

Ukraine: Investment Guide





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Ukraine: Investment Guide

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Introduction

As an experienced Ukrainian law firm, we often receive various enquiries from foreign clients, willing to invest and set up a business in Ukraine or seeking to establish business relations with Ukrainian companies. Over the past few years, the number of such enquiries has significantly risen due to the gradual recovery of the Ukrainian economy, favourable changes in the Ukrainian legislation and conclusion of important international trade agreements.

Nevertheless, most enquiries still concern the general issues relating to setting up a business presence in Ukraine, employment, foreign investment protection, customs regulations, taxes, dispute resolution, real estate purchase, etc.

Therefore, we have decided to publish the second, revised edition of this guide for foreign investors, covering general regulations in the most commonly referred areas of the Ukrainian law. The first edition was issued in 2017. It was found useful by the readers and assisted investors in making reasonable choices when planning their business activities in Ukraine. The second edition of the guide focuses on the most crucial aspects of regulations, so it is not overwhelming in legal details, making it a very flexible read for a person having no legal background. Thus, it will be helpful to both legal professionals and business people, often dealing with the Ukrainian market and statutory provisions.

Our intention is for this guide to be useful to you and your business and to help in understanding specifics of the Ukrainian laws when setting up and managing your business in Ukraine. For further clarification of any information or facts contained in this guide, please, do not hesitate to contact the lawyers of DLF attorneys-at-law who will be happy to give you specific and tailored advice.

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Ukraine. General information

Ukraine is the second largest country in Europe. Around 70% of Ukraine is agricultural land, accounting for approximately 15% of the total area of Europe. The Ukrainian agriculture is undoubtedly the most attractive sector for investors: it generates about 20% of the national gross domestic product. The food and IT industries also have enormous potential. Nowadays, the IT market is considered to be the most promising in Ukraine.

Every year, Ukraine is becoming more and more attractive for investors, as the country represents a relatively large market with more than 42 million consumers with a business climate, evolving annually as a result of reforms.

1.1. Area and location

The Ukrainian area totals 603,628 sq. km. Ukraine is at the heart of the Eastern Europe with its territory washed by the Black and Azov Seas in the south. Ukraine is bordered by Poland, Slovakia, Hungary, and Romania in the west, by Moldova in the southwest, and by the Russian Federation and Belarus in the east and in the north.

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.

Ukraine is a comparatively large market with over 42 million consumers.

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, the Dnipro, the Dnister and the Southern Buh.

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.

Ukraine is among leaders in terms of the amount of minerals.

1.3. Land use

As of 2018, 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, as of 2018 Ukraine's population was approximately 42 million people. Kyiv, Kharkiv, Dnipro and Odessa are the 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.

Today Ukraine's literacy rate amounts to 99.7%.

1.8. Employment

The number of gainfully employed population in Ukraine is about 16.7 million people. The employment rate among the working-age population totals 67.3%. The highest employment rate among the regions, amounting to 61.3%, is in Kyiv. This is primarily due to the administrative functions performed by this region.

As of 2018, the unemployment rate in Ukraine was 9%, but depending on the region, it may vary significantly.



Markteintritt in der Ukraine

This brochure in German is a comprehensive publication addressing the information needs of small and medium-sized enterprises. The publication provides important basic knowledge for initial steps when starting a business in Ukraine.

[View Markteintritt in der Ukraine](#)

1.9. Living standards

Despite the fact that the Ukrainian population income constantly grows, its size is quite low, compared to the European standards. The official average monthly salary in January 2019 amounted to approximately UAH 9223 (approx. USD 340). A part of the economy is in the shade. Therefore, the official statistics sometimes fails to accurately reflect the real level of income.

1.10. Political system

Ukraine is a parliamentary-presidential republic, with the Constitution being its fundamental law. The Ukrainian Parliament is the highest body of the legislative state power, and the President of Ukraine is the Head of the State. The executive power is represented by the Cabinet of Ministers of Ukraine. The Prime Minister is appointed by the President with the consent of the Verkhovna Rada.

The employment rate among the working-age population totals 67.3%.

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 of about USD 3,000.

The gross domestic product by sector is distributed as follows: 13.3% accounts for agriculture, 24.4% 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, woodworking 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.

Ukraine pays much attention to the space exploration and aircraft development. For example, the Ukrainian Antonov An-225, Mriya, is the largest aircraft in the world. Each year Ukraine enters into approximately 400 contracts to provide launch services by Ukrainian launch vehicles. Besides, Ukraine produces satellites and assembly joints for all the spaceships 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 2018 were distributed at the following ratio:

Export (USD 43.2 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, Turkey, China, Egypt and Russia.

Import (USD 54.95 billion). Import column contains basic goods imported to Ukraine that are energy (primarily natural gas), machinery and equipment, chemicals.

Key import partners: Germany, China, Belarus, Poland, Russia. 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 5.2 million tons and a passenger fleet of 9,900 jobs. In Ukraine, there are 18 ports, including 175 trans-shipping complexes and 8 shipyards.

Ukraine is an industrial and agricultural country with the GDP per capita of about USD 3,000.

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 Ukrrihflot. It consists of Dnipro, Zaporizhia, Mykolaiv, Kherson and Chernihiv river ports with a total capacity of cargo handling about 24 million tons.

Ukraine holds a strong position in agriculture.

Ukraine has a wide network of airlines and airports. Some of them have the international status. Ukraine is connected by air with the countries of Europe, America, Asia and Africa. Annually, more than 20.5 million passengers use air transportation. 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.

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

Ukrainian Antonov An-225, Mriya, is the largest aircraft in the world.

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 and 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.



Arabic-English issue of Ukraine: Investment Guide

The Arabic-English 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, immigration issues, real estate, taxes, etc.

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



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

In case of the foreign investors' rights violation, the latter have an opportunity to use the mechanisms of their investments protection provided for in international agreements on promotion and protection of investments signed with many countries. Since Ukraine ratified the Convention on the Investment Disputes Settlement between States and Nationals of Other States in 2000, the Convention members have an opportunity to contact the International Centre for the Investment Disputes Settlement 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,

Foreign investment in Ukraine is quite reliably protected at the legislative level.

France, Switzerland, the Netherlands, Denmark, Poland, Turkey, China, Japan, the UAE, Saudi Arabia, Egypt and others.

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.

State bodies may not seize foreign investments.

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.

Parties may agree to settle disputes in international arbitration institutions.

2.2.3. Compensation and reimbursement of losses incurred by foreign investors

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 are 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 such contracts in international arbitration institutions. Thus, a foreign investor will

S structuring contractual and corporate relationships is essential at the investment stage planning.

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.



General customs regulations and trade finance

The Ukrainian customs regulation gradually transforms into a body of law, complying with and absorbing 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, resulting in establishment of the EU-Ukraine Free Trade Zone and the necessity of harmonizing 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. Customs officers and border guards are the ones who interact with applicants at customs on a regular basis. They should provisionally examine the goods and then decide within two hours whether to admit the goods into the customs territory of Ukraine or to invite experts for further examination. If experts are involved, they must arrive without delay and, within two hours, make one of the following decisions: to admit or refuse the admittance of goods into the customs territory of Ukraine or to order an inspection/sampling/additional processing. The information about all the decisions made in relation to the goods must be recorded in the 'single window' information system.

Such a '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.

A 'single window' electronic system unifies all controlling authorities.

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 registration delay.

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.



Any goods imported to Ukraine shall undergo registration with the customs authorities.

3.3. Customs regimes

A customs regime consists of the interrelated legal rules, determining 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, including:

- 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 VAT rate is 20%. For pharmaceutical products, the VAT rate is 7%.

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 imported goods value 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%.

3.5. Methods of payment for goods

In Ukraine, it is possible to use various methods of payment for transactions on goods and services sale and purchase 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 goods shipment 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 365 days from the goods customs clearance date.

Failure to comply with the abovementioned requirements results in the penalty imposition 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 on the date of indebtedness occurrence (the amount of penalty shall not exceed the sum of non-delivered goods).

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, often used in the international trade.

However, it is worth mentioning that any provisions, contradicting the mandatory requirements 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 the grounds specified in the Uniform Customs and Practice for Documentary Credits 600 and International Standby Practices 98 as well as 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.

The most common way of monetary settlements is prepayment.

3.8. Documentary collection

There is 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 to be taken into consideration when doing business with foreign counterparties.

Ukrainian exporters must receive payment within 365 days from the goods customs clearance date.

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.

The most common legal type of a legal entity for doing business is LLC.

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, 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 takes about one week.

A limited liability company being registered, such a company shall comply with certain formal requirements: the limited liability company founders shall develop a charter (the main statutory document of a company), whereby they specify the company name, information on the company management bodies, their competence, the procedure for adopting resolutions; the procedure for joining and withdrawing from the company. The founders shall appoint the director and determine the person in charge of the state registration with the state authorities in the minutes on the company establishment.

The founders' presence while the charter and protocols are being signed as well as at the registration procedure itself is not required. Signing statutory documents, registering the

There are no requirements for the LLC minimum authorized capital amount.

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 shareholders, 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. The maximum number of members of a limited liability company is not limited.

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.

The maximum number of LLC members is not limited.

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 director and

the supervisory board (if any). 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 company director in charge of management over the company's operational activities (unless otherwise provided by the charter).

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 supervisory board may be established to monitor the director's activities in a limited liability company. In particular, the supervisory board competence may include electing the sole executive body or members of the company collegial executive body (any, all or some of them), suspending and terminating their powers, establishing remuneration to the company executive body members.

The minimum amount of JSC authorized capital equals to approximately USD 193,000.

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.



DLF Legal Alert New Law on LLC in Ukraine

This legal alert looks into the Law on Limited Liability Companies, adopted in 2018, and its implications. Among others, the law stipulates important changes to the corporate governance, provides for the possibility to conclude shareholders' agreements between LLC shareholders, introduces the significant transaction term, etc.

[View DLF Legal Alert New Law on LLC in Ukraine](#)

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 193,000), 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 Economic Development and Trade 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.



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 debtor's solvency through the negotiation process is the Law of Ukraine On Financial Restructuring. This Law is a temporary tool to overcome financial problems caused by the crisis; it expires on 19 October 2019.

5.2. Parties to the bankruptcy

None but a legal entity or a 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.

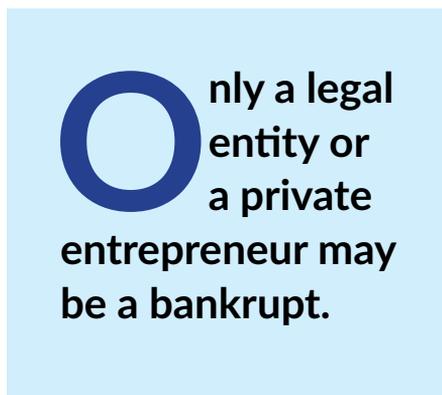
Only citizens of Ukraine may be appointed as an insolvency officer. In order to become an insolvency officer, a citizen of Ukraine must have completed higher legal or economic education, have had work experience in the field for at least three years or at least one year at the management level after graduation, have undergone training and probation for a period of six months, have a command of the state language and have passed a qualification exam.

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 (having liabilities in connection with the individual's business activity) failing to perform the 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 application date (UAH 1,251,900, approx. USD 46,600 as of 1 March 2019).

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, being 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

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

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.

After the proceedings initiation the debtor's property disposition procedure and moratorium on creditors' claims are introduced.

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 bailout or settlement agreement was determined, and the monetary claims of creditors can only be satisfied 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 an 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.

The amount of outstanding obligations shall be not less than approx. USD 46,600.

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 Market. 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 business person 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.

Liquidation of the debtor by the owner. In this case, all statutory liquidation procedures shall be observed in the general manner; the debtor's director may be appointed as a liquidator.

5.4. Protection of parties and their rights

The bodies protecting the parties to the bankruptcy proceedings include:

1. The court: shall supervise the compliance with the law throughout the entire bankruptcy proceedings, approve reports on the results of the insolvency officer's actions, appoint an insolvency officer, ensure additional protection of the debtor's property, resolve disputes involving the debtor's property and complaints about the debtor's or insolvency officer's actions;
2. The state body for bankruptcy (currently the Ministry of Justice of Ukraine): shall organize training of insolvency officers and issue respective certificates, form the Unified Register of Insolvency Officers, maintain the Unified Register of Debtors, establish the procedure for analysis of the debtor's financial condition, establish the standard forms of the reorganization plan and settlement agreement, prepare and approve the standard documents on the conduct of bankruptcy proceedings, as well as control the activities of insolvency officers and review complaints about their actions;
3. Law enforcement agencies: shall, within the limits of their competence, control the legality of actions taken by parties to bankruptcy proceedings and by other involved parties and, if necessary, impose liability upon them.

5.5. Anticipated amendments in legislation

On 18 October 2018, the Verkhovna Rada of Ukraine adopted the Code of Bankruptcy Proceedings.

The Code is still awaiting the signature of the President and shall be published, having been signed.

The Code is aimed at reforming and improving the bankruptcy system in Ukraine and introduces a number of significant changes to the current procedures.

The most important changes to the bankruptcy procedures include:

1. The Code provides for a mandatory advance payment to be made by the applicant to the deposit account of the commercial court as a remuneration of the insolvency officer;
2. The Code establishes the bankruptcy procedure for individuals: a restructuring procedure or a debt repayment procedure. At the same time, only the debtor himself/herself has the right to file a bankruptcy with the court;
3. The list of court decisions that can be appealed in a court of cassation has been greatly reduced. This will allow to reduce the bankruptcy proceedings time significantly;
4. The moratorium on the satisfaction of secured creditors' claims from the pledged property shall expire 170 days from the day of introducing the procedure for the property disposal, unless the court decides to proceed to the next procedure. This will allow secured creditors to satisfy their claims in case of an excessive delay of the proceedings;
5. There is no minimum claim for legal entities to open bankruptcy proceedings. For individuals, minimum claim amount shall be 30 minimum wages (UAH 125,190, approx. USD 4,660 as of 1 March 2019);
6. The Code specifies the liability of the debtor's management for failure to take measures to prevent bankruptcy;
7. The Code has significantly expanded the procedure for invalidating the debtor's transactions. Transactions occurring within 3 years prior to bankruptcy may now be recognized invalid;
8. The debtor's property may be sold through the electronic bidding system. This will allow to unify the property sale and to avoid possible violations during the auction. Moreover, this will facilitate the access of interested buyers, potentially increasing the property sale price;
9. Secured creditors are entitled to independently purchase the pledged property, provided that such property has not been sold at a re-auction.

In general, the new Code is aimed at streamlining the bankruptcy proceedings and ensuring additional protection of creditors. Thus, new procedures should, in the long run, ensure the maximum repayment of creditors' claims.

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: corporate income tax, value added tax, personal income tax, single social contribution, excise tax, 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, the flat rate of 18% is established for all 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, 10% rate for lotteries and gambling activities using gaming machines, 0%, 4% and 12% for non-resident insurers based on 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, which make payments to non-residents from the income derived from Ukrainian sources of origin, 20% for residents, which make payments to non-residents for advertising production or its distribution.

6.1.1. Taxpayers and tax base

Corporate Income Tax (CIT) is paid by the resident companies, which receive income in Ukraine as well as abroad. CIT is also paid by the non-resident companies, which receive income from Ukrainian sources.

The CIT base is the income derived from Ukrainian sources of origin and abroad. The amount of tax is determined by adjustment of financial result (profit or loss) before tax, as

The most important taxes are: corporate income tax, value added tax, personal income tax, single social contribution and rent payments.

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, the proceeds of engineering, leasing and rent, profits from sale of real estate, securities and corporate rights, the proceeds of joint activities and entertainment activities, etc.

The flat rate of 18% is established for all CIT taxpayers.

In relation to the income from Ukrainian sources of origin, the following rates apply:

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 apply 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, the control has been established over related-party transactions. In addition, such control is exercised over transactions with non-residents in low-tax jurisdictions.

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

- in general, the CIT rate in such countries is by 5 or more percentage points lower than in Ukraine, or such countries provide preferential tax treatment to business entities, or particularities of the tax base calculation in such countries actually allow business entities not to pay a corporate income tax or pay it at the rate that 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 upon request of the central executive body implementing the state tax and customs policy.

The transfer pricing control is exercised over transactions, where:

- the taxpayer's revenue exceeds UAH 150 million for the tax year;
- the annual volume of the transactions with one counterparty (related person) exceeds UAH 10 million.

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 non-resident exceeds the equity ratio by more than 3.5 times.

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.

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

VAT is applied to transactions on supply of goods and services on the custom 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;

The VAT rate is 20%. For pharmaceutical products, the VAT rate is 7%.

- import and export of goods in the amount less than EUR 150; from 1 July 2019, the customs value will be reduced to EUR 100;
- 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 has introduced special taxation terms for such businesses. The taxpayers, both private entrepreneurs and legal entities, may choose to apply for a simplified taxation system in one of the following categories:

The IV group is designed for agriculture producers. The tax rate depends on the category of

	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 11,170)	UAH 1.5 million (approx. USD 55,860)	UAH 5 million (approx. USD 186,220)
Tax rate	Up to 10% of minimal wage	Up to 20% of minimal wage	3% of income (VAT excluded); 5% of income (VAT included).

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 accession. In this case, it is possible to become a single tax payer in the year of creation, if the share of agricultural commodity production for the previous tax year by all commodity producers involved in their creation 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 established agricultural commodity producers (legal entities) may be single tax payers

from the next year, if share of agricultural commodity production obtained for the previous tax year equals to or exceeds 75% and newly created agricultural commodity producers (individuals) from the year of state registration.

6.4. Personal income tax

The personal income tax (PIT) is 18%, while PIT rate for dividend payments is 5%. Dividends on shares and corporate rights accrued by non-residents and business entities, being not subject to corporate income tax, are taxed at the rate of 9%.

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 NBU;
- 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 non-bank financial institution;
- the income of 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 charter capital of a legal entity;
- the charity aid amounts.

The taxpayer is obliged to register as a VAT payer if the aggregate value of supplied goods or services exceeds UAH 1 million for the last 12 months.

6.5. Single social contribution

The single social contribution is paid by the 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 15 minimal wages.

6.6. Military duty

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

The military duty is paid by residents and non-residents. The military duty is paid from wages, 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).

The single social contribution rate is established at 22%.

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 wage per 1 sq. m. of residential and non-residential property.

The additional tax rate in the amount of UAH 25,000 (approx. USD 930) is applied for apartments of more than 300 square meters and houses of more than 500 square meters.

Ukraine has introduced special taxation terms for small and medium businesses.

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 amount of 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 land plots of general use. The real estate tax rate for agricultural land plots shall be not lower than 0.3% and not higher than 1% of the normative

evaluation. The rate for forest lands shall not exceed 0.1% of the normative evaluation. For land plots, being 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 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 wages.

The rate of transport tax is established in the amount of UAH 25,000 (approx. USD 930) per year per each vehicle.



Taxes in Ukraine 2019

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 2019](#)

6.8. Duties

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

- customs duty, which includes:
 - import duty;
 - export duty;
 - seasonal duty;
 - specific kinds of duty: special, anti-dumping, countervailing;
 - tourist duty;
 - 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, regulating relations between the employee and the enterprise owner is a labour agreement. Under the terms of such an agreement, the employee shall undertake to perform work determined in the agreement, and the enterprise owner shall pay salary to the employee and provide working conditions required for work performance.

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 employees recruitment.

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 subsequent work nature or of its performance conditions;
- entered into for the period of certain work performance.

The labour agreement may be entered into in the verbal or written form.

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 work nature or its performance conditions, or the employee's interests.

The fixed-term labour agreement may be entered into only in certain cases.

7.2. Labour contract

A special form of the labour agreement is a labour contract. The labour contract provisions may envisage its validity, rights, duties and responsibilities of the parties (including financial ones), employees' benefits and conditions, the contract termination. 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 the labour contract conclusion 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 representative office head 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, duration, termination provisions, etc.

7.3. Collective agreement

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

A collective agreement shall specify the parties' mutual liabilities, in particular changes in production and labour organization, work measurement and labour remuneration, 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, labour conditions and protection, ensuring housing, cultural, medical services, organization of employees' health improvement and rest, etc.

A collective agreement may provide for other provisions as well, however, one should keep in mind that provisions of a collective agreement that deteriorate the employees' position 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 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 has been 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 has been 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, has been established, the employer shall be entitled to terminate the labour agreement.

7.5. Working hours

Employees' normal working hours 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. The working week duration 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. Labour remuneration

The remuneration that the employer shall pay the employee for the performed work is determined by the labour agreement parties. 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 employees, having entered into a labour agreement, such a 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 later 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 under 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, involving several grounds, such as the labour agreement or work permit expiration or the labour agreement early termination on the grounds provided by law at the initiative of the employee or the employer.

The procedure of the labour agreement termination on the employee's initiative depends on whether such an agreement is entered into for

The probation period may not exceed three months.

an indefinite or the definite (termed) period of time. The employee shall be entitled to terminate the 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.

A foreign employee shall obtain a work permit in Ukraine.

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 work performance, 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, preventing 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 enterprise director (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, having 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 the company registration in Ukraine, a citizen of Ukraine may be appointed as its director, and only a work permit having been obtained, 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 (for special categories of foreigners and foreign seconded employees a work permit is issued for up to three years). A work permit may be extended on the employer's initiative, who applies to the relevant employment centre with an application statement and two photographs within at least 20 days before the expiration of the permit.

A work permit fee amounts to 5 minimum salaries. As of 2019, this amount equals UAH 20,865 (approx. USD 740). 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 10 working days upon its signing.

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, identifying the copyright object and (or) the author's related rights and certifying 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 of the total number of employees; a copy of the agreement (the contract), concluded between domestic and foreign enterprises, shall be submitted, providing employment of foreigners sent by a foreign enterprise to Ukraine for performing certain work;
- they belong to the category of "intra-company assignees" (individuals working at an enterprise in a foreign country and being temporarily assigned for an economic activity to the territory of Ukraine); a decision of a foreign enterprise on the foreigner's transfer 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.

8

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 three years from the dates of granting them a status of a person, who has suffered from trafficking in human beings;
- foreign nationals, having served in the Armed Forces of Ukraine for three years or more.

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;
- foreign Ukrainians, spouses of foreign Ukrainians, their children in the event of their joint entry to and stay on the territory of Ukraine.

Foreign nationals shall obtain permission for immigration provided for certain categories of immigrants.

This list of grounds for immigration permit to Ukraine is exhaustive. Other grounds, such as real estate in the country, do not give the right to immigrate to Ukraine.

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 the applicant's place of residence in Ukraine and abroad;
- information on the applicant's family composition;
- a certificate of chronic diseases absence;
- a certificate of good conduct;
- a receipt of payment of state duties or consular fees.

All documents issued by foreign state authorities shall be translated into Ukrainian. Moreover, 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 10 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 permanent residence permit validity is limited to 10 years in Ukraine.

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 and submit the following documents:

- the original passport of a foreign national with visa type D;
- a notarized Ukrainian translation of the passport page with personal data;
- a copy of the decision on issuing the immigration permit;
- a receipt of the administrative fee payment.

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 15 days following receipt of the application. A relevant

All documents issued by foreign state authorities shall be translated into Ukrainian and either legalized or apostilled.

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;
- a foreign national is the founder (shareholder) or the ultimate beneficial owner (controller) of a legal entity registered in Ukraine and interest held by such a foreign national or a stateless person or by a foreign legal entity as the ultimate beneficial owner of which the foreign national or stateless person acts is at least EUR 100,000 in the authorized capital of the Ukrainian legal entity;
- education and training.

Therefore, in addition to the main documents, i.e. a passport or another identity document with type D visa (a long-term visa obtained at the embassy/consulate of Ukraine in the country of the foreign national citizenship), a foreign national shall submit to the State Migration Service of Ukraine the following documents:

- a notarized Ukrainian translation of the passport page with personal data;
- a valid medical insurance policy;
- a receipt of the administrative fee payment;
- 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 a written commitment of the employer to notify the State Migration Service and the State Employment Service of an early termination of the employment agreement (contract);
 - b) participation in the international technical assistance projects implementation – a copy of the international technical assistance project registration card issued by

the Ministry of Economic Development and Trade of Ukraine and a letter from the public authority, a company or an organization acting as the international technical assistance project recipient;

- 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 (non-governmental) organizations of foreign countries in Ukraine and a letter from the respective branch, representative office or another structural unit of the foreign non-governmental organization;
- 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 Ministry of Information Policy of Ukraine regarding the registration of a temporary residence permit for foreigners or stateless persons in Ukraine and a letter from the foreign mass media;
- g) education – a document confirming actual studies in Ukraine and commitment of the institution to report on expulsion from this institution;
- h) a foreign national who is a shareholder, founder or beneficial owner (controller) of a legal entity shall file a copy of the company charter, a written commitment of the legal entity to notify the State Migration Service if the foreign national loses the status of the founder, shareholder or beneficial owner (controller) of the respective legal entity and other documents depending on the foreign investment type; 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.



Getting a
permit for
permanent
residence provides
significant benefits
to foreigners.

Thus, following the receipt of the documents by the State Migration Service of Ukraine, a residence permit shall be issued within 15 calendar days. In practice, a foreign national shall pick up the document in person after 2 weeks. 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 be easily 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 or interconnected structures 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.



R real estate in
Ukraine may
be easily pur-
chased and sold.

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.

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.

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 Land Code of Ukraine prohibits the sale of agricultural land to foreign nationals.

- 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

The state-owned and municipal property transfer to private hands is an important mechanism for increasing the efficiency of enterprises, introducing effective management in state-owned companies and creating a competitive environment. The state-owned property privatization contributes to creating the economy non-state sector.

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 state and municipal property facilities will run for the next few years, with 26 of them being large companies.

10.1. Objects of privatization

The objects of state property being subject to privatization cover all state-owned and municipal objects except for those whose privatization is expressly prohibited by the Ukrainian law.

In order to employ privatization methods rationally and efficiently, privatization objects are classified into large-scale and small-scale privatization objects.

Large-scale privatization objects include state-owned and municipal objects (single property units of state-owned companies and shares (interest) in undertakings where more than 50% of the shares (interest) are state-owned) whose assets, according to the previous year's financial statements, exceed UAH 250 million (approx. USD 9,307,520).

Small-scale privatization objects include:

- single property complexes of state-owned and municipal companies, their structural units, including leased single property complexes of state-owned and municipal companies, except for single property complexes of state-owned and municipal companies classified as large-scale privatization objects;
- separate property comprising movable and immovable property of state-owned

or municipal enterprises (including buildings, structures, non-residential premises); property remaining after the liquidation of state-owned or municipal enterprises, declared bankrupt; property of enterprises liquidated by the decision of the body authorized to manage state-owned or municipal property; property of state-owned or municipal enterprises that were not sold as single property complexes; state-owned or municipal property not included in the authorized capital of economic entities and registered in the account of economic entities established as a result of privatization or corporatization;

- construction in progress (buildings, structures, transmission devices out of operation), preserved objects;
- social and cultural facilities, including education, healthcare, culture, physical education and sports facilities, tourism, arts and press, television, radio broadcasting, publishing facilities; sanatorium and resort facilities, rest homes and holiday camps, preventive health centres; other facilities intended to meet the social and cultural needs of people irrespective of the property's value; social and cultural facilities, not included in the authorized capital of economic entities;
- blocks of stocks of joint-stock company, established in the process of privatization or corporatization, stocks (shares) owned by the state in the authorized capital of economic entities, other economic organizations and enterprises based on the association of property of various forms of ownership and located in Ukraine or abroad, except for blocks of stocks of joint-stock companies classified as large-scale privatization objects.

The privatization legislation identifies the list of persons, eligible to be purchasers of state and municipal property facilities.

10.2. Purchasers

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

However, it should be noted that the privatization legislation identifies the list of persons, ineligible to be purchasers of state and municipal property facilities. These include:

- public authorities;
- state enterprises (economic associations, holding companies, joint-stock companies, their subsidiaries and branches) owned by the state of Ukraine;
- employees of privatization state agencies;
- buyers registered in offshore zones with an opaque structure of ownership (whose beneficiary owners are not 100% disclosed), as well as buyers from the aggressor state;

- legal entities, beneficiary holders of 10% or more of the shares of which are residents of the state recognized by the Verkhovna Rada of Ukraine as the aggressor state. The above provision does not apply to legal entities whose stocks are traded on foreign stock exchanges, except for legal entities being the aggressor state residents;
- individuals – citizens and/or residents of the state recognized by the Verkhovna Rada of Ukraine as the aggressor state;
- legal entities registered under the laws of the states included in the FATF list of non-cooperative countries as well as legal entities where such persons directly or indirectly hold more than 50% of the authorized capital;
- legal entities, the information on whose beneficiary owners has not been disclosed;
- individuals and legal entities in respect of which special economic and other restrictive sanctions have been imposed, as well as their affiliated persons;
- persons who were a party to the sale of the privatization object in Ukraine and with whom the contract on the privatization object sale was terminated due to a breach by such persons, as well as their affiliated persons;
- counsellors involved in preparing the object for privatization.

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

The privatization procedure begins with the formation and approval of the privatization objects lists and their publication. Lists of large-scale privatization objects shall be approved by the Cabinet of Ministers of Ukraine upon submission of the State Property Fund of Ukraine. Lists of small-scale privatization objects, however, shall be approved by the State Property Fund of Ukraine itself. Lists of municipal property objects shall be approved by local councils.

Upon the privatization list approval, the relevant public authority shall make a decision on privatization in the form of an order. Information about such decisions shall be published in official printed media and on the website of the State Property Fund of Ukraine. Information about municipal property privatization decisions shall be published on the websites of local councils and in the electronic bidding system.

State-owned or municipal property privatization shall be carried out by way of selling objects at an auction:

Privatization of state-owned or municipal property that is leasehold shall be carried out through sale at an auction or through a buy-out.

- with conditions;
- without conditions;
- using the method of gradual lowering of the starting price and subsequent submission of price bids;
- using the method of the starting price lowering;
- using the method of studying price bids;
- privatization objects buy-out.

At the same time, the procedures for acquiring small-scale and large-scale privatization objects are slightly different.

Small-scale privatization objects may be sold exclusively through electronic bidding. The procedure for conducting electronic auctions for the small-scale privatization objects sale is approved by the Cabinet of Ministers of Ukraine.

Large-scale privatization objects may be privatized through a buy-out. A special condition for the large-scale privatization objects sale is the invitation of advisers on a competitive basis. Counsellors' duties shall, in particular, include:

- information gathering and analysing economic, technical and financial performance of the company;
- bringing the main indicators of the company's accounting records in line with accounting standards;
- ensuring the audit conduct;
- preparing a financial model and determining investment attractiveness of the company;
- setting the starting price;
- preparing documents on the company in accordance with the statutory requirements on the economic competition protection and on the environmental audits;
- searching for a potential investor.

The Law does not clearly state who the counsellor can be, with the only requirement being that the buyer as well as the state citizens or residents recognized by the Verkhovna Rada of Ukraine as the aggressor state citizens or residents may not be counsellors.

10.4. Privatization of leased property

Privatization of state-owned or municipal property that is leasehold shall be carried out through sale at an auction or through a buy-out.

The tenant shall get the right to buy out the leasehold property at a price set based on the results of an independent appraisal, with all the following conditions having been met:

- the tenant has made improvements to the leased property that cannot be removed from the relevant property without causing damage to it (irremovable

improvements); the value of such improvements should be at least 25% of the property market value determined by an appraiser for the purpose of leasing property;

- the tenant has received the landlord's written consent for irremovable improvements, entitling him/her to privatize the property through a buy-out;
- irremovable improvements have been made within a three-year period from the date of determining the property market value for the purpose of concluding a lease agreement or for the purpose of extending the lease agreement;
- the implementation and composition of the irremovable improvements, including their irremovable nature, are confirmed by results of a construction examination, and the cost of the irremovable improvements confirmed by the construction examination results is determined by an appraiser;
- the tenant duly performs the lease agreement, there is no arrears of rent in respect of the tenancy;
- the lease agreement is valid at the moment of privatization.

For privatization of a state or municipal property facility through its buying-out, sale at an auction, the relevant SPA shall be concluded.

10.5. Information on privatization

The State Property Fund of Ukraine provides privatization transparency and announces notifications on the privatization process and results. 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 has been made as well as on their sale conditions; the deadline for submitting an application for an auction; results of implementation of privatization plans, which

must be published in the public authorities official printed media.

The results of the privatization of a facility (the winner of the bid, an auction, change of privatization procedure; price of the purchased privatization object; information about purchasers, distribution of privatized shares between new holders) 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 10 business days following the sale results approval.

10.6. Requirements for economic competition protection

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 buyer is required to obtain a permit from the Antimonopoly Committee of Ukraine for the direct or indirect acquisition of stock (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 the form of a single property complex or a structural unit of the business entity in question.

10.7. Registration of privatization deals

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

The purchase and sale agreement shall include obligations of the parties identified by the terms of the auction or buying-out regarding:

- keeping main types of the activity;
- technical re-equipment, production modernization (investment amount) and energy upgrade of the facility;
- performance of set mobilization tasks;
- repayment of salary debts and budget debts, the company's overdue debts;
- provision of social protection to employees in accordance with the labour law requirements;
- requirements and additional restrictions of the environmental legislation on the facility use;
- payment for services of legal entities and individuals involved in the privatization of state-owned objects, in particular: environmental audits; advisory services; property appraisal.

The sale and purchase agreement of a large-scale privatization object may include the seller's obligation to disclose information about the condition of the privatization object or entity whose shares are subject to large-scale privatization and existing encumbrances of the respective privatization object or the entity assets, as well as liability for object or the entity assets, as well as liability for such information completeness and accuracy.

The purchase and sale agreement must not be notarized unless otherwise provided by the law.

The facility ownership is passed to the purchaser following payment of sale price in full.

By agreement of the parties, 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.

The exclusive conditions of termination of the privatization object sale and purchase agreement are as follows:

- 60 days' delay of payment for the privatization object from the date of the sale and purchase agreement conclusion in violation of its terms;
- failure to perform the terms of sale and buyer's obligations specified in the sale and purchase agreement within the time period established by such an agreement;
- false information submission to the privatization body;
- payment for the privatization object of funds obtained in violation of the statutory requirements in the area of prevention and counteraction to the legalization (laundering) of the proceeds from crime, terrorism financing and financing of the mass destruction weapons proliferation;
- non-performance of the buyer's obligation to prevent the reduction of the number of employees on the initiative of the new owner or its authorized body;
- sale or alienation in any manner of the privatized object by the buyer to individuals who are citizens or residents of the state recognized by the Verkhovna Rada of Ukraine as the aggressor state.



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, extending down to the depths 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 qualifies mineral resources as those of the first or second group. In particular, the distribution of mineral resources by the specified criteria is set in 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 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) authorised 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.

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 the subsurface site geological survey and mineral reserves estimation on the basis of a special permit for use of mineral resources and at the investor's own expense and applied for a special permit for mining at the respective site no later than three years after the reserves approval;
- 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 auction results. 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

A licensing regime requires obtaining a special permit for mineral resources use.

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 permit 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.

An investor should get a mining allotment to obtain the right to mining.

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 entity 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.

The regime of production sharing agreement provides execution of the respective agreement between the investor and the Cabinet of Ministers of Ukraine.

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.

The investor has to register land use (as a property or on a leasehold basis) to be able to use mineral resources (including mining).

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, land plots are allocated for rent in Ukraine on a competitive basis at an auction. However, if an 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 ob-

tained, 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:

Rent payment = Output x Price x Rate x 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 – 16 and 31%;
- gas – from 6 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;

The copyright arises at the moment of the work creation.

- 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.

The work author is the primary subject of copyright.

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.

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.

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 shall be certified with a certificate, granting its holder the trademark legal protection. The scope of the trademark legal protection is defined by its image and by the goods and services listed in the certificate, unless otherwise provided by the 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.

12.2.4. Intellectual property rights to the objects created in connection with the 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 (contract) or job assignment 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 respective employment agreement (contract) or job assignment.

Features of exercising proprietary rights to the object created in connection with the performance of an employment agreement (contract) or job assignment 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:

The scope of the trademark legal protection is defined by its image and by the goods and services listed in the certificate.

- 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.

12.4. Proprietary intellectual property rights

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.

Personal non-property rights to the object created in connection with the employment agreement performance belong to the employee.

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.

12.5. 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.

Every person is entitled to apply to court to protect his/her intellectual property.

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 agreement 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.

12.6. 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 (accumulation), 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.

12.7. 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.



Trademark protection in Ukraine

In this brochure, general guidance on legal protection of trademark in Ukraine is provided, including 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*](#)



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, an advertising consumer and public authorities responsible for monitoring compliance with the advertising legislation requirements.

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 Constitution of Ukraine, advertisements, messages and other forms of audio and visual advertising products shall be performed in the state language, i.e. Ukrainian.

In most cases, advertising in Ukraine is provided as promotional materials in Ukrainian. If promotional materials contain foreign words which are not registered trademarks of the advertiser, it is necessary to translate or transliterate these foreign words in the same-sized font that should be easily visible to advertising consumers.

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.

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

Only the medicines and medical devices permitted by the Ministry of Health of Ukraine may be advertised.

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 the real estate unit under construction;
- to distribute advertising services of divination and fortune-telling.

A dvertisements, messages and other forms of audio and visual advertising products shall be performed in the state language, i.e. Ukrainian.

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),

Construction project advertising for the purpose of selling residential or non-residential premises is allowed only subject to the construction activities license (permit).

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.

Persons guilty of violating the advertising laws shall be subject to disciplinary, civil, administrative and criminal liability.

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 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.

13.9. Liability for advertising law violations

Persons guilty of violating the advertising laws shall be subject to disciplinary, civil, administrative and criminal liability.

In particular, the following persons shall be liable for advertising law violations:

- advertisers guilty of: ordering advertising of products the production and/or circulation of which are prohibited by law; providing an advertising producer with false information necessary for the advertising production; ordering the distribution of advertising prohibited by law; failing to comply with statutory requirements regarding the advertising content; violating the advertising distribution procedure if advertising is distributed by the advertiser;
- advertising producers guilty of violating third party rights when producing advertising;
- advertising distributors guilty of violating the statutory procedure for advertising distribution and placement.

Penalties imposed by the State Service of Ukraine for Food Safety and Consumer Protection:

In case of ordering advertising of products the production and/or circulation of which are prohibited by law; providing an advertising producer with false information necessary for the advertising production; ordering distribution of advertising prohibited by law; failing to comply with statutory requirements regarding the advertising content, advertisers may face a fine of five times the cost of such advertising distribution.

The AMCU may impose sanctions on advertisers for violating the laws on protection against unfair competition, in particular for producing and distributing unfair advertising.

In case of violating third party rights when producing advertising, advertising producers may be liable to a fine of five times the cost of such advertising production.

In case of violating the statutory procedure for advertising distribution and placement, advertising distributors may face a fine of five times the cost of such advertising distribution.

The Antimonopoly Committee of Ukraine (AMCU) may impose sanctions on advertisers for violating the laws on protection against un-

fair competition, in particular for producing and distributing unfair advertising.

Unfair advertising is defined as advertising that misleads or may mislead advertising consumers, may cause harm to people, the state or society as a result of providing inaccurate, false, ambiguous or exaggerated information or concealing some information as well as breaching the requirements regarding the time, place and method of distribution.

The AMCU may impose on an undertaking distributing unfair advertising a fine of up to five percent of the turnover (proceeds) of the undertaking from the sale of products (goods, works, services) for the last reporting year preceding the year in which the fine is imposed.

Article 28 of Law of Ukraine On Advertising provides for public refutation of abusive and unlawful comparative advertising, which shall be performed voluntarily or in accordance with the court decision at the expense of the guilty person in the same manner in which the advertisement was placed.

The guilty person bearing civil liability for advertising law violations shall compensate for the harm caused to the affected parties by unfair advertising. Pursuant to Article 27 of Law of Ukraine On Advertising, the article provisions shall not restrict the rights of advertising consumers who incurred damages as a result of unfair and unlawful comparative advertising to seek damages in accordance with the Ukrainian law.

All decisions in cases of advertising law violations may be appealed in court.

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. Besides resolution of disputes in courts, their resolution can be transferred to arbitration or mediation institutions, which do not belong to the judicial system of Ukraine.

14.1. General courts

The general courts system consists of local courts (trial courts), courts of appeal (courts of the second instance) and the Supreme Court of Ukraine (court of the third instance), which is the highest judicial body in the court system.

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:

- seizing property or assets that belong or should be transferred or paid to the defendant;

- forbidding the defendant to perform certain actions;
- establishing an obligation to take certain actions;
- forbidding other persons to perform any actions related to the dispute subject, or to make payments, or to transfer assets to the defendant, or to perform other obligations with respect to the defendant;
- stopping penalties on the basis of the enforcement document or any other document whereby the penalty is carried out in an undisputable order;
- suspending the property sale if a claim is made for the recognition of the title to this property or for its removal from the description and lifting the arrest;
- transferring an item being the dispute subject for storage to another person having no interest in the dispute resolution results;
- stopping the customs clearance of goods or items containing intellectual property objects;
- arresting a vessel in order to secure a maritime claim;
- other measures necessary to ensure the effective protection or restoration of the violated or contested rights and interests.

The general courts system consists of local courts, courts of appeal and the Supreme Court of Ukraine.

An injunction may be obtained both before bringing a claim and at any stage of the court trial where the failure to use an injunction can significantly impede or prevent the enforcement of a court decision or the effective protection or restoration of the violated or contested rights or interests of the plaintiff in respect of which he/she has applied or intends to apply to the court.

14.1.2. Case hearing in the trial court

The court shall start considering the case on merits not later than 60 days from the date of opening the proceedings, and in case of preparatory proceedings extension not later than the next day after such term expiration. The court shall try the case on merits within 30 days from the date when the court started considering the case on merits.

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 claim amount if the claim is subjected to monetary valuation; reasonable calculation of the amounts collected or disputed;
- the claim content: the method (methods) of protecting the rights or interests provided for by the law or an agreement or another method (methods) for the protection of rights and interests not contradicting the law (the plaintiff asks the court to determine the relevant method in the court decision); and in case of bringing an action against several defendants – claims to each of them;
- an outline of the circumstances substantiating the plaintiff's claims; an indication of evidence, confirming the specified circumstances; the action cause;
- information about measures on out-of-court dispute resolution;
- information on taking measures to secure evidence or claim prior to filing the statement of claim;
- a list of documents and other evidence attached to the statement of claim; indication of evidence which cannot be filed along with the statement of claim (if any); an indication as to the fact that the plaintiff or another person disposes of written or electronic evidence the copies of which are attached to the statement of claim;
- preliminary calculation of the legal costs incurred and expected to be incurred by the plaintiff in connection with the case trial;
- plaintiff's confirmation that he/she has not filed another claim (claims) against the same defendant (defendants) on the same subject and on the same grounds.

Claims, not having been considered by the trial court, are not accepted in the court of appeal.

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 initiation, 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 court has proceedings on the case between the same parties, on the same subject and on the same grounds;

- there is a decision of an arbitration tribunal or an international commercial arbitration made within its competence in Ukraine in a dispute between the same parties, on the same subject and on the same grounds;
- there is a decision of a court of a foreign state or an international commercial arbitration recognized in Ukraine in accordance with the procedure established by law in a dispute between the same parties, on the same subject and on the same grounds;
- 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 20 days.

14.1.3. Consideration of disputes on appeal

Within 20 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 to appeal consideration further has the right to take one of the following decisions:

- to leave the court decision unchanged and dismiss an appeal;
- to reverse the court decision as a whole or partly and to make a new decision in the relevant part or to change the decision;
- to declare the trial court decision invalid as a whole or partly and terminate the proceedings in the relevant part;
- to reverse the court decision as a whole or partly and to terminate the proceedings in

The arbitration agreement may be in the form of an arbitration clause in an agreement or in the form of a separate agreement.

the relevant part as a whole or partly or to leave the claim without consideration as a whole or partly;

- to reverse the court decision and to remand the case for a new trial in the trial court in accordance with the established jurisdiction;
- to reverse the decision preventing further proceedings and to remand the case for further review to the trial court.

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

The court of cassation resolving economic disputes shall be the Supreme Court of Ukraine.

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

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

A foreign court decision is recognized and enforced in Ukraine.

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

The court of cassation does not accept or consider claims that were not subject to consideration in the trial court. The change in the subject matter and grounds of the claim in the court of cassation shall not be allowed.

The court of cassation is entitled to:

- leave the court decision of the trial court or a resolution of the court of appeal unchanged and dismiss an appeal;
- reverse the court decision of the trial court and the court of appeal in full or partly and remand the case in full or partly for a new trial, in particular in accordance with the established jurisdiction or for further review;
- reverse the court decision in full or partly and make a new decision in the relevant part or change the decision without remanding the case for a new trial;
- reverse the decision of the court of appeal in full or partly and leave the decision of the trial court unchanged in the relevant part;

- reverse the decisions of the trial court and the court of appeal in full or partly and terminate the proceedings or leave the claim without consideration in the relevant part;
- declare the trial courts and the courts of appeal decisions invalid as a whole or partly and terminate the proceedings in the relevant part.

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 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.

Any inaccuracies in the agreement text providing for submitting the dispute to an arbitration tribunal or international commercial arbitration and (or) doubts as to its validity, validity and enforceability should be interpreted by the court in favour of its validity and enforceability.

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 arbitrators, 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 court decisions enforcement in Ukraine. In addition, Ukraine has an institute of private enforcement officers, involvement of which can expedite the awards enforcement procedure.

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 belong 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.

A foreign court decision may be brought to execution in Ukraine within three years from its entry into force date.

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.

15

Merger Control in Ukraine

Ukraine, like other European countries, developing a market economy on their territory, has incorporated antitrust regulations and legal mechanisms in its legislation to regulate and support competition, as well as rules to ensure fair competition. An integral part of the competition control is the control exercised by the Antimonopoly Committee of Ukraine over M&A transactions both in Ukraine and abroad, which may also affect Ukrainian domestic markets.

15.1. Concentrations

Pursuant to Article 22 of Law of Ukraine On the Protection of Economic Competition of 11 January 2001 (hereinafter referred to as the “Competition Law”), the following shall be considered as concentration:

1. merger of economic entities (all the assets and liabilities of the merging companies are transferred to the new company);
2. affiliation of an economic entity to another entity (an economic entity acquires all the assets and liabilities of another company);
3. acquisition of control;
4. acquisition of control directly or through other persons over one or several economic entities or over parts of economic entities by one or several economic entities, in particular by means of:
 - a) assets, i.e.:
 - direct or indirect acquisition of assets in the form of an integrated property complex or a structural subdivision of an economic entity; conclusion of rental, leasing and concession agreements;

Economic concentrations are subject to a prior approval by the Antimonopoly Committee of Ukraine.

- acquisition of the right to use assets in the form of an integrated property complex or a structural subdivision of an economic entity;
 - acquisition by other means, in particular the purchase of assets of a liquidated economic entity;
- b) appointment to key positions, i.e.:
- appointment or election of a person – occupying one or several positions of a chairman, deputy chairman of the supervisory board, the board of directors or the mentioned positions at other supervisory or executive boards, e.g. directorate, of other economic entities – as a chairman, deputy chairman of the supervisory board, the board of directors or of other supervisory or executive boards of the economic entity;
 - creation of a situation where there is a coincidence of more than half of the members of the supervisory board, the board of directors, other executive or supervisory boards of two or more than two economic entities;
- c) establishment of an economic entity by two or more than two economic entities that will independently carry out economic activities in the long run, whereas the mentioned formation does not result in the co-ordination of competition behaviour between economic entities, having established the economic entity or between them and the newly-established economic entity;
- d) direct or indirect purchase or acquisition (by other means) of the right to use shares (stock), which ensures attaining or exceeding 25% or 50% of the votes at the higher management board of the relevant economic entity.

15.2. Which transactions are subject to prior approval by the Ukrainian antitrust authorities?

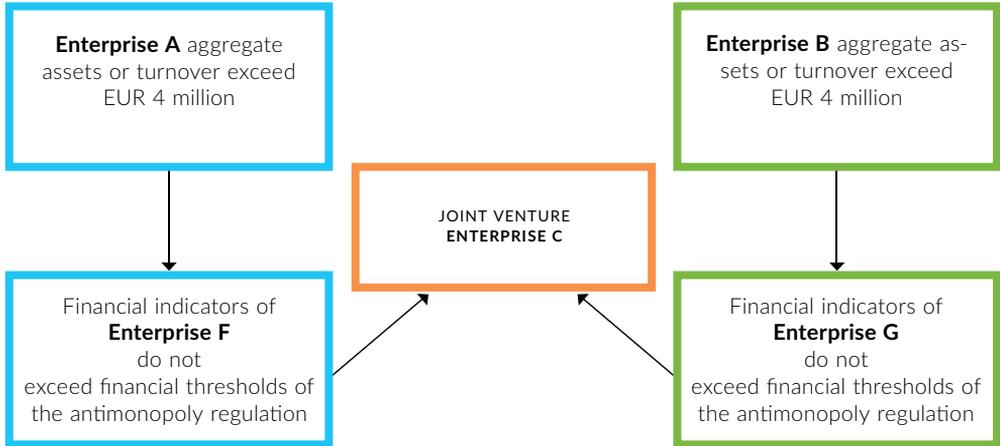
A concentration is notifiable and requires a prior approval of the Antimonopoly Committee of Ukraine where the following assets and/or turnover thresholds are exceeded by the companies involved.

In the Ukrainian competition law, the above-mentioned situations are considered as economic concentration which may affect competition. Economic concentrations are subject to a prior approval by the Antimonopoly Committee of Ukraine. The thresholds set out in Article 24 of the Competition Law are met in the following cases:

- l) (1) if the total cost of assets or the total sales of the participants in concentration, with relations of control being taken into account, in the last financial year, including those abroad, exceed the sum equivalent to EUR 30 million while (2) the assets or the sales of at least two participants in concentration, with relations of control being taken into account, exceed the sum equivalent to EUR 4 million;

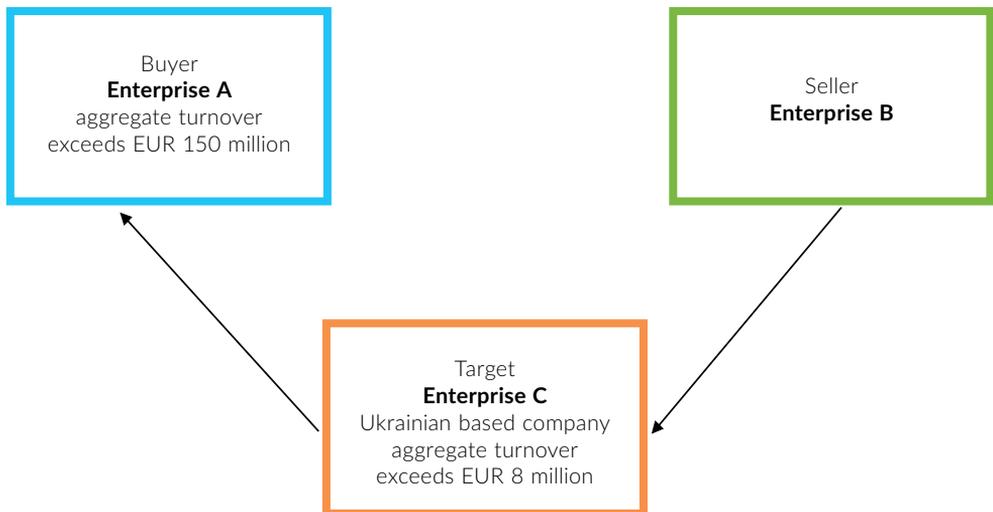
If the AMCU prohibits the concentration, its participants may still apply for a ministerial approval.

**Financial indicators (assets or sales turnover)
of Enterprise A (Company A + Company F) together with
Enterprise B (Company B + Company G) exceed EUR 30 million**



II) the sales, in Ukraine only, of at least one participant in concentration, with relations of control being taken into account, in the last financial year (1) exceed the sum equivalent to EUR 8 million while (2) the assets, both in Ukraine and/or abroad, of another participant in concentration, with relations of control being taken into account, in the last financial year exceed the sum equivalent to EUR 150 million.

**Sale and purchase agreement for shares of Enterprise C
(Target) between Company A and Company B**



15.3. Who is considered to be a participant in concentration?

Pursuant to Article 23 of the Competition Law, the following shall be considered as participants in concentration:

- economic entities with respect to which a merger or affiliation is being carried out;
- economic entities which acquire or intend to acquire control over another economic entity, as well as economic entities with respect to which control is being acquired or must be acquired;
- economic entities whose assets (property), shares (stock) are being acquired (as property) or received for use, lease, leasing or concession and their buyers (acquirers);
- economic entities which are or intend to be the founders of a newly-established economic entity. An economic entity whose assets (property) or shares (stock) are contributed to the share capital of the newly-established economic entity shall also be considered as a participant in concentration where one of the founders is a body of executive power, a body of local self-government, a body of administrative and economic management and control;
- individuals and legal entities linked with the aforesaid participants in concentration by relations of control, which gives grounds to consider these individuals and legal entities and the relevant participants in concentration as a corporate group.

The implementation of a transaction that is subject to merger control without the AMCU's authorization may entail a fine of up to 5% of the participant/company turnover.



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, in particular it deals with the structure and functions of the controlling authorities and principles of their functioning, covering the thresholds required for exercising of such control, liability for breach of antimonopoly law, etc.

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

15.4. Prohibition of concentrations

Concentrations may be not authorized by the Antimonopoly Committee only in the following cases:

- a concentration results in the market monopolization;
- a concentration results in the monopolization of a market significant part;
- a concentration results in the substantial restriction of competition on the whole market;
- a concentration results in the substantial restriction of competition in a market significant part.

If the Antimonopoly Committee prohibits the concentration, the participants in concentration may still apply for a ministerial approval.

15.5. Sanctions for failure to notify

If a transaction that is subject to merger control is not notified to the Antimonopoly Committee, it shall be automatically considered a competition law violation. If the Antimonopoly Committee finds out, it may impose fines on the purchaser. The implementation of a transaction that is subject to merger control without the relevant authorization by the Antimonopoly Committee may entail a fine of up to 5% of the participant/company turnover, with relations of control being taken into account, in the last financial year preceding the year when such an authorization should have been applied for.

If the company did not make any sales in the last financial year or if it does not provide information about the performance per request of the Antimonopoly Committee, the latter may impose a fine of up to 20,000 tax-deductible minimum citizen incomes (UAH 340,000, equivalent to approx. EUR 11,100).

16

Renewable energy in Ukraine

The alternative energy industry is one of the fastest growing and most attractive sectors for investment in Ukraine. This can be explained, inter alia, by the favourable geographical conditions in Ukraine, where solar radiation is more intense than, for example, in Germany. The wind speed in this Eastern European country makes it possible to develop large-scale wind projects. Moreover, Ukraine has a huge potential in electricity production from biogas, which, in some cases, is already partially being successfully implemented.

The favourable legal framework, which, thanks to the international organizations support, is gradually becoming more investor-friendly and thus is in line with global trends, plays a significant role in the foreign investment attraction to Ukraine. The successful development of the renewable energy sector over the past year is an undeniable proof of that.

One of the growth drivers recorded in recent years is primarily the feed-in tariff, fixed in EUR. Thanks to government subsidization of the industry in the initial phase, Ukraine has succeeded in creating a renewable energy market with foreign investors having a decent market share. It is now expected that the feed-in tariffs will be partially replaced by auctions: the respective bill should create the basis for conducting "green" auctions.

16.1. Current state of play in the industry

A substantial increase in the number of commissioned renewable energy projects has been observed over the last 2-3 years and especially over the past year. In 2018, the total installed renewable energy capacity almost tripled, reaching over 2,100 MW (excluding the facilities in the Crimean peninsula).

The total capacity of projects completed in 2018, mostly in the field of solar, wind and biogas energy, reached approx. 745 MW.

The total capacity of projects completed in 2018, mostly in the field of solar, wind and biogas energy, reached approx. 745 MW. Most of these projects were implemented by foreign investors or with foreign investors' participation. Thus, international banks play an important role in financing renewable energy projects in Ukraine.

In 2018, the total installed renewable energy capacity almost tripled, reaching over 2,100 MW.

Plans to construct large-scale solar and wind energy projects in the Chernobyl Exclusion Zone are a great opportunity for foreign investors and are now in the process of implementation. The first 1 MW solar power plant has already been commissioned with the participation of a German company.

This year, a higher growth rate is expected for alternative energy projects, as many investors intend to complete their projects by the end of 2019 and connect them to the grid in order to obtain the lucrative feed-in tariffs.

16.2. Feed-in tariff rates

For many years, Ukraine has been trying to financially stimulate the power generation from renewable energy sources. This resulted in regulations on feed-in-tariff for renewable energy sourced electricity, i.e., the state's guaranteed obligation to buy "green" power generated by electricity producers from renewable energy sources.

The feed-in tariff is fixed in EUR until 2030. However, it is paid in the national currency, i.e. in UAH. All generated power, except for electricity for personal use, shall be paid for at the feed-in tariff rates.

In Ukraine, it is the obligation of the so-called "guaranteed buyer" to off-take "green" electricity generated under the feed-in tariff, regardless of the installed capacity.

The feed-in tariff amount depends on the date of electricity generating facility commissioning. The feed-in tariffs applicable to different renewable energy sources are shown in the table represented below (in EUR):

Type	Capacity (kW)	Commissioning date				
		01.07.-31.12.2015	2016	2017 - 2019	2020 - 2024	2025 - 2029
Ground-mounted solar power plant		0.1696	0.1599	0.1502	0.1352	0.1201
Rooftop solar power plant		0.1804	0.1723	0.1637	0.1475	0.1309
Wind turbine	≤600	0.0582			0.0517	0.0452
	>600 - ≤2000	0.0679			0.0603	0.0528
	>2000	0.1018			0.0905	0.0792
Biomass		0.1239			0.1115	0.0991
Biogas		0.1239			0.1115	0.0991
Hydro plant	≤200	0.1745			0.1572	0.1395
	>200 - ≤1000	0.1395			0.1255	0.1115
	>1000 - ≤10000	0.1045			0.0942	0.0835
Geothermal energy		0.1502			0.1352	0.1201
Solar power for private household	<30	0.2003	0.1901	0.1809	0.1626	0.1449
Wind turbine for private household	<30	0.1163			0.1045	0.0932



DLF Legal Alert Renewable Energy in Ukraine: Green Auctions

This Legal Alert analyses in detail the key novelties introduced by the law on green auctions, having come into effect on 22 May 2019, including the changes to the 'green' tariff amount and duration, advantages of the new state support system, the auction procedure, the timeframe for the renewable energy object construction, the validity of previously granted technical conditions, etc.

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16.3. Premium to feed-in tariff

A relevant premium shall be added to the feed-in tariff throughout the entire period of feed-in tariff to encourage the investors to use equipment of the Ukrainian origin, provided that the electricity generating facilities are commissioned by 31 December 2024.

If the level of use of the Ukrainian origin equipment is at least 30%, the premium to the feed-in tariff shall be 5%. If the Ukrainian origin equipment is used at the level of at least 50%, the premium to the feed-in tariff shall increase to 10%.

Nevertheless, it should be noted that the premium to the feed-in tariff does not apply to private households installations.

16.4. Private households

According to the State Energy Efficiency and Energy Saving Agency of Ukraine, the rise of solar panels installed by private households is still a trend in the Ukrainian renewable energy sector.

The laws provide that private households may set up renewable energy installations with a capacity of up to 30 kW and sell solar or wind generated electricity under the feed-in tariff in the amount exceeding the monthly consumption of electricity by such households.

16.5. What trends are expected?

In December 2018, the Ukrainian parliament passed a law providing for exemption from import VAT on importation of equipment used for the renewable energy facilities construction. This law shall apply to certain goods according to the goods subcategories under the Ukrainian Classification of Goods for Foreign Economic Activity. This temporary tax exemption shall be valid until 31 December 2022.

The same law also provides for a considerable simplification of land allocation for renewable energy facilities. Now, it is sufficient if the existing land plot is designated as “lands of industry, transport, communications, energy, defence and other purposes”. These amendments will greatly simplify the renewable energy plants construction by reducing the local authorities’ involvement in the required documents preparation, and this, in turn, will considerably shorten the time it takes to start the renewable energy facilities construction. This will allow the timely construction and commissioning of the so-called “ready to build” solar projects in Ukraine by the end of 2019, as well as obtaining the feed-in tariff.

This year, the renewable energy sector support



A growth driver is the feed-in tariff, fixed in EUR.

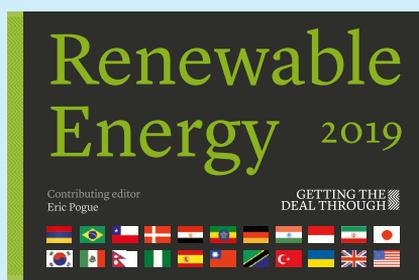
by the Ukrainian state is expected to be changed or modified. In particular, Ukraine introduces auctions for renewable energy installations subject to exceeding certain capacity thresholds. At the end of December 2018, the Ukrainian Parliament adopted at first reading a bill stating that a state support to green electricity producers shall be provided on a competitive basis, namely through the auctions and tenders introduction.

Auctions for the quotas allocation are planned to be introduced from 1 January 2020. The advantage of the new subsidy system over the existing feed-in tariff system lies, inter alia, in a longer support period (20 years after the renewable energy installation commissioning) and in guaranteed off-take of all generated “green” electricity at an auction price.

The capacity requirements for renewable energy installations to take part in auctions include:

- in 2020 – wind energy facilities with a capacity exceeding 20 MW and facilities producing electricity from other renewable energy sources with a capacity of over 10 MW;
- in 2021 and 2022 – wind energy facilities with a capacity exceeding 20 MW and facilities producing electricity from other renewable energy sources with a capacity of over 5 MW;
- starting from 2023 – all wind energy facilities with a capacity exceeding 3 MW (except those with one wind turbine) and facilities producing electricity from other renewable energy sources with a capacity of over 1 MW.

Moreover, the bill on “green” auctions provides for a number of other important changes. In particular, the bill specifies which renewable energy facilities will be still eligible for feed-in tariff after their commissioning after 2020 and under what conditions. Many amendments are most likely to be made before the bill is passed, and such amendments should certainly be taken into account by foreign investors.



Renewable Energy in Ukraine: Getting the Deal through

The publication, prepared for Getting the Deal through, a global research platform, provides an extensive overview of the key legislation and regulation affecting the renewable energy development in Ukraine.

[View Renewable Energy in Ukraine: Getting the Deal through](#)

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