
- lower edge of the outdoor advertising, placed over the roadway, including on the bridges, overhead roads, etc., should be located at the height of not less than 5 meters from the surface of the pavement;
- in places where travel way touch caps of buildings or fences, outdoor advertising can be placed in one line with facades of buildings or fences.

Outdoor advertising placement on the monuments of the national or local importance within protection zones of these monuments, historical areas of settlements shall be implemented on the basis of permits issued by the participation of executive power bodies, enshrined by the Law of Ukraine “On Protection of Cultural Heritage”.

13.8. Adaptation of advertising

Advertisers quite often use in their work advertising materials (videos, advertising models, advertising banners, brochures, etc.) made in another country meeting the requirements of the advertising legislation of that country. However, these advertising materials do not always meet the requirements of the advertising law and should be brought into conformity with the applicable law of Ukraine and advertiser’s advertising requirements.

The requirements of the applicable law of Ukraine should be taken into account, when adapting advertising materials, in order to prevent imaging in advertising materials of the objects which are prohibited for advertising by the applicable law (images of weapons, symbols of international organizations, images of famous persons, without written permission from those individuals, etc.).

Thus, the legal analysis of advertising material subject to adaptation shall define in full the list of images, objects, texts, etc., subject to adaptation, including removal, Ukrainian translation, editing, adding new titles in advertising materials, subject to the applicable law, etc.

14

Dispute resolution

The basic principles of the judicial system of Ukraine are defined in the Constitution of Ukraine. The judicial system of Ukraine consists of general courts and the Constitutional Court of Ukraine. At that, the Constitutional Court of Ukraine is the sole body of constitutional jurisdiction. In 2016, the extensive process of restructuring the judicial system of Ukraine began, targeted to improve the efficiency of the courts, renewing the judicial staff, and perform control over judges' activities. Besides resolution of disputes in courts, their resolution can be transferred to arbitration or mediation institutions.

14.1. General courts

The system of general courts consists of local courts (trial courts), courts of appeal (courts of the second instance) and high specialized courts (courts of the third instance). The Supreme Court of Ukraine is the highest judicial body in the system of general courts. The appropriate high specialized courts are the highest judicial bodies of specialized courts.

The general courts specialize in civil, criminal, commercial, administrative cases and cases of administrative offenses.

Both private individuals and legal entities (via their authorized representatives) can participate in hearings in the general courts. Protection of rights and interests of individuals is performed by virtue of claim. The defendant, in turn, may file objections to the claim.

Commercial courts are the most important from the perspective of foreign investors doing business in Ukraine. Enterprises, institutions, organizations and other legal entities, including foreign ones, and also private entrepreneurs are eligible to apply to the commercial court for protection of their violated or disputed rights and interests protected by the law, and for provision of measures targeted at prevention of violations.

14.1.1. Measures for securing a claim

The commercial court at the request of the party or on its own initiative is entitled to take actions to secure the claim, including:

- to seize property or assets belonging to the defendant;
- to forbid the defendant to perform certain actions;
- to forbid other persons to perform any acts relating to the subject of the dispute;
- to stop penalties on the basis of the enforcement document or any other document by which the penalty is carried out in an undisputable order.

14.1.2. Case hearing in the trial court

Disputes are resolved by commercial courts within the period of two months from the date of the claim receipt. In exceptional cases, at the request of the party and taking into account special aspects of the dispute, the commercial court may extend the period of case examination.

The proceedings in commercial courts begin with filing the claim. The court automatic documenting system provides distribution of cases among judges. A legal claim is filed to the commercial court in writing. A legal claim should contain certain information and documents, which may be extended for the proper dispute resolution, namely:

- information on the court to which the claim is filed;
- information (the name of a legal entity, ID of a private individual, location, domicile, identification code of a legal entity or the registration number of the taxpayer's registration card) about the parties in the case;
- information about the amount of the claim, if the claim is subjected to monetary valuation or about the contract disputes arising at conclusion, modification and termination of commercial contracts;
- content of the claim and circumstances, on which the claim is based; indication of evidence supporting the claim; reasonable calculation of the amounts withheld or disputed; the legislation under which the claim is filed;
- information about measures on out-of-court dispute resolution;
- document, which confirms sending the claim copy and documents attached thereto to the defendant;
- document confirming the court fees payment in the prescribed manner and amount;
- the list of documents and other evidence attached to the application.

When filing a claim, the plaintiff is obliged to provide the parties with a copy of the claim and

attached documents according to the number of defendants and third parties by registered mail with an inventory.

The defendant is entitled, having received the decision on proceedings institution, to send to the commercial court a statement of defence and all documents that confirm defensive pleading and file a counterclaim for a joint review with the initial claim prior to examination of the case on its merits.

The commercial procedural legislation of Ukraine defines a number of grounds, on which the court may refuse to accept the plaintiff's claim and to consider the case. Thus, the judge refuses to accept a claim if:

- the dispute cannot be considered in commercial courts of Ukraine;
- a commercial court or another body which, within its competence, solves commercial disputes, has proceedings on the case between the same parties on the same subject and of the same reasons, or there is a decision of these bodies concerning that dispute;
- a legal entity, having applied with a claim or to whom an action has been brought, suspended its business activity.

In resolving a commercial dispute on the merits (whether satisfaction of the claim or its full or partial rejection), the commercial court takes decisions according to evaluation of the evidence submitted by the parties and other participants in the commercial process, and the evidence, demanded by the commercial court.

The adopted decision is announced by the commercial court in the courtroom after the hearing. The commercial court decision comes into force after the expiration of appeal submission period, which is 10 days.

14.1.3. Consideration of disputes on appeal

Within 10 days of the decision settlement by the trial court, the parties have the right to appeal it.

During the process of case revision, a commercial court of appeal, according to the available or supplementary evidence, reargues the case. Additional evidence is accepted by the court if the applicant has justified the impossibility of its submission to the trial court. The commercial court of appeal is not bound by the arguments of the appeal and verifies the legality and validity of the decision of the local commercial court in full.

Claims that were not considered by the trial court are not accepted in the court of appeal.

The commercial court of appeal further to appeal consideration has the right to take one of the following decisions:

- to leave the decision of the trial court unchanged and dismiss an appeal;
- to reverse the decision in whole or in part and make a new decision;

- to reverse the decision in whole or in part and terminate the proceedings or leave the claim without consideration in whole or in part;
- to change the decision.

As a result of an appeal, the commercial court adopts a resolution. The resolution comes into force from the date of its adoption.

14.1.4. Resolution of disputes on cassation

Resolution of the commercial court of appeal can be appealed by each party of a lawsuit. A cassation appeal may be filed within 20 days following the date when the decision of the commercial court of appeal came into force.

During the decision review in cassation, the court of cassation, on the basis of the established facts of the case, verifies the application of the substantive and procedural law by the trial court or by the court of appeal.

The court of cassation has no right to determine or consider circumstances unproved, which were not established in the decision or resolution of the commercial court or rejected by it, to decide on the credibility of any evidence, on the superiority of one evidence over another, to collect new evidence or to verify evidence additionally.

The court of cassation is entitled to:

- leave the decision of the trial court or a resolution of the court of appeal unchanged and dismiss an appeal;
- reverse the decision of the trial court or a resolution of the court of appeal in full or in part and make a new decision;
- reverse the decision of the trial court or a resolution of the court of appeal and remand the case for a new trial;
- reverse the decision of the trial court, a resolution of the court of appeal in full or in part and terminate the proceedings or leave the claim without consideration in full or in part;
- change the decision of the trial court or a resolution of the court of appeal;
- uphold one of the previous decisions or resolutions.

14.1.5. Dispute review in the Supreme Court of Ukraine

Parties and third parties are entitled to apply for review of decisions of commercial courts after their review on cassation. The commercial procedural legislation of Ukraine establishes an exclusive list of grounds under which an application may be filed to the Supreme Court of Ukraine for the decision review, namely:

- unequal application by the court of cassation of the same rules of the substantive law, having led to the adoption of court decisions of different content in similar legal relations;

- unequal application by the court of cassation of the same rules of the procedural law at the appeal, having prevented further proceedings or having been taken with violation of jurisdiction rules;
- inconsistencies of the decision of the court of cassation to the conclusion as to the application of the substantive law norms in similar legal relations, stated by the Supreme Court of Ukraine;
- establishment by the international judicial institution, whose jurisdiction is recognized by Ukraine, of Ukraine's violations of international obligations in this dispute resolution.

As a result of case review, by the majority of votes, the court adopts one of the following resolutions on:

- full or partial appeal allowance;
- appeal dismissal.

The decision of the Supreme Court of Ukraine is final.

14.2. Courts of arbitration

In order to resolve disputes arising from contractual and other civil law relations regarding implementation of foreign trade and other international economic relations, as well as disputes of enterprises with foreign investment, the parties may use the services of international commercial arbitration.

The application of this alternative dispute resolution mechanism is specified in the Law of Ukraine "On International Commercial Arbitration" and the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and European Convention on International Commercial Arbitration.

The arbitration court is a non-governmental institution, formed specifically for the particular case or cases review on a regular basis. Parties may transfer dispute to arbitration if they have concluded an arbitration agreement for submission to arbitration of all or certain disputes, which have arisen or may arise between them in connection with the legal relationship between them.

The arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement. In order to avoid future disputes on the arbitration agreement validity, the parties should pay special attention to the arbitration agreement specifying information on a specific arbitration institution that is to conduct the trial, to the law, which shall be applied to the agreement and to the place and date of the agreement execution.

The benefits of resolving disputes by arbitration courts include:

- time saving and specialization of arbitrators. An appeal to the arbitration institution enables parties to save time, whereas rules of the institution establish clear deadlines for the proceedings. In addition, the case can be submitted to the arbi-

trators, who are highly specialized in specific cases;

- an arbitral award, irrespective of the country in which it was taken, is recognized as binding upon presentation of a written request to the competent court;
- the arbitral award is final.

Ukraine has the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry.

The arbitral award, irrespective of the country in which it was taken, is recognized as binding and the party relying on award or applying for its execution shall submit the original of the decision, duly certified, or a duly certified copy thereof, and the original of the arbitration agreement. If the award or the agreement is in a foreign language, the party shall supply a duly certified translation of these documents.

The award can be refused in recognition or enforcement, regardless of the country in which it was taken, only if:

- one of the parties of the arbitration agreement was incompetent or this agreement is invalid under the law to which the parties have subjected it;
- the party, against which the award was taken, was not properly notified of the appointment of the arbitrator or arbitration;
- the decision was taken regarding a dispute not contemplated by the arbitration agreement;
- the composition of the arbitral tribunal or the arbitration procedure did not meet the requirements set out in the agreement between the parties;
- the decision has not yet become binding to the parties or has been cancelled or its execution was suspended by a court of the country, in which, or under the law of which it was taken;
- the object of the dispute cannot be subject to arbitration under the law of Ukraine or the recognition or enforcement of the award would be contrary to the public policy of Ukraine.

14.3. Enforcement of decisions

The State Enforcement Service of Ukraine is the body responsible for the enforcement of court decisions in Ukraine. In addition, in 2016 the institute of private enforcement officers was introduced in Ukraine, involvement of which can expedite the procedure of awards enforcement.

If the person, against whom the award was delivered, refuses to execute the decision voluntarily, then the measures of enforcement are taken. These measures include:

- seizure of the debtor's funds and property or property rights, including if they be-

long to others or belong to the debtor from others;

- seizure of the debtor's salary, income, pension, scholarship;
- removal from the debtor and transfer of certain items listed in the decision to the creditor;
- other measures stipulated by the decision.

Enforcement procedures are carried out by a state enforcement officer according to the debtor's place of residence, place of stay or place of work or the location of the property. If the debtor is a legal entity, the enforcement is carried out at the location of its permanent body or property. The plaintiff is entitled to choose the place of enforcement among several state enforcement services, authorized to take enforcement actions on implementing the decision on the territory covered by their function.

The state enforcement officer is obliged to take enforcement actions on implementing the decision within 6 months of the resolution on enforcement and in case of non-property decision – within 2 months. Duration of the enforcement procedure is calculated from the date of attachment of the last enforcement document to the title.

14.4. The recognition of foreign courts decisions in Ukraine

The civil procedural legislation of Ukraine defines the procedure for foreign awards recognition and enforcement in Ukraine. A foreign court decision is recognized and enforced in Ukraine, if its recognition and enforcement are foreseen with an international treaty or on the basis of the principle of reciprocity. If the recognition and enforcement of a foreign decision depends on the principle of reciprocity, it is considered to exist, if not proven otherwise.

The decision of a foreign court may be brought to execution in Ukraine within three years from the date of its entry into force, with some exceptions. Issue of permission for compulsory execution of a foreign court decision is reviewed by the court at the debtor's residence or location. If the debtor has no domicile or residence on the territory of Ukraine or his/her residence or stay is unknown, issue of permission for compulsory execution of a foreign court decision is reviewed by the court at the location of the debtor's property.

If international treaties, ratified by the Parliament of Ukraine, do not list the documents, which must accompany the claim, or if such a treaty is not available, the following documents should accompany the claim:

- a duly certified copy of the foreign court decision, the compulsory execution of which is applied for;
- the official document testifying to the fact that the foreign court decision has come into force;
- the document, which certifies that the party against whom the foreign decision was taken and who was not involved in the trial, was properly notified of the time and place of the hearing;

- the document defining in which part or from what period the foreign court decision is to be executed;
- the document certifying the authority of the representative;
- translation of the listed documents into the Ukrainian language or the language provided by the international treaties of Ukraine, certified according to the legislation.

Having examined the documents submitted and having heard the explanations of the parties, the court decides to grant the permission for compulsory execution of the foreign court decision. Pursuant to the decision of the foreign court and the decision on granting the permission for its enforcement, the court issues an enforcement title.

Contacts

DLF attorneys-at-law

Torus Business Centre
17 d Hlybochytska Street
04050 Kyiv, Ukraine

+380 44 384 24 54

info@DLF.ua

www.DLF.ua

www.DLF.ua