Doing Business in Ukraine

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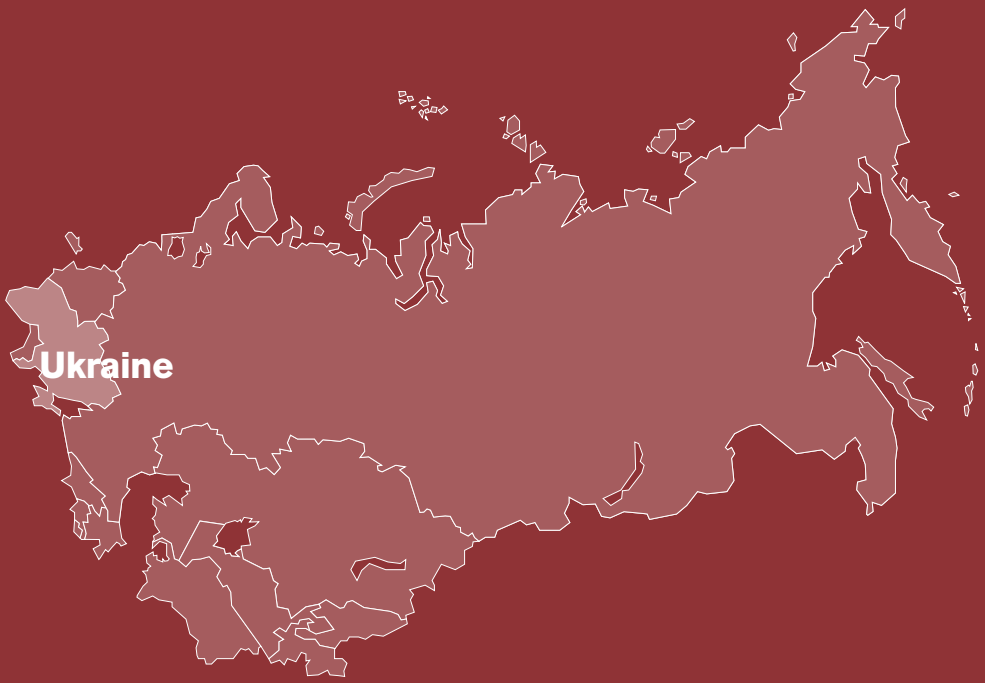

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PREFACE

Baker & McKenzie is unique in the world of legal services. The Firm was founded in Chicago in 1949 and remains a single partnership, now spanning 35 countries, with offices in 62 cities, and a total of over 3,000 lawyers. Today, in an era when operating seamlessly is essential to success, Baker & McKenzie has the single largest global network of any law firm. Baker & McKenzie offers its clients the best of both worlds—wide-ranging global experience with in-depth expertise, and practical know-how in the laws and legal systems of the local jurisdictions in which we are located.

Baker & McKenzie was a pioneer in establishing a law practice in the former Soviet Union. The Firm has been representing clients in the former Soviet Union for over 30 years, long before the term "Emerging Market" became fashionable. Baker & McKenzie opened the Moscow Office in 1989, becoming the first firm to receive accreditation in the USSR. Thereafter, we opened full-service offices in Kyiv (1992), St. Petersburg (1992), Almaty (1995), and Baku (1998). In each case, we were among the first international law firms to open offices in these locations; moreover, Baker & McKenzie continues to maintain the largest presence of any international law firm across the region.

Baker & McKenzie was the first foreign law firm to open an office in Ukraine. Currently, over 400 multinational companies, financial institutions, and large Ukrainian enterprises look to Baker & McKenzie for legal representation in Ukraine. Our clients have come to rely on the substantial capabilities of the Kyiv Office and enjoy the benefits of being able to access the global resources of the Firm.

Since gaining its independence in 1991, Ukraine has adopted many new laws; consequently, the country remains in a transitional state, with a legal system that is continuing to develop. Significant changes to the Ukrainian legal system are still forthcoming. For example, the new Civil Code of Ukraine (nicknamed the "Commercial Constitution of Ukraine"), the Commercial Code of Ukraine, the Tax Code of Ukraine, the laws encompassing the so-called "profound" judicial reform (as opposed to the "small" judicial reform, which was implemented during the course of 2001), the new laws on telecommunications and medicines, together with many others, are all to be adopted by the Ukrainian Parliament during the course of 2002-2003.

Given the above, we have prepared Doing Business in Ukraine as a general guide to be used by companies (and individuals) doing business or considering investing in Ukraine. Therefore, this document should be taken as a basic guideline intended to assist investors in understanding Ukraine's overall investment climate, and it should not be relied upon as legal advice in relation to any transaction or as a substitute for seeking specific legal advice.

January 2001

1. UKRAINE – A GENERAL OVERVIEW

1.1 Geography and Topography

Ukraine is located in Eastern Europe and covers a land area of 603,700 sq. km., making it the second largest country in Europe after Russia. It borders the Russian Federation to the east, Belarus to the north, Poland, Slovakia, Hungary, and Romania to the west, and the Black Sea and the Sea of Azov to the south.

The time zone in Kyiv is 2 hours later than Greenwich Mean Time. Ukraine covers one time zone. In general, the business week in Kyiv consists of Monday – Friday, 8:00 a.m./9:00 a.m. to 5 p.m./6:00 pm, with an hour break for lunch from 1pm - 2 p.m. In most cases, stores and services open an hour later and close two hours later.

National holidays in Ukraine are: New Year's Day (1 January), Orthodox Christmas (7 January), International Women's Day (8 March), Easter (in April, date fluctuates), Solidarity Day (1-2 May), Victory Day (9 May), Holy Trinity Day (in June, date fluctuates), Constitution Day (28 June), and Independence Day (24 August).

1.2 Population

The population of Ukraine is approximately 50 million (as of the end of 1999), of which 73% are ethnic Ukrainians and 22% are Russians. The other 5% of the population include Bulgarians, Tatars, Hungarians, Romanians, Greeks, and other nationalities. The population density is 86.2 people per sq. km.

1.3 Government: Political and Legal Systems

Ukraine is a civil law country. Thus, the Constitution of Ukraine provides the framework for its legislative system. The principal body of legislation consists of laws adopted by the Verkhovna Rada (i.e., the Parliament) of Ukraine. The laws are implemented through various normative acts, which are adopted by the relevant government bodies (i.e., the President, the Cabinet of Ministers, Ministries, and State Committees).

The Ukrainian Constitution was adopted on 28 June 1996, and heralded a new period in the development of the Ukrainian legislative system. The Constitution established the general guidelines of national policy and established a foundation for the development of a democratic state. Apart

from its political significance, the Constitution has enormous value as a legislative act. The provisions of the Constitution are norms of direct application, which entitle any individual to seek the protection of his/her rights within the judicial system. In general, all laws and normative acts are adopted on the basis of, and in strict compliance with, the Constitution. The Constitution of Ukraine is deemed to be the cornerstone of the development of the Ukrainian legal system. The Constitution itself mandates the preparation and implementation of a comprehensive program of legislative developments by providing for the adoption of more than thirty new laws and, as deemed necessary, amendments of existing laws.

The legal system of Ukraine is organized in a hierarchical order and contains three major layers of normative acts: (i) the Constitution; (ii) laws adopted by the Verkhovna Rada of Ukraine and international agreements of Ukraine; and (iii) other normative acts. The Verkhovna Rada of Ukraine approves international agreements in the form of laws of Ukraine.

Pursuant to the Constitution, Ukraine has three branches of state power: the legislative branch, represented by the Verkhovna Rada of Ukraine; the executive branch, represented by the Cabinet of Ministers of Ukraine and headed by the Prime Minister; and the judicial branch, represented by a multilevel system of courts, with the Constitutional Court of Ukraine and the Supreme Court of Ukraine at the highest level.

The President of Ukraine is the head of state and the commander-in-chief of the armed forces, and has certain authority over the executive branch. Presidential elections are held every five years, on the last Sunday of October. The President of Ukraine, *inter alia*, has the right to:

(1) appoint the Prime Minister of Ukraine (pending the approval of the Verkhovna Rada of Ukraine), as well as to dismiss the Prime Minister;

(2) appoint the members of the Cabinet of Ministers of Ukraine, the heads of other central organs of executive authority and the heads of the local state administrations (upon the recommendation of the Prime Minister of Ukraine), as well as to dismiss all those whom he has appointed;

(3) appoint the General Prosecutor of Ukraine (pending the approval of the Verkhovna Rada of Ukraine), as well as to dismisses the General Prosecutor;

(4) establish courts in accordance with the procedures set by law;

(5) sign bills (i.e., proposed legislative acts adopted by the Verkhovna Rada of Ukraine) into law; and

(6) veto bills (i.e., proposed legislative acts adopted by the Verkhovna Rada of Ukraine), and send them back to the Verkhovna Rada for amendments.

The Verkhovna Rada of Ukraine is the supreme legislative body in Ukraine, with the power to adopt laws and resolutions, and to approve the candidates for Prime Minister as well as several other chief government officers. The Verkhovna Rada of Ukraine is comprised of 450 deputies, who are elected for four-year terms. Half of the Verkhovna Rada is elected on a straight party ticket (i.e., by the proportional system of representation) and the other half is elected by a majority vote. Following the March 1998 elections, the current composition of the Verkhovna Rada consists of an estimated 45% left-wing deputies, 45% centrist deputies, and 10% right-wing deputies.

In Ukraine, a bill becomes a law once it gains a majority (226 deputies) of the votes in the Verkhovna Rada of Ukraine and is signed into law by the President. The Cabinet of Ministers of Ukraine enforces laws once they are adopted. The different Ministries, State Committees, and other authorized bodies of the executive branch are responsible for the direct implementation of the resolutions passed by the Cabinet of Ministers.

Consisting of the Constitutional Court, the courts of general jurisdiction, and specialized courts, the court system exercises independent judicial power in Ukraine. The Supreme Court of Ukraine is the highest judicial body within this system. In a nutshell, this court is responsible for the official interpretation of the Constitution and the laws of Ukraine. The Constitutional Court of Ukraine consists of eighteen justices, the President, the Verkhovna Rada of Ukraine, and the Assembly of Judges of Ukraine appoint six each. Justices of the Constitutional Court of Ukraine are appointed for a single term of nine years.

The courts of general jurisdiction are responsible for civil, criminal, and administrative cases. In accordance with the Constitution (and the current legislation), the courts of general jurisdiction have the following four-tier structure:

(1) the Supreme Court of Ukraine;

(2) the supreme specialized courts (commercial, military, and administrative);

(3) the appellate courts; and

(4) the local courts.

Specialized courts in Ukraine include the Arbitrazh (commercial) courts, the military courts, and the administrative courts.

1.4 Economy

With its consumer market of 50 million people and its opportune geographical location, Ukraine benefits from several competitive strengths as compared with its CIS neighbors. In general, the country enjoys a mild climate, a rich natural resource base, a sizeable and flexible consumer market, a highly educated labor force, a well-developed transport infrastructure, and a well-developed R&D base with significant accomplishments in the natural sciences and in military-related research. Unfortunately, Ukraine's slow recovery from the 1998 crisis has left the country in desperate need of investment in all sectors of industry.

In general, all industry sectors could benefit greatly from an injection of technological upgrades, as well as international know-how. Due to a lack of funding, much of the industrial infrastructure and equipment in the country has become obsolete. Thus, the production capacities of most of the industrial plants do not meet the real needs of the country. Furthermore, the country's underdeveloped energy grid cannot meet the full needs of its citizens; consequently, Ukraine has become increasingly co-dependant on energy imports from Russia and Turkmenistan.

Post independence, Ukraine inherited from the former Soviet Union an over-developed heavy industry sector, which included metallurgy, machine building (mainly military), mining, and chemical production. During the last several years, the liberalization of Ukraine's foreign trade rules has been an important component of the country's overall economic reform program. Moreover, to encourage further trade, the state has nearly abandoned all of its controls over the various commercial distribution channels. As a result, export restrictions have been substantially scaled down.

The 1996 list of exports subject to quotas and licensing, which is still in effect, contains only the following few commodities: precious metals and their ores, metal scrap, and materials containing metal scrap. The list of imports subject

to licensing regulations includes various chemical, pharmaceutical, and cosmetic products. Indicative prices are still stipulated for certain ferrous and non-ferrous metals, their scraps and alloys, *etc.* It should be noted that import duties are imposed on most imported products.

Ukraine's core export categories include: ferrous and non-ferrous metals and metal products, chemical products, fertilizers, plastics and rubber, agricultural products and foodstuffs, engineering goods, different types of machinery and equipment (including different types of transport vehicles), textiles, and a wide variety of raw materials.

The Ukrainian financial sector has also undergone substantial changes and improvements in the past several years. An effective regulatory framework is being progressively created and a modern financial system, based on market principles, is steadily emerging. Through great effort and a successful monetary reform program, the fundamental principles and conditions have been established to promote further developments in this sector. For example, the 1991 Law *"On Banks and Banking"* has established a two-tier banking system, with a national bank and a level of commercial banks. To understand the banking sector better, it is important to recognize that most of the Ukrainian banks have evolved from the Soviet "monobank" system, under which banks did not have an independent role in borrowing/lending, etc. In fact, during that era, the banks only accommodated the central production plan by following instructions from the USSR Ministry of Finance. Currently, only two banks, the Oschadny Bank (i.e., the savings bank) and the State Export-Import Bank, are still owned by the state.

In 1996, shortly after the adoption of the new Constitution, the National Bank of Ukraine, (the "NBU") successfully launched the new Ukrainian currency, the Hryvnia ("UAH"). The NBU's most important achievement to date has been the stabilization of Ukraine's currency through its maintaining of a tight monetary policy between 1995-1998.

1.5 Foreign Relations

After its independence, Ukraine acknowledged the importance of foreign relations by establishing diplomatic relation with 177 countries, as well as with several international organizations. To name just a few, Ukraine is a member of the United Nations and various other multilateral organizations, including the IMF, IBRD, IFC, MIGA, EBRD, EIB, OSCE, and the Council of Europe. Ukraine cooperates with OECD, the European Union (the "EU"), NATO, and the WTO, and is planning to join the latter in the near future. Noting the relevant statistics as of the end of 1999, Ukraine is a party to 400 multilateral treaties and over 2,000 bilateral agreements.

The Ukrainian Government has made it a point to include among its long-term strategic goals Ukraine's accession to the European Union. As a first step, in recent years, Ukraine has signed and ratified the Partnership and Cooperation Agreement with the EU, which is now in force.

1.6 Regional Structure

Ukraine is a unitary state divided into 24 oblasts (regions), the Autonomous Republic of Crimea, and the cities of Kyiv and Sevastopol. Every oblast and each of the cities of Kyiv and Sevastopol has a governor, who is appointed by the President. The Autonomous Republic of Crimea has its own autonomous constitution, Verkhovna Rada (Parliament), and government, but remains subordinate to the central Government of Ukraine.

2. FOREIGN INVESTMENT REGIME

2.1 Laws on Foreign Investment

The principal legislative act governing foreign investments in Ukraine is the Law of Ukraine "*On the Regime of Foreign Investment*" (the "Foreign Investment Law") adopted on 19 March 1996. The Law of Ukraine *"On Investment Activity"*, which was adopted on 18 September 1991, establishes the general principles of investment activity on the territory of Ukraine, irrespective of the nationality of the investor. However, this Law is rarely relied upon in the context of foreign investments in Ukraine, due to the pre-eminence of the provisions of the Foreign Investment Law, which applies in the first instance on the basis of the principle *of lex specialis*.

Under the Foreign Investment Law, the term "foreign investment" refers to all forms of value invested by foreign investors in objects of investment activity in accordance with the applicable Ukrainian legislation for the purpose of obtaining profits or achieving a social effect. An enterprise with foreign investment is defined as any type of organizational form created in accordance with the applicable Ukrainian legislation, where the foreign investment in the charter fund is at least 10%.

According to the Foreign Investment Law, foreign investment may be made in the following forms:

(1) foreign currency recognized as convertible by the NBU;

(2) Ukrainian currency, when reinvesting in the object of the initial investment, or when investing in any other object of investment in accordance with the applicable Ukrainian legislation, on the condition that the reinvested sum has been subject to income tax;

(3) any kind of movable or immovable property, together with the property rights associated therewith;

(4) shares, bonds, other securities, and corporate rights (e.g., ownership rights to a share in the charter fund of a legal entity established in accordance with the applicable Ukrainian legislation or the laws of other countries) denominated in foreign currency;

(5) monetary claims and rights to demand the performance of contractual obligations, which are guaranteed by first-class banks and have a foreign currency value confirmed in accordance with the laws (i.e., the procedures) of the country of the investor, or with the customary practice in international trade;

(6) all types of intellectual property rights, the foreign currency value of which is confirmed in accordance with the laws (i.e., the procedures) of the country of the investor, or with the customs of international trade, as well as pursuant to an expert evaluation in Ukraine, including copyrights, rights to inventions, useful models, industrial designs, trade marks and service marks, know-how, and other forms of intellectual and industrial property legalized on the territory of Ukraine;

(7) rights to conduct business activities, including rights to use natural resources which are granted pursuant to legislation or international agreements, the foreign currency value of which is confirmed in accordance with the laws (i.e., the procedures) of the country of the investor or with the customary practice in international trade; and

(8) other values according to the applicable Ukrainian legislation.

Foreign investors may carry out investment activities on the basis of agreements on joint activities concluded with Ukrainian enterprises ("Joint Activity Agreements"). Such contractual joint ventures must maintain separate accounting records and must establish separate bank accounts for their joint operations. Joint Activity Agreements must be registered in the manner established by the Cabinet of Ministers of Ukraine.

2.2 Registration Procedure

Foreign investors are entitled to certain privileges and guarantees under the Foreign Investment Law, provided that their investment has been duly registered with the appropriate state authorities. Depending on where the foreign investment activity may be deemed to be economically concentrated, the foreign investment should be registered by the regional (oblast) state administration, the state administration of the cities of Kyiv and Sevastopol, or the government of the Autonomous Republic of Crimea. The registration of a foreign investment must be effected in the course of three business days following the actual implementation of the investment. The procedure for the registration of a foreign investment is established by the Resolution of the

Cabinet of Ministers *"On the Procedure for the State Registration of Foreign Investment"* dated 7 August 1996.

In order to register a foreign investment, an investor or its authorized representative must submit to the relevant registration body the following documents: (1) an informational notification on the foreign investment confirmed by the local state tax administration; (2) documents certifying the form of the foreign investment (e.g., constituent documents, on Joint Activity Agreements, concession agreements, etc.); (3) documents evidencing the value of the foreign investment; and (4) documents evidencing the payment of the state registration fee.

The registration of a foreign investment may be denied only in the event of the violation of the established registration procedure. A denial of the registration of a foreign investment must be documented in written form and must specify the reasons for such denial. The denial may be challenged through a court proceeding.

2.3 Investment Protection: Guaranties and Rights

The Foreign Investment Law provides for the following guarantees to a foreign investor:

(1) Protection Against Changes in Legislation: the foreign investor is guaranteed protection against changes in the foreign investment legislation for a period of 10 years. Such protection, however, has been interpreted narrowly to apply only to changes of matters relating to nationalization, expropriation, and similar matters.

(2) Protection Against Nationalization: the foreign investor's investment may not be nationalized. State bodies cannot expropriate foreign investments, with the exception of emergency measures in the event of a natural disaster, accidents, epidemics, or epizooty (i.e., animal diseases). The foregoing expropriation may be carried out only on the basis of decisions of bodies authorized by the Cabinet of Ministers of Ukraine.

(3) Guarantee for Compensation and Reimbursement of Losses: the foreign investor has the right to be reimbursed for its losses, including lost profits and moral damages, incurred as a result of the actions, the failure to act, or the improper performance on the part of state bodies of Ukraine, or of officials of their obligations with respect to foreign investors or enterprises with foreign investment as required by law. All expenses and losses of the

foreign investor must be reimbursed at the current market rate and/or on a well-founded valuation certified by an auditor or an auditing firm.

(4) Guarantee in the Event of the Termination of Investment Activity: the foreign investor is guaranteed the right to remit its revenues and to withdraw its investments from Ukraine free from export duties within six months from the termination of the investment activity.

(5) Guarantee of Repatriation of Profits: after the payment of taxes, duties, and other mandatory payments, the foreign investor is guaranteed the right to the unimpeded and immediate transfer abroad of all profits and other proceeds in foreign currency legally earned as a result of the foreign investment.

Other benefits granted to foreign investors under the Foreign Investment Law include the exemption from import duties of the foreign investor's in-kind contribution to the charter fund of its enterprise with foreign investment (excluding goods for sale or goods for the investor's own consumption). However, in the event that such property will be sold or otherwise transferred by a foreign investor within three years after the foreign investment has been recorded on the balance sheet of the enterprise, including in the event of the termination of the activities of such enterprise, then the enterprise with foreign investment will be required to pay the import duty calculated on the basis of the customs value of such property converted into Ukrainian currency at the official exchange rate established by the NBU on the date of the alienation of such property.

2.4 Divestiture

The Foreign Investment Law provides that, in the event of the termination of the investment activity, the foreign investor has the right, within six months from the date of the termination of such activity, to recover its investment in-kind or in the currency of the investment in the amount of the actual contribution (taking into account any possible reduction of the charter fund), without the payment of any fees or duties. A foreign investor has the right to recover the benefits from its investments in cash or in-kind based on the basis of the actual market value of the investment at the moment of the termination of the investment activity, unless otherwise stipulated by the applicable Ukrainian legislation or international agreements to which Ukraine is a party.

2.5 Restricted Sectors

As a general rule, the Foreign Investment Law provides that foreign investors will benefit from what is referred to as the "national regime" (i.e., non-discriminatory treatment) for investment and other economic activity on the territory of Ukraine. However, this concept is subject to other provisions of Ukrainian legislation and of international agreements to which Ukraine is a party. Accordingly, the relevant Ukrainian legislation contains certain restrictions with regard to the maximum permissible extent of foreign investment into enterprises carrying out activities in certain industry sectors. Spheres of activity subject to the foregoing restrictions include: telecommunications, broadcasting (radio and TV), publishing, and insurance. Certain indirect limitations apply to banking and auditing activities.

2.6 Investment Incentives

With the cancellation of the beneficial taxation regime for enterprises with foreign investment, investment incentives under Ukrainian legislation have been substantially reduced. As of 1 July 1997, all enterprises with foreign investment are taxed on their profit at the general rate of 30%. However, certain residual benefits remain, including state guarantees for foreign investments (see above) and the duty free import of in-kind contributions to the charter fund of an enterprise with foreign investment (see above).

The Foreign Investment Law contemplates the possibility of the establishment of a priority regime with respect to certain projects with the participation of foreign investors, which will be implemented pursuant to state programs promoting key sectors of the economy, social spheres, and territories. There is recent evidence of the application of such priority treatment in the form of tax incentives in the area of automobile manufacturing.

In addition, the applicable Ukrainian legislation provides for the establishment of free economic zones. The legal status of foreign investments into such zones is regulated by separate legislation on free economic zones. Foreign investors may be granted additional privileges and benefits by such legislation.

2.7 Dispute Resolution

In the event of a dispute arising with respect to a foreign investment, an investor can turn for relief to a number of different dispute resolution bodies. As a general matter, the Law of Ukraine *"On Foreign Economic Activity"* (the

"LFEA") allows the parties to a commercial dispute to select a forum for the resolution of their disputes. In accordance with Article 38 of the LFEA, disputes between subjects of foreign economic activity may be resolved by (i) Ukrainian civil courts of law, (ii) Ukrainian courts of arbitration, or (iii) other organs of dispute resolution chosen by the parties to the dispute.

2.8 Investment Treaties

Set forth below is a list of the countries, with which Ukraine has currently in effect "Treaties on the Mutual Protection of Foreign Investments."

1 Argentina
2 Austria
3 Belgian-Luxembourg Economic Union
4 Bulgaria
5 Canada
6 Chile
7 China
8 Croatia
9 Cuba
10 Czech Republic
11 Denmark
12 Egypt
13 Estonia
14 Finland
15 France
17 Germany
17 Great Britain
18 Greece
19 Hungary
20 Indonesia
21 Iran
22 Israel
23 Italy
24 Korea
25 Latvia
26 Lebanon
27 Lithuania
28 Macedonia
29 Mongolia
30 Netherlands
31 Poland
32 Slovakia
33 Slovenia
34 Spain
35 Sweden
36 Switzerland
37 Turkey
38 USA
39 Vietnam
40 Yemen
41 Yugoslavia
42 Treaty on Partnership and Cooperation between Ukraine and the European Union

In the CIS

42 Armenia
43 Azerbaijan
44 Belarus
45 Georgia
46 Kyrgyzstan
47 Moldova
48 Russia
49 Turkmenistan

3. ESTABLISHING A LEGAL PRESENCE

3.1 General

Currently, legal entities in Ukraine can be created under two parallel bodies of law: the Law of Ukraine *"On Enterprises in Ukraine"* (the "Enterprise Law"), dated 27 March 1991 (as amended), and the Law of Ukraine *"On Companies"* (the "Company Law"), dated 19 September 1991 (as amended). It is generally recognized that, although the provisions of the Company Law lack precision in certain respects and need further development, the Company Law better suits the needs of modern business enterprises than the provisions of the Enterprise Law. As a result, most legal entities in Ukraine are established in the form of a company (hospodarske tovarystvo), rather than in the form of an enterprise (pidpryemstvo).

3.2 Company Law

A company is a distinct form of an enterprise established in accordance with the Company Law. However, certain provisions of the Enterprise Law, nevertheless, apply to companies, to the same extent that they apply to every other type of enterprise. As defined by the Company Law, a company is an enterprise, institution, or organization created on the basis of an agreement between legal entities and/or individuals by means of the consolidation of their property and/or business activities for the purpose of obtaining profit.

The Company Law provides for five different corporate forms of legal entities: joint-stock companies (both open and closed), limited liability companies, additional liability companies, full liability companies, and differentiated liability companies (similar to limited partnerships). The most common vehicles for conducting business activities in Ukraine are the joint stock company (the "JSC") and the limited liability company (the "LLC"), both of which embody the concept of limited liability for investors.

3.3 Joint Stock Company (JSC)

A JSC is very similar in form and operation to a U.S. corporation. It is a company, which has authorized capital divided into shares of equal nominal value. Shareholders in a JSC are only liable for the obligations of the entity to the extent of their capital contributions. There are two levels of taxation imposed with respect to a JSC - a profits tax and the shareholders are taxed dividends.

There are two types of JSCs: open and closed. An open JSC is established through a public offering and subscription of shares; in contrast, the shares of a closed JSC are distributed privately among the founding shareholders. Shares issued by both open and closed JSCs must be registered with the Ukrainian State Commission on Securities and the Stock Market (the "Securities Commission"). In addition, founders of an open JSC must register information about the share issuances with the Securities Commission. When creating a wholly-owned subsidiary, a foreign investor generally uses the closed JSC form.

At least two founding shareholders are necessary to create a JSC. Thus, a foreign founder wishing to establish a wholly-owned JSC should choose two companies as the founding entities of such JSC. The two founding shareholders are free to determine between themselves the share distribution that each will have in the legal entity. A minimum capitalization of 1,250 times the minimum monthly wage is required to establish a JSC.

3.4 Management of a JSC

A JSC has four corporate bodies: the shareholders' meeting, the supervisory council (i.e., the board of directors), the management, and the audit commission. The shareholders' meeting is the highest governing body, and is responsible for the policy decisions of the JSC. The supervisory council's authority may be broad or narrow, as specified either in the charter of the JSC or through resolutions adopted at the shareholders' meetings.

Shareholders' voting rights are based on the principle of one share equals one vote. However, the Company Law envisions the possibility of a JSC's issuance of non-voting shares of stock. Regular shareholders' meetings require a quorum of at least 60% of the outstanding shares, in order to be duly constituted. Most resolutions are approved by a simple majority of the shares present at a duly convened shareholders meeting; however, the following three fundamental decisions require approval by at least 75% of the shares present: (1) amendments of the charter of the JSC; (2) termination of the activity of the JSC; and (3) the creation or termination of a subsidiary, branch, or representative office of the JSC.

A JSC may create a supervisory council. In a JSC with more than 50 shareholders, the establishment of a supervisory council is required by law. The supervisory council represents the interests of the shareholders between the shareholders' meetings, and it exercises, to the extent contemplated by the JSC's charter, control over the JSC's management. Members of the supervisory council of a JSC may not be members of its management.

The JSC's day-to-day business activities are carried out by its management, which is an appointed executive body (this entity is usually established as a "directorate", i.e., *pravlinnia*). The management generally reports to the shareholders' meeting, as well as to the supervisory council.

The audit commission, consisting of elected shareholders, exercises control over the financial and economic activities of the JSC. The procedure for the operations of the audit commission, as well as the overall number of its members, must be established in the charter of the JSC. After an audit, the audit commission must report its findings to the general shareholders' meeting or to the supervisory council of the JSC.

3.5 Limited Liability Company (LLC)

A LLC is a cross between a U.S. corporation and a U.S. partnership. It is similar to a corporation, because it is essentially a company with limited liability for its investors, i.e., its interest-holders ("participants") are only liable to the extent of their capital contributions. Conversely, it is similar to a partnership, because its ownership interests (in the form of participatory shares) are expressed in terms of contractual rights, which are outlined in the LLC's constituent documents. Thus, the transfer of an ownership interest is accomplished through the assignment of contractual rights. Ownership interests in a LLC are deemed not to be "securities" and, therefore, are not subject to registration with the Securities Commission.

There are also two levels of taxation for a LLC: (1) a LLC is taxed on its profits; and (2) the interest-holders of the LLC are taxed on the LLC's profits that are allocated to them. At a minimum, two founding interest-holders are required to establish a LLC. As with JSCs, a foreign founder wishing to establish a wholly-owned LLC must choose two companies as the founding entities of such a LLC. There are no legal restrictions on how the participatory shares of a LLC may be distributed; this is left totally to the decisions of the founders of the LLC. A minimum capitalization of 100 times the minimum monthly wage is required to establish a LLC.

3.6 Management of a LLC

A LLC has three corporate bodies: the participants' assembly, the management, and the audit commission. The participants' assembly consists of the participants (i.e., the interest-holders) of the LLC and each participant is granted one vote for each percent of its interest in the LLC.

Meetings of the participants' assembly require a quorum of at least 60% of the outstanding votes. Resolutions are approved by a simple majority of the votes present at a duly convened meeting of the participants' assembly; however, the following three resolutions require the approval of all of the outstanding votes by unanimous decision: (1) amendments of the charter; (2) determination of the principal activities of the LLC; and (3) the expulsion of a participant.

Under the applicable legislation, the management may take one of two forms; "directorate" (collective management) or "director" (individual management). The form of the LLC's management and the number of its members may be decided at the discretion of the interest-holders as specified in the LLC's charter. The directorate of a LLC usually consists of the general director, the deputy general director, the finance director, and/or the chief accountant, and other individuals, as specified in the LLC's charter and other foundation documents. The directorate is responsible for the day-to-day operations of the LLC; however, the directorate's members are appointed by, and may be voted out by, the participants' assembly.

The audit commission, consisting of elected interest-holders, exercises control over the financial and economic activities of the LLC. The role and functions of the LLC's audit commission are similar to those of the audit commission of the JSC. There must be at least three members of the audit commission of the LLC.

3.7 Partnership

The current Ukrainian legislation does not provide for the formation of legal entities or partnerships, which act as "pass-through" entities for tax purposes. Although the corporate legislation permits the creation of a "full liability company" (similar to a US partnership), it is nonetheless subject to two levels of taxation: at the company level and at the participant level. The creation of a "differentiated liability company" (similar to a US limited partnership) is also possible; however, it is also subject to two levels of taxation. There are no requirements with regard to the minimum capitalization of a full liability company or a differentiated liability company.

3.8 Joint Venture

In general, a joint venture is a special category of enterprise. Prior to the introduction of amendments of the Enterprise Law on 4 February 1998, JVs were considered to be distinct forms of business. However, since those amendments, JVs are no longer treated as being distinct under the law.

Nevertheless, it is still common in Ukraine to refer to a company with foreign investment as a joint venture. In fact, virtually all of these "joint ventures" have been established in the form of a JSC or a LLC pursuant to the Company Law.

The current Ukrainian legislation also permits a foreign investor to invest in Ukraine without creating a legal entity by entering into a joint production agreement or a Joint Activity Agreement with a Ukrainian legal entity.

3.9 Registration Procedure

The registration of business entities in Ukraine is performed by local executive bodies (i.e., executive councils of deputies or state administrations). In order to register a company in Ukraine, the following documents must be submitted by the founders to the relevant registration authorities (within the city of Kyiv, the registration documents must be submitted to the state administration of the district, within which the legal entity will be located):

(1) Constituent documents, consisting of the following:

   (a) foundation agreement;
   (b) charter; and
   (c) protocol of the meeting of the founding shareholders (interest-holders).

(2) Completed registration card;

(3) Confirmation of payment of the state registration fee (approximately USD22);

(4) Confirmation that the legally required minimum initial cash contribution to the capital fund (i.e., 50% for a closed JSC, and 30% for an open JSC and an LLC) has been made;

(5) Duly notarized and legalized certificates of registration (i.e., extracts from the trade register) for each of the founding entities; and

(6) Copy of the lease agreement concluded by one of the founding entities of the JSC or the LLC with the owner of the premises, which are to be used as the legal address of the JSC or the LLC.

Since Ukraine is not a party to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, any document issued/prepared in a foreign country (except in the former USSR republics and in certain other East European countries) must be duly notarized in the country of origin and legalized by a Ukrainian consulate in such country.

Under certain circumstances, the prior approval by the Ukrainian anti-monopoly authorities establishment of the legal entity may be required (see Chapter 8 below on "Competition").

The registration of a legal entity should be completed within 5 working days after all of the necessary documents have been filed with the registration authorities. In addition, upon the receipt of the certificate of state registration, a number of post-registration steps should be completed (i.e., the registration of the legal entity with the tax authorities and with certain social funds, etc), in order to make the legal entity fully operational.

3.10 Representative Office

A foreign legal entity may establish its representative office in Ukraine, in order to carry out marketing, promotional, and other auxiliary functions on behalf of the foreign legal entity. It is less clear whether a foreign legal entity may also conduct a trade or business through a representative office, although "commercial" representative offices (in effect, the equivalent of branches in most other countries) are quite common in Ukraine. The recent practice has been to permit a representative office to carry out a wide range of commercial activities, including the signing of contracts and the implementation of import, export, and other transactions. However, in practice, a representative offices will not be permitted to engage in those types of activities, which require the obtaining of a special license from the state authorities (e.g., securities trading and brokerage activities).

Currently, a representative office of a foreign legal entity in Ukraine is registered by the Ministry of Economy and European Integration of Ukraine.

In order to register a representative office of a foreign legal entity on the territory of Ukraine, such foreign legal entity is required to submit the following documents to the Ministry of Economy and European Integration of Ukraine:

(a) Application for the registration of the representative office;

(b) Copy of the articles of association (certificate of incorporation) of the foreign legal entity, or an extract from the relevant commercial or court register;

(c) Letter of good standing from the bank of the foreign legal entity;

(d) Power of attorney in favor of the head of the representative office in Ukraine;

(e) Power of attorney in favor of representatives of the foreign legal entity authorized to register the representative office;

(f) Copy of the special permission from the state authorities of the foreign legal entity's country (if any);

(g) Resolution of the foreign legal entity's management or board of directors to open the representative office in Ukraine; and

(h) Regulations on the representative office of the foreign legal entity.

3.11 Branches and Subsidiaries of Foreign Companies

The current Ukrainian legislation distinguishes between branches and representative offices. A branch is a structural unit of an enterprise, which carries out those activities set forth in its regulation. Neither a branch nor a representative office has the status of a separate legal entity. The establishment of a branch does not require a separate registration. Rather, a legal entity simply needs to notify the appropriate registration authority about its opening of its branch. The registration body will then enter such additional information into the existing registration card of the legal entity.

Notwithstanding the foregoing, the relevant Ukrainian legislation does not provide any guidance as to the procedure, which must be followed by a foreign business entity, in order to open a branch in Ukraine. As a result, in practice, branches are not used by foreign legal entities when carrying out business activities in Ukraine. Rather, foreign wholly-owned subsidiaries, which are usually established in the form of a LLC, are common vehicles utilized by foreign companies to establish their presence and to undertake commercial activities in Ukraine.

4. TAXATION

4.1 General

The general principles of the Ukrainian tax system, as well as the types of taxes and duties (mandatory payments) which may be levied in Ukraine, are defined in the Law *"On the Taxation System"* (the "Tax System Law"). The Tax System Law stipulates that tax rates, tax exemptions, and procedures and mechanisms for tax assessments and payments may not be introduced or changed by legislative acts other than special tax laws. In addition, any changes or amendments with regard to the determination of tax rates, tax exemptions, and procedures and mechanisms for their assessment and payment may be introduced into the tax legislation not less than 6 months before the beginning of the new budget year, and should take effect at the beginning of the new budget year.

The Tax System Law provides for certain categories of taxes, which may be levied in Ukraine. There are two categories of taxes in Ukraine: state-wide and local. State-wide taxes and duties are established by the Verkhovna Rada of Ukraine and are levied throughout the entire territory of Ukraine. Local taxes and duties (mandatory payments), and the mechanisms and procedures for their assessment and payment, are established by local village or city councils in accordance with, and within the maximum rates established by, the laws of Ukraine.

With the adoption of the Law of Ukraine *"On the Procedure for the Settlement of Obligations of Taxpayers to the Budgets and the State Purposive Funds"* (the "Tax Procedure Law"), there were established the uniform rules for, inter alia, filing tax returns and settlement of tax liabilities, the statutory period of limitation of tax liability, rates and procedure for calculating penalty interest for the late tax payment and penalties for violation of tax rules, the administrative procedure for appealing tax liability assessment.

4.2 Corporate Profits Tax Law

The Law of Ukraine *"On the Taxation of Profits of Enterprises"*, as amended (the "Corporate Profits Tax Law"), is the principal law governing the income tax liabilities of corporate taxpayers in Ukraine. The Corporate Profits Tax Law was completely amended and restated on 22 May 1997, and became effective on 1 July 1997.

The following persons are subject to the corporate profits tax:

(1) resident business entities, state, public, and other types of enterprises, institutions, and organizations, which generate profits from their activity, both within and outside of the territory of Ukraine;

(2) non-resident physical persons and legal entities, which derive profits from Ukrainian sources, with the exception of diplomatic establishments and other organizations enjoying immunity from taxation;

(3) branches, divisions, and other separate units of taxpayers identified above, which are not legal entities and which are located in a territorial community other than the territorial community of such taxpayer; and

(4) permanent establishments of non-residents, which derive profits from Ukrainian sources or which act as agents (i.e., representatives) for such non-residents.

The Corporate Profits Tax Law has established a basic corporate tax rate of 30%. The corporate profits tax is levied on "profits," which are considered to be equal to the adjusted gross income of the taxpayer in any given reporting period (i.e., calendar quarter) minus all allowable expenses and depreciation. "Gross income" is defined as the aggregate revenues obtained by an enterprise in monetary, in-kind, or non-material forms from all of its activities carried out in Ukraine and abroad during the reporting period.

Under the Corporate Tax Law, all reasonable business expenses of the corporate taxpayer are allowed as deductions, unless they are expressly limited or prohibited by law. Such limited and prohibited deductions include, *inter alia:*

(1) interest payments on a loan in which the share of the foreign shareholder is 50% or more, and which is making interest payments in favor of another taxpayer, in which the share of a foreign shareholder is 50% or more—the allowed deduction is limited to 50% of the taxable income of the corporate taxpayer paying the interest in the same reporting period, plus any income obtained in the form of interest;

(2) payments to offshore territories, a list of which is made public annually by the Cabinet of Ministers of Ukraine—the allowed deduction by the corporate taxpayer is limited to 85% of the incurred expenses;

(3) expenses, which are not related to the business activities of the corporate taxpayer, are not deductible; and

(4) certain types of payments to affiliated persons are not deductible.

4.3 Taxation of Non-Residents

The Corporate Profits Tax Law establishes the following general principles with respect to the taxation of foreign legal entities:

(1) foreign legal entities will be taxed in Ukraine on their profits derived from their commercial activities undertaken on the territory of Ukraine through a permanent establishment; and

(2) income derived from sources within the territory of Ukraine by non-residents, which are not engaged in commercial activities on the territory of Ukraine through a permanent establishment, will be taxed at the time of the remittance of such income to such non-residents, and such taxes will be withheld from the sums remitted.

The Corporate Profits Tax Law provides that a non-resident will be liable to pay corporate profits tax with respect to all Ukrainian-source income. "Ukrainian-source income" is defined as "any income derived by non-residents from any business activities on the territory of Ukraine.…" Article 13.1 enumerates the various categories of income, which are *per se* deemed to be Ukrainian-source income, including, *inter alia*: interest payments, dividends, royalties, lease payments, proceeds from real estate sales on the territory of Ukraine, profits from securities transactions, profits from Joint Activity Agreements or long-term agreements, broker or agency fees, and other kinds of income derived by a non-resident (or the permanent establishment of such non-resident, or any other non-resident) from its business activity on the territory of Ukraine.

However, the Corporate Profits Tax Law provides that the income of non-residents received in the form of "a payment or other kind of compensation for the value of goods (works or services) transferred (or delivered) by a non-resident (or its permanent establishment) to a resident" shall not constitute Ukrainian source income.

The Corporate Profits Tax Law provides for a 15% withholding tax rate (defined as a "repatriation tax") to be withheld by a resident taxpayer or by a permanent establishment of such non-resident from the amount of any Ukrainian-source income if and when such non-resident's Ukrainian-source income is remitted to such non-resident by a resident taxpayer or by a

permanent establishment of such non-resident, unless an applicable bilateral double taxation treaty provides relief with respect to such "repatriation tax".

Dividends received by a non-resident legal entity from its ownership rights in a resident legal entity are taxed at a 15% withholding tax rate, unless an applicable bilateral double taxation treaty provides otherwise.

4.4 Double Tax Treaties

Ukraine is a party to more than 40 bilateral double taxation treaties with the following countries:

Country:	Signature Date:	Ratification Date:	Date of Entry Into Force:
Armenia	14 May 1996	13 Sep 1996	19 Nov 1996
Austria	17 Oct 1997	17 Mar 1999	20 May 1999
Azerbaijan	30 July 1999	02 Mar 2000	03 Jul 2000
Belarus	24 Dec 1993	20 Dec 1994	30 Jan 1995
Belgium	20 May 1996	29 Oct 1996	25 Feb 1999
Bulgaria	20 Nov 1995	23 Apr 1996	3 Oct 1997
Canada	4 Mar 1996	12 Jul 1996	22 Aug 1996
China	14 Dec 1995	12 Jul 1996	18 Oct 1996
Croatia	10 Sep 1996	17 Mar 1999	1 Jun 1999
Cyprus*	29 Oct 1982	26 Aug 1983	26 Aug 1983
Czech Republic	30 Jun 1997	17 Mar 1999	20 Apr 1999
Denmark	5 Mar 1996	12 Jul 1996	21 Aug 1996
Estonia	10 May 1996	13 Sep 1996	24 Dec 1996
Finland	14 Oct 1994	6 Oct 1995	14 Feb 1998
France	30 Jan 1997	3 Mar 1998	1 Nov 1999
Georgia	14 Feb 1997	17 Mar 1999	1 Apr 1999
Germany	3 Jul 1995	22 Nov 1995	4 Oct 1996

Hungary	19 May 1995	23 Apr 1996	24 Jun 1996
India	07 Apr 1999	20 Sep 2001	31 Oct 2001
Indonesia	11 Apr 1996	29 Oct 1996	9 Nov 1998
Iran	22 May 1996	06 Dec 1996	21 July 2001
Italy*	26 Feb 1985	30 Jun 1989	30 Jun 1989
Japan*	18 Jan 1986	14 Mar 1988	14 Jun 1988
Kazakhstan	9 Jul 1996	15 Nov 1996	14 Apr 1997
Kyrgyzstan	17 Oct 1997	17 Mar 1997	01 May 1999
Latvia	21 Nov 1995	12 Jul 1996	21 Nov 1996
Lithuania	23 Sep 1996	9 Dec 1997	25 Dec 1997
Macedonia	2 Mar 1998	5 Nov 1998	23 Nov 1998
Malaysia*	31 Jul 1987	1 Jul 1988	1 Jul 1988
Moldova	29 Aug 1995	23 Apr 1996	27 May 1996
Mongolia*	19 May 1978	1 Jan 1979	1 Jan 1979
The Netherlands	24 Oct 1995	12 Jul 1996	2 Nov 1996
Norway	7 Mar 1996	12 Jun 1996	18 Sep 1996
Poland	12 Jan 1993	24 Mar 1994	24 Mar 1994
Romania	29 Mar 1996	21 Oct 1997	17 Nov 1997
Russian Federation	8 Feb 1995	17 Oct 1995	3 Aug 1999
Slovak Republic	23 Jan 1996	12 Jun 1996	22 Nov 1996
Spain*	1 Mar 1985	7 Aug 1986	7 Aug 1986
Sweden	15 Aug 1995	23 Apr 1996	4 Jun 1996
Switzerland*	5 Sep 1986	15 Dec 1987	13 Jan 1988
Turkey	27 Nov 1996	17 Jan 1998	29 Apr 1998
Turkmenistan	29 Jan 1998	17 Mar 1999	21 Oct 1999
United Kingdom	10 Feb 1993	10 Aug 1993	11 Aug 1993

United States of America	4 Mar 1994	26 May 1995	5 Jun 2000
Uzbekistan	10 Nov 1994	2 Jun 1995	25 Jul 1995
Vietnam	8 Apr 1996	29 Oct 1996	19 Nov 1996
Yugoslavia	22 Mar 2001	04 Oct 2001	29 Nov 2001

* Treaties of the former Soviet Union, to which Ukraine is a party as a legal successor

4.5 Taxation of Permanent Establishments

As mentioned above, for the purposes of the Corporate Profits Tax Law, permanent establishments of non-residents are deemed to be independent taxpayers in Ukraine. Under Article 1.17 of the Corporate Profits Tax Law, a "permanent establishment of a non-resident" in Ukraine is created through a fixed place of business, through which the business activities of such non-resident are either fully or partially conducted in Ukraine. The concept of a "permanent establishment" under the Corporate Profits Tax Law is similar to the definition adopted in the majority of the bilateral double taxation treaties, to which Ukraine is a party, although the definition under the Corporate Profits Tax Law is somewhat broader.

The Corporate Profits Tax Law provides that income derived by a non-resident, which conducts its business activities in Ukraine through a permanent establishment, is subject to taxation at the general tax rate, which is currently 30%.

4.6 Value-Added Tax

The Law of Ukraine *"On the Value-Added Tax",* as amended (the "VAT Law"), is the principal law governing VAT in Ukraine. In accordance with Article 2 of the VAT Law, any Ukrainian or non-Ukrainian legal entity will be required to pay VAT, if, *inter alia*, that person:

(1) has sold goods (or provided works, services) subject to VAT during any period within the last 12 calendar months, with an aggregate value in excess of 3,600 times of non-taxable personal minimal income;

(2) imports (ships) goods into the customs territory of Ukraine; or

(3) is the recipient of works (services) from a non-resident entity and such works (services) are provided on and within the customs territory of Ukraine.

The VAT Law identifies a list of transactions subject to VAT, which includes, *inter alia*, the following:

(1) the sale of goods (or the provision of works, services) on and within the customs territory of Ukraine;

(2) the import of goods into the customs territory of Ukraine; and

(3) the import of works (services) from non-residents in circumstances, in which such works (services) are provided on and within the customs territory of Ukraine.

Transactions, which do not constitute taxable events, subject to VAT include, *inter alia*:

(1) the issuance, placement, and cash sale of securities;

(2) lease payments pursuant to a financial lease agreement or a residential lease agreement (provided that it is the lessee's principal residence);

(3) the transfer of pledged property pursuant to a loan agreement and its return to the pledgor upon the repayment of the debt;

(4) the providing of insurance and re-insurance services; and

(5) the contribution of fixed assets to the charter fund of a legal entity in exchange for ownership rights in such legal entity.

The VAT Law provides for a tax rate of 20% of the contractual value of the relevant goods (works, services), which value includes any excise tax, import duty, and other taxes or payments required by the applicable Ukrainian legislation. A 0% tax rate is provided by the VAT Law for goods (works, services) exported (provided, rendered) outside of the customs territory of Ukraine.

4.7 Personal Income Tax

Issues of personal income taxation are principally regulated by the Decree of the Ukrainian Cabinet of Ministers "*On the Personal Income Tax*", adopted on 26 December 1992, as subsequently amended (the "Personal Income Tax Decree").

Ukrainian residents are taxed on their aggregate worldwide income. Non-residents are taxed on all income derived from sources within Ukraine, but they are not eligible for the exemptions or deductions available to residents.

The Personal Income Tax Decree provides that income tax is levied on wages received and on all other income received, whether in cash or in kind. Taxes paid outside Ukraine may be taken as a credit against Ukrainian taxes due, in the event that the taxpayer provides a written acknowledgment from the foreign tax authority that such foreign taxes have, in fact, been paid. However, the total of such foreign tax credits may not exceed the amount of the Ukrainian personal income tax due.

All foreign individuals, who are physically present in Ukraine for more than 183 calendar days in a calendar year, are deemed Ukrainian residents for personal income taxation purposes. As such, they are subject to Ukrainian tax on their worldwide income.

Foreign individuals, who are tax residents of Ukraine, are required to pay Ukrainian personal income tax on a quarterly basis. In accordance with the Law of Ukraine "*On the Procedure for* the *Settlement of Obligations of Tax*p*ayers to the Budgets and the State Purposive Funds*", dated 21 December 2000, payers of the Ukrainian personal income tax must file their final tax returns by 1 April of the year following the taxable period (i.e., the calendar year). Nevertheless, it is the position of the Ukrainian tax authorities that foreign individuals, who are tax residents of Ukraine, must file their final tax returns within 40 days after the end of the taxable period, i.e., the calendar year end, for which such return is filed. Non-residents (Ukrainian or foreign individuals) receiving Ukrainian-source income are taxed at the source of such income.

Ukrainian citizens, who are residents of Ukraine, are currently not required to file tax returns, if their only source of income is from their principal place of employment. Employers are required to carry out the withholding of the personal income taxes due on wages. If a Ukrainian citizen, who is a resident, has income from sources other than his/her principal place of employment, then such individual must file a personal tax return by 1 April of the year following the taxable period. Taxes are payable in local currency.

Income derived by foreign citizens, who are deemed residents for the purpose of the Personal Income Tax Decree, is taxed at the same rates applicable to the income of Ukrainian citizens.

The tax rates applicable to income derived from the taxpayer's principal place of employment are determined on the basis of the following scale:

Sum of Monthly Aggregate Taxable Income	Applicable Tax Rate
(1) Non-Taxable Minimum (17 UAH, which is approximately USD3.13)	Exempt
(2) from 1 Minimum plus 1 UAH to 5 Minimums inclusively	10% of the amount exceeding 1 Minimum
(3) from 5 Minimums plus1 UAH to 10 Minimums inclusively	The tax rate on 5 Minimums, plus 15% of the amount exceeding 5 Minimums
(4) from 10 Minimums plus 1 UAH to 60 Minimums inclusively	The tax rate on 10 Minimums, plus 20% of the amount exceeding 10 Minimums
(5) from 60 Minimums plus 1 UAH to 100 Minimums inclusively	The tax rate on 60 Minimums, plus 30% of the amount exceeding 60 Minimums
(6) from 100 Minimums plus 1 UAH	The tax rate on 100 Minimums, plus 40% of the amount exceeding 100 Minimums

Income derived by Ukrainian residents from a source other than the taxpayer's principal place of employment, as well as Ukrainian-source income of a non-resident, are taxed at the fixed rate of 20%.

4.8 Payroll Taxes

Employees in Ukraine, who are deemed insured by virtue of their employment, are guaranteed social security and pension benefits. The employer is liable by law to make the relevant mandatory payroll-based contributions in respect of its insured employees to the appropriate state funds. Such contributions are not deducted from the employees' salaries, but must be paid by the employer in addition to their salaries.

The following mandatory payroll taxes, payable at the following percentages of the employees' salaries, are applicable to all entities in respect of their insured employees:

(1)	Pension Insurance:	32%
(2)	Temporary Disability, Birth, and Burial Insurance:	2.9%
(3)	Unemployment Insurance:	2.1%
(4)	Industrial Accident and Professional Disease Disability Insurance:	0.84% up to 13.8%*
	Total:	37.84% up to 50.8%

* Actual rate depends on the "traumatism risk level" of the industry sector, in which the employer operates.

The taxable basis for the above payroll taxes is the monthly salary payable by the employer to each individual employee, currently capped at 1,600 UAH per employee (which is approximately USD295). All payroll taxes must be paid by wire transfer to the appropriate accounts at the same time the employer withdraws funds to pay salaries to employees.

4.9 Land Tax

The Law *"On the Payment for Land"*, as amended (the "Land Tax Law"), was adopted in 1992. Pursuant to the Land Tax Law, payments for land are established in the form of a land tax or a land lease payment, which is determined on the basis of an estimation of the value of the land. An owner of land (other than the state) is required to pay the land tax. Under a grant of land use, the user does not pay rent to the owner, but is responsible for paying the land tax in lieu of the owner. Under a land lease agreement, the lessee must pay a rent payment, but is not responsible for the payment of the land tax.

The Land Tax Law establishes three types of payments for land: (i) payments for agricultural land; (ii) payments for land located within the limits of residential areas; and (iii) payments for non-agricultural land located outside of the limits of residential areas (which includes land designated for the use of transport, communications, defense, and other industries; land of natural reserves; land of special recreational, historic, or cultural status; land of the national forest fund; and land of the national water fund).

The rates of payments for land are differentiated depending on the land value and the land location.

4.10 Excise Tax

The excise tax is an indirect tax on consumers (recipients) of some goods (products), which are provided by law as being excisable. The excise tax is inclusive to the value of the excisable goods and is payable by:

(1) subjects of entrepreneurial activity, their branches, divisions, and other separate units, which do not enjoy the status of a legal entity, producing (including under tolling terms) excisable goods (services) on, or importing excisable goods into, the customs territory of Ukraine;

(2) non-residents producing excisable goods (products) on the customs territory of Ukraine, either directly or through a permanent establishment;

(3) individuals (both Ukrainian and foreign), who transport excisable goods (products) to, or who ship excisable goods (products) from outside of, the customs territory of Ukraine;

(4) legal entities and individuals, which acquire excisable goods (or the right to possess, use, or dispose of them) from a tax agent (which is defined as an enterprise with foreign investment, whose rights to exemption from certain taxes are confirmed by a (Arbitrazh) court, and which is responsible for computing and levying the excise tax on the excise taxpayers).

The list of goods (products), which are subject to the excise tax, is established by the Verkhovna Rada of Ukraine. The rates of the excise tax on such excisable goods (products) are primarily established as a fixed rate per item.

The excise tax is calculated on the basis of the following: (i) a fixed rate applied to the sales turnover; and (ii) a firm price per item sold. Goods exported for foreign currency are not subject to the excise tax. In addition, the sales turnover from special service cars, e.g., invalid support cars, ambulances, and fire brigades, and from spirits used for medicinal purposes is not subject to the excise tax.

5. CURRENCY REGULATIONS

5.1 General

The principal act of legislation in Ukraine in the sphere of currency regulation is the Decree of the Cabinet of Ministers of Ukraine *"On the System of Currency Regulation and Currency Control"* dated 19 February 1993 (the "Currency Decree"). In its implementation of the Currency Decree, the National Bank of Ukraine (the "NBU") has adopted a large number of regulations, instructions, and other normative acts.

5.2 Status of National Currency

The Ukrainian national currency is the Hryvnia ("UAH"), and it was introduced in September 1996. The Currency Decree provides that UAH is the only lawful means of payment on the territory of Ukraine, and that it is acceptable without any limitations in the settlement of any obligations.

5.3 Use of Foreign Currency Within Ukraine

The Currency Decree sets forth the general rule that any use of foreign currency on the territory of Ukraine, as a means of payment or as an object of pledge, may legally be carried out only pursuant to an individual license of the NBU.

The foregoing rule does not apply to foreign currency transfers performed within Ukraine by a Ukrainian commercial bank, possessing a banking license, when rendering banking services to its clients. In addition, it is permissible to use within Ukraine cash in foreign currency to pay, *inter alia*, customs duties and charges (only when the payer is an individual), consular fees, mandatory medical insurance fees, road charges, payments for fuel and services sold/rendered to operators and crews of foreign means of transport, payments for hotel services (only when the payer is a non-resident), and payments for goods or services sold or rendered within authorized duty free zones.

5.4 Transfer Abroad of Foreign Currency from Ukraine

The Currency Decree sets forth the general rule that any transfer abroad of foreign currency from Ukraine requires an individual license of the NBU, subject to an exhaustive list of exemptions provided in the Currency Decree. Such exemptions include:

(1) the transfer abroad of foreign currency by a Ukrainian resident individual within the limit determined by the NBU (currently, such limit for cash is the equivalent of USD1,000);

(2) the transfer abroad of foreign currency by a Ukrainian resident or non-resident (legal entity or individual) within the limit of the amount previously imported into Ukraine by such resident or non-resident on a legal basis;

(3) the payment abroad in foreign currency by a Ukrainian resident (legal entity or individual) in discharge of a contractual obligation in such foreign currency to a non-resident in settlement for goods, services, works, intellectual property rights, or other property rights acquired or received by such resident from such non-resident (note that an acquisition of securities or other "currency values" does not fall within this exemption);

(4) the payment abroad in foreign currency of interest under a loan or income earned (e.g., dividends) from a foreign investment; and

(5) the repatriation abroad from Ukraine of the amount of a foreign investment in foreign currency previously made in Ukraine upon the termination of the relevant investment activity.

5.5 Other Licensable Transactions

Under the Currency Decree, an individual license of the NBU is required, *inter alia*, for:

(1) depositing funds in UAH or in foreign currency, or depositing other "currency values" (e.g., securities, banking metals, etc.), in an account or on deposit outside of Ukraine (except, *inter alia*, the opening by a Ukrainian commercial bank, possessing a banking license, of a correspondent account at a foreign bank, and the opening by a Ukrainian resident of his/her bank account at a foreign bank for the duration of such resident's stay abroad);

(2) investing in foreign currency outside of Ukraine (by the transfer abroad of such foreign currency from Ukraine); and

(3) the receipt by a Ukrainian resident from a non-resident of a foreign currency loan (except when the resident is a Ukrainian commercial bank and the loan is provided by a foreign bank for a term not exceeding 1 year).

5.6 Settlements Under Export and Import Contracts

The relevant Ukrainian legislation requires that a Ukrainian resident's proceeds in foreign currency under an export contract must be collected in such resident's own bank account within 90 days from the date of the customs clearance of the exported goods. This 90-day period may be prolonged in a limited number of cases, only pursuant to an individual permission from the NBU. A resident's failure to comply with this 90-day requirement may result in the imposition on such resident of a fine in the amount of 0.3% of the amount due under the export contract for each day of delay in receiving the foreign currency proceeds.

Similarly, the relevant Ukrainian legislation requires that goods paid for by a Ukrainian resident, pursuant to an import contract concluded with a non-resident, must be imported and cleared through the Ukrainian customs within 90 days from the date on which such resident's payment was made. As in the case with an export contract, this 90-day term may be prolonged in a limited number of cases, and the same fine may be imposed if such a resident fails to comply with this 90-day requirement.

5.7 Acquisition of Foreign Currency

A resident Ukrainian legal entity may acquire foreign currency in Ukraine only through a duly licensed Ukrainian commercial bank, and only in a limited number of cases and subject to its submission to the bank of a package of documents confirming the legitimacy of the acquisition. The cases, in which such an acquisition will be permitted, include, *inter alia*, the need for such resident to discharge its payment obligation to a non-resident in connection with:

(1) the purchase of goods or the receipt of services from such non-resident;

(2) the repayment of a loan extended by such non-resident and/or the payment of interest thereon;

(3) the payment of dividends or other income earned as a result of such non-resident's investment; and

(4) any currency transaction, for which the NBU has issued an individual license.

5.8 Mandatory Sale of Foreign Currency Proceeds

Currently, a Ukrainian resident is required to sell for (i.e., to convert into) Ukrainian currency 50% of its proceeds received in a foreign convertible currency. Nevertheless, this mandatory conversion requirement does not apply, *inter alia*, to:

(1) funds received by such resident under a loan extended by a non-resident and, where applicable, registered by the NBU;

(2) funds used in full to repay such a loan as specified above or to pay interest thereon, or to make lease payments under a lease agreement concluded with a non-resident;

(3) funds paid into Ukraine as foreign investment;

(4) funds purchased in Ukraine on a legitimate basis for discharging such resident's payment obligations to a non-resident (provided that such funds are utilized for such discharge within the limited term set forth by the NBU);

(5) funds received by a Ukrainian intermediary for the purpose of their further transfer to a Ukrainian or foreign beneficiary;

(6) funds deposited by such resident in a bank or other credit-financial institution and interest earned and received on such deposited funds;

(7) proceeds received from services rendered by a transportation, telecommunications, or fishing company, which are used to cover such company's operational expenses incurred outside of Ukraine;

(8) amounts received as charitable contributions; and

(9) a Ukrainian commercial bank's or other credit-financial institution's receipt of its own funds.

5.9 Trade in Foreign Currency

Trade in foreign currency on the territory of Ukraine may be carried out only by or through Ukrainian commercial banks and other credit-financial institutions, which possess the relevant license of the NBU, and only at the inter-bank currency market of Ukraine.

6. LAND OWNERSHIP AND RELATED RIGHTS

6.1 Land Ownership

The Constitution of Ukraine has established two forms of land ownership in Ukraine: public and private. Public property consists of state property and municipal property. The principal legislative act regulating land issues in Ukraine is the new *Land Code of Ukraine*, which entered into force on 1 January 2002 (the "Land Code"). The Land Code applies to all types of land in Ukraine, and governs the legal relations of Ukrainian and foreign individuals and legal entities, state-owned companies, state and municipal authorities of Ukraine, foreign states, and international organizations in the field of the ownership, use, and disposition of land in Ukraine. The Land Code clearly distinguishes between agricultural and non-agricultural land, and it establishes different regimes of ownership for each type of land.

The Land Code contains a number of transitional provisions, which postpone or limit the application of certain provisions of the Land Code until a future date (the "Transitional Provisions"). One of the most important of these is that agricultural land may not be re-sold, alienated, or otherwise disposed of (unless such alienation occurs as a result of an exchange agreement, inheritance, or the withdrawal of land for a public purpose), and interests in agricultural land may not be contributed to charter funds of legal entities, by individuals or legal entities until 1 January 2005. The Land Code does not contain any similar restrictions with respect to non-agricultural land.

The Land Code provides for the following types of rights to land in Ukraine: (a) ownership; (b) perpetual/indefinite use; (c) short-term lease; (d) long-term lease; and (e) servitudes (easements).

The previous version of the Land Code provided for a limited concept of private land ownership, covering only Ukrainian individuals and collective farms. The new Land Code expressly states that there are three types of ownership of land in Ukraine: private, municipal and state. Subject to the limitations of the Transitional Provisions, Ukrainian individuals and legal entities are no longer restricted in their ownership, use or disposition of land.

Foreign individuals, legal entities and foreign states are allowed to own, use, and dispose of certain non-agricultural land in Ukraine, but are explicitly prohibited from owning agricultural land. Foreign legal entities may own only non-agricultural land (a) within city limits, if they purchase buildings or

structures or land plots for construction purposes; and (b) beyond city limits, if they purchase buildings or structures. State or municipal land may, however, be sold to a foreign legal entity if it establishes and registers its permanent establishment in the form of a commercial representative office in Ukraine.

Unlike in the past, the right of perpetual use of land may now be granted only to state and municipally owned companies. Accordingly, all individuals and legal entities, who possess state or municipal land on the basis of perpetual use rights as of 1 January 2001 must therefore change (re-register) their rights of perpetual use to either the right of ownership or lease by 1 January 2005.

Individuals (or their heirs), who owned land plots in Ukraine before 15 May 1992 (the date on which the previous version of the Land Code took effect), have no right to receive such land plots back into their ownership. There will therefore be no restitution of land ownership based on historical land use rights.

6.2 Land Leases

The Land Code contains a number of general provisions with respect to land leases. In particular, it provides that a land lease is a contractual, limited-in-time possession and use of a land plot, which is granted for compensation and which is necessary for the lessee's commercial and other activities. All Ukrainian and foreign individuals, and legal entities, foreign states, and international organizations may lease land in Ukraine. The Land Code establishes two types of land leases: short-term (up to 5 years) and long-term (up to 50 years).

The Land Code establishes the right of a lessee to sublease the land plot, subject to the lessor's consent. "Lessors of land plots" are defined only as the owners of such land plots or their authorized representatives. The Land Code refers to a separate law to regulate the various issues involved with land leases. Currently, land lease relations are regulated in detail by the Law of Ukraine "On Land Leasing" dated 6 October 1998 (the "Land Lease Law"). According to the Land Lease Law, land lease agreements must be in writing, must contain the plan (scheme) of the land plot, and must be notarized. The essential elements of any land lease agreement are as follows: (i) the subject-matter of the lease, its location and size; (ii) the term of the validity of the agreement; (iii) the amount of the rent and the terms and means of payment; (iv) the purposes of the lease; (v) the terms for returning the plot of land; (vi) all existing restrictions and encumbrances; (vii) the risk of damage or loss; and (viii) liability. Every land lease agreement is required to be registered with the state authorities.

6.3 Third Party Rights

The Land Code recognizes new types of rights of third parties and establishes the concepts of "servitudes" (easements) and "good-neighborliness". The Land Code contains detailed descriptions of various types of servitudes, their application, and the procedures for their establishment and termination.

Under the concept of "good-neighborliness", landowners and land users are obligated to choose the manner of land utilization, which will create the least amount of inconvenience and discomfort (considering such issues as shading, smoke generation, odor nuisances and noise pollution) to the landowners and land users of neighboring land plots.

6.4 Property rights

6.4.1 General

The Law of Ukraine *"On Ownership"* dated 7 February 1991, as amended (the "Law on Ownership"), represented a significant step forward after the end of the Soviet era in the conceptual reorientation of Ukraine's legal system of property ownership toward more liberal principles. In contrast to the previous rigid regime of state and collective ownership of property, the Law *"On Ownership"* specifically recognized private ownership and included Ukrainian residents, foreign individuals, and foreign legal entities among those entitled to own property in Ukraine. Moreover, the Law *"On Ownership"* specifically permitted owners of property, including foreign investors and joint ventures, to use such property for commercial purposes, to lease such property, and to keep the revenues, profits, and production derived from the use of such property.

Under Article 26 of the Constitution of Ukraine, foreign citizens enjoy the same rights and freedoms and bear the same responsibilities as Ukrainian citizens, including property rights. According to the Law *"On Ownership"*, foreign citizens and legal entities are entitled to own property in Ukraine, unless otherwise provided in the international treaties of Ukraine or by other laws of Ukraine. The Ukrainian courts provide for the protection of property rights according to the applicable legislation of Ukraine.

6.4.2 Lease of Real Estate Objects

Leases of real estate objects (with the exception of land) in Ukraine are regulated by the Civil Code of Ukraine, the Law of Ukraine *"On Leasing"* dated 17 December 1997 (the "Leasing Law"), the Law of Ukraine *"On the Leasing of State and Municipal Property"* dated 10 April 1992, as amended (the "State Property Leasing Law"), and certain other normative acts.

The Civil Code contains general provisions governing the leasing of movable and immovable property. The Leasing Law is one of the new laws, which was adopted in the course of the post-Soviet era reforms. It regulates in detail the various issues concerning the forms of leasing and the subjects and objects of leasing. It also defines the essential elements of a leasing agreement. Under the Leasing Law, any movable property or real estate classified as a "capital asset" according to the applicable legislation of Ukraine may be the object of leasing, unless it is expressly restricted from being an object of leasing or its free circulation on the market is prohibited. The Leasing Law distinguishes two types of leasing: (a) financial leasing and (b) operational leasing.

The State Property Leasing Law primarily regulates the leasing of state and municipal property. However, the provisions of the State Property Leasing Law may also apply to the leasing of private property, unless otherwise expressly provided by the leasing agreement or by other applicable legislation.

6.4.3 Pledges of Property

The Law of Ukraine *"On Pledges"* dated 2 October 1992, as amended (the "Pledge Law") defines a pledge as being a means to secure obligations. The Pledge Law stipulates that any property and property rights, which are alienable and can be realized, may be pledged. Personal claims cannot be pledged. Any pledge agreement must be in writing and, in the case of real estate, transportation means, and/or space objects, must also be notarized. The pledge is subject to mandatory state registration in accordance with, and in the cases specified by, the applicable legislation of Ukraine. State registers of pledges on movable and immovable property are held by the respective state agencies. The Pledge Law contains specific chapters on mortgages, pledges of movable property, pledges of property rights, and pledges of securities. The Land Code also allows for the mortgage of a land plot by its owner. However, under the Land Code, only banks that satisfy certain requirements may act as mortgagees in respect of such a mortgaged land plot.

7. PRIVATIZATION

7.1 General Background

In 1992, Ukraine embarked on a mass privatization program, which combined voucher privatization by citizens and limited cash privatization. In March 1992, the Verkhovna Rada of Ukraine enacted two major pieces of legislation on privatization, one covering large scale privatization, i.e., the Law "*On Privatization of the Property of State Owned Enterprises*" (the "Privatization Law"), and the other covering the privatization of small-scale enterprises, i.e., the Law "*On Privatization of the Property of Small State-Owned Enterprises*" (the "Law on Small Privatization"). These two laws establish the basic principles of privatization: (i) the possible objects of and participants in privatization; (ii) the role of the state authorities in the privatization of state property; and (iii) the general characteristics of the methods and procedures for privatization (plus various others).

The specific objectives, quotas, and methods of privatization for each year are outlined in state privatization programs adopted by the Verkhovna Rada of Ukraine. In addition, various aspects of the privatization process are regulated by resolutions of the Verkhovna Rada of Ukraine, resolutions and decrees of the Cabinet of Ministers, decrees of the President, and orders of the State Property Fund ("SPF").

In 2000, the Verkhovna Rada of Ukraine adopted the Law "*On the State Privatization Program for 2000-2002*" (the "2000 Privatization Program"), in which it set forth the latest objectives and priorities for privatization, and provided a detailed procedure for the privatization of different kinds of state property for the next three years.

7.2 Objects of Privatization

Under the Privatization Law, the following state-owned assets are subject to privatization:

(1) assets, production facilities, and structural units of enterprise that constitute an integrated property complex;

(2) unfinished construction sites; and

(3) state-owned shares in enterprises.

The 2000 Privatization Program divides all state-owned assets into six groups. For example, Group A includes small enterprises and their structural units, which have been sub-divided into separate enterprises having up to 100 employees, or over 100 employees if the value of the fixed assets was not sufficient to form an open joint stock company (i.e., UAH147,500 or approximately USD27,247 at the current exchange rate). Group B includes enterprises with more than 100 employees and fixed assets sufficient to establish an open joint stock company ("OJSC"). Group G covers integrated property complexes and monopolists, and Group E includes state-owned shares in private enterprises of any legal organizational form.

7.3 Participants in Privatization

Under the Privatization Law, foreign individuals and legal entities may participate in the privatization process, along with Ukrainian citizens and legal entities. In order to make payment for a purchased object of privatization, a foreign investor must open a separate local currency bank account in Ukraine. In practice, however, a participant in privatization must open two accounts, i.e., a Foreign currency account and a local currency account, whereby foreign currency is transferred from abroad into the foreign currency account, exchanged into local currency, and then credited to the local currency account. The Privatization Law stipulates that joint ventures and foreign investors, which are legal entities, must submit a declaration of origin of the funds, which they intend to use as consideration for the property being privatized, regardless of the value of the purchase.

The 2000 Privatization Program introduced certain restrictions as to the participants where the object of privatization is a block of shares of an OJSC, which has a monopoly position on the national market of the relevant products, or which has a strategic significance to the state economy and/or security. In such cases, only a majority interest in such OJSC may be privatized; provided, however, if such OJSC operates in the field of energy, metallurgy, the oil and chemical industry, radio-electronics, aviation or machine building, then such majority interest may be acquired only by an "industrial investor". The latter is defined as a national or foreign investor, or a consortium of investors, interested in maintaining the relevant market share of the OJSC, which produces similar products or consumes in its main production the products of such OJSC as its main raw materials, or produces products which are consumed by such OJSC in its main production, or which maintains direct control over such enterprises for at least one year. The 2000 Privatization Program specifically provides that an offshore entity may not qualify as an industrial investor.

7.4 Methods of Privatization

Under the Privatization Law, state-owned property may be privatized through the sale of state property at auctions, and through a tender or a buy-out of the state property under alternative privatization plans. The relevant Ukrainian legislation distinguishes between a "commercial" and a "non-commercial" tender. A commercial tender is a method of privatization, under which the bidder, offering the highest price for the block of shares and undertaking to fulfill all of the established conditions, wins the tender. The winner of a non-commercial tender is the bidder, which proposes to invest the most in an enterprise in accordance with the business plan prepared by the bidder and which commits to pay the announced price for the block of shares. Shares offered for sale through a tender may be sold only in one block in the quantity stipulated by the privatization plan.

An "open tender" is defined as a method of privatization, which is applied to the competitive sale of blocks of shares of OJSCs carried out with the participation of financial intermediaries authorized by the SPF. The authorized intermediary may be either a resident or a nonresident legal entity, which is licensed to engage in professional securities trading activities by the State Commission on Securities and the Stock Exchange of Ukraine in the case of a resident intermediary, or the relevant foreign authority in the case of a non-resident intermediary. The authorized person is responsible for the preparation of the tender documentation, the initial evaluation of the block of shares to be sold, and the organizing of marketing campaigns.

Large blocks of shares (i.e., more than 25%) in OJSCs with a turnover exceeding UAH100 million for the previous reporting year, or with a balance sheet value of fixed assets exceeding UAH100 million, are normally offered for sale by open tender. Only one block of shares at a time of a particular OJSC may be offered for sale through an open tender. Proposals to buy a part of the tendered block of shares are not acceptable.

There are additional requirements for the sale of shares in "strategic enterprises". If an enterprise, which is to be sold through an auction, tender, or on a stock exchange, is identified as "strategic," the bidders must prepare and submit to the privatization authorities additional disclosure documentation determined by the SPF and the Anti-Monopoly Committee (the "AMC"). If the stake to be acquired in a strategic enterprise exceeds 25%, or is otherwise deemed to grant controlling powers in the highest management body of the enterprise, the approval of the AMC must be obtained prior to the purchase.

The 2000 Privatization Program provides that the state may (but is not obliged to) retain 25% or 50% (depending on the category of the enterprise undergoing privatization) of the outstanding shares plus one share of OJSCs created on the basis of state-owned monopolies or strategic enterprises. Such a shareholding ensures that the state will retain the right to control the decision-making process at the shareholders' meeting (the highest governing body of a joint stock company) either by the exercise of a veto or by the outright majority ownership of the shares, with regard to the following issues: (1) amendments of the charter of the joint stock company; (2) the termination of its activities; (3) the creation or termination of a subsidiary, branch, or representative office (Article 42 of the Companies Law); (4) participation in other enterprises and associations; and (5) any pledge, lease, sale, or any other alienation of its assets, the balance value of which exceeds 25% of the charter fund of the company.

The lists of enterprises, which are to be sold through auctions, tenders and buy-outs, are approved by the SPF with respect to state-owned property by the Parliament of the Autonomous Republic of Crimea with respect to property of Crimea, and by local councils of deputies with respect to municipal property.

Title to privatized property is evidenced by the sale and purchase agreement entered into by the purchaser and the corresponding privatization authority. The sale and purchase agreement must be executed in written form and certified by a notary.

7.5 Investment Obligations

The Privatization Law also provides for investment obligations if the investor acquires an entire integrated property complex. Among such possible investment obligations are:

(1) implementing know-how and new technologies;

(2) preserving job positions;

(3) abiding by the antimonopoly regulations;

(4) preserving the range and amounts of the goods produced;

(5) implementing anti-pollution measures;

(6) making direct investments;

(7) taking measures aimed at the social well-being of personnel; and

(8) others.

The parties to the privatization process may agree upon other investment obligations. However, it should be noted that the provisions regarding investment obligations do not apply to the privatization of monopoly enterprises or companies of strategic importance.

The period for the carrying out of such investment obligations may not exceed 5 years. Any transfer of shares (property), which are subject to investment obligations, is subject to the approval by the state privatization authorities and is generally prohibited until the investment obligations are performed in full. If the state privatization authority will approve such a transfer of shares (property), the investment obligations must be assumed by the new owner of the shares (property) in question.

7.6 Privatization Developments and Results

Notwithstanding the ambitious agenda for full-scale privatization embodied in each of the state privatization programs, until recently, an effective program for the systematic large-scale transfer of state-owned assets to private entities and/or individuals has not been implemented in Ukraine. Although the Ukrainian Government began to transform state enterprises into joint stock companies in the "corporatization" process, and to sell minority stakes through auctions and competitive tenders, most enterprises privatized during 1993-1996 were small and medium-sized businesses involved in the spheres of retail trade, food service, construction, and other service-related activities. Significant portions of those enterprises, which have been privatized, have been privatized by a buy-out of the enterprise by the workers' collective.

At the end of 1998, and the beginning of 1999, Ukraine commenced a new stage of privatization, offering for tender both blocking (i.e., 25%) and majority (i.e., 50% and more) stakes in its "blue chip" companies. The results of the major tenders held in 2001 are provided below.

TENDER RESULTS

Name of Enterprise	Tender was conducted on	Percent offered for Sale via Tender	Asked Price (UAH)	Buyer's price (UAH)	Winner of the tender (Buyer)
ENERGY DISTRIBUTION COMPANIES					
OJSC "KYIVOBLENERGO"	17.04.01	75%	174 000 000,00	248 700 000,00	AES Washington Holdings B.V.
OJSC "ZHYTOMYROBLENERGO"	17.04.01	75.56%	95 200 000,00	190 000 000,00	Vychodoslovenske Energeticke Zavody
OJSC "RIVNEOBLENERGO"	17.04.01	75%	100 600 000,00	125 000 000,00	AES Washington Holdings B.V.
OJSC "SEVASTOPILMISKENERGO"	24.04.01	70%	35 300 000,00	100 960 000,00	Vychodoslovenske Energeticke Zavody
OJSC "KHERSONOBLENERGO"	24.04.01	65%	111 400 000,00	112 138 000,00	Vychodoslovenske Energeticke Zavody
OJSC "KIROVOGRADOBLENERGO"	24.04.01	51%	87 017 000,00	88 234 000,00	Vychodoslovenske Energeticke Zavody

(Source: State Property Fund of Ukraine)

OJSC – open joint stock company

UAH – Ukrainian Hryvna (on 17 April 2001 1 USD equals 5.4180 UAH)

7.7 Privatization Prospects for the Year 2002

In 1999-2001, Ukraine privatized a large number of large industrial enterprises, strategic companies, and monopolies. In general, such privatization was limited to the sale of a 25% to 50 % stake in a company, except for power distribution companies as set forth above. In 2002, Ukraine will proceed with the privatization of monopolies and strategic enterprises, but the remaining stakes in many of these already-privatized companies will be offered for sale as well. Enterprises in the field of metallurgy, the chemical industry, energy distribution, and telecommunications will be among those offered for sale in 2002.

In addition, the 37 % share package of the Ukrainian telecommunications monopoly, "Ukrtelecom", is scheduled to be sold through an open tender in 2002. It will become the largest company ever privatized in Ukraine. The Verkhovna Rada of Ukraine has adopted a special Law "On the Privatization of Ukrtelecom", which provides that a share package representing 50% of the capital fund of Ukrtelecom plus one share shall remain in state ownership, while the remaining 49.99% of Ukrtelecom's shares shall be offered for sale to the qualified employees of Ukrtelecom on preferential conditions and to strategic investors in an open tender. According to this Law, a stake offered at an open tender may not be less than 25%. Only an industrial investor may purchase the shares of Ukrtelecom under the above Law (with the definition of "industrial investor" essentially conforming to the definition provided in the 2000 Privatization Program). Prior to Ukrtelecom's privatization, its charter capital was increased. Foreign and domestic advisors and experts were selected on a competitive basis to advise and assist the Ukrainian Government in the process of the privatization of Ukrtelecom. Each Ukrtelecom employee was entitled to purchase Ukrtelecom shares in an amount up to USD136. The senior management of Ukrtelecom was also entitled to purchase up to 5% of the charter capital of Ukrtelecom. According to Ukrtelecom, the company sold 7.14% of its shares for UAH 167,070,000 during the preferential sale of its shares to the company's employees, which took place from October 1, 2001, to February 1, 2002.

The winner of the privatization tender for the sale of a 37% share package of Ukrtelecom will also have the right to manage up to one-half of the total block of the state's shares. The state will also undertake to invest 30% of the funds, which it will receive from the privatization, into Ukrtelecom as its investment into the development of the telecommunication network in Ukraine. The above Law prohibits any change in the type of activities (i.e., the specialization) of Ukrtelecom after its privatization.

The State Property Fund of Ukraine plans to sell stakes of shares in 281 state enterprises, in order to raise UAH 5.6 billion from privatization in 2002. Set forth below is a list of the major enterprises, which are currently being prepared for privatization.

COMPANIES SET FOR PRIVATIZATION IN 2002

Company	Capital fund, UAH thousand	Share stake offered for sale, %	Expected revenues from sale of shares, UAH thousand
Vinnytsiaoblenergo	30,973.66	75.00	139,380.00
Volynoblenergo	23,863.80	75.00	107,400.00
Donetsk rolled metal plant	5,717.64	25.00	N/A
Zakarpattiaoblenergo	31,150.81	75.00	140,220.00
Luhanskoblenergo	52,030.73	25.00	37,290.00
Petrovskyi Dnipropetrovsk metallurgical plant	212,337.61	42.26	N/A
Nikopol-based Pivdennotrubnyi plant	364,751.04	96.67	N/A
Dniprooblenergo	59,916.17	75.00	269,640.00
Donetskoblenergo	81,896.47	65.00	319,380.00
Azovstal	793,550.57	25.00	N/A
Makiivka metallurgical plant	354,160.36	60.86	N/A
Zaporizhiaoblenergo	44,840.00	60.25	135,080.00
AvtoZAZ	9,575.08	81.59	N/A
Prykarpatyaoblenergo	25,908.88	25.00	17,470.00
Ukrtelecom	4,681,562.00	37.00	N/A
Rosava	69,246.46	74.62	N/A
Krymenergo	43,241.88	70.00	181,620.00
Lvivoblenergo	48,493.08	26.98	14,900.00
Odesaoblenergo	52,123.89	25.01	40,600.00
Poltavaoblenergo	55,240.00	25.00	25,610.00
Svema	488,071.90	35.25	N/A
Sumyoblenergo	44,281.37	25.00	22,140.00
Ternopiloblenergo	15,272.04	51.00	46,740.00
Kharkivoblenergo	64,135.19	65.00	250,080.00
Khmelnytskoblenergo	33,637.84	70.00	141,300.00
Cherkasyoblenergo	37,098.33	71.00	158,040.00
Chernihivoblenergo	29,829.51	25.00	14,910.00

(Source: State Property Fund of Ukraine)

8. COMPETITION LAW

8.1 General

On 18 January 2001, the Verkhovna Rada of Ukraine enacted Law of Ukraine No 2242-III "*On the Protection of Economic Competition*", which will become effective one year after its official publication, i.e., on 2 March 2002 (the "Competition Law"). The Competition Law will replace the currently effective Law of Ukraine "*On Restricting Monopoly and Preventing Unfair Competition in Business Practices"*, dated 18 February 1992.

The Competition Law, *inter alia,* defines and sets forth the principal features of (i) anti-competitive concerted actions of business entities; (ii) abuse of monopoly (dominating) position on the market; and (iii) restrictive and discriminatory activities by business entities and their associations.

The Competition Law also describes the transactions, which, subject to the satisfaction of certain monetary thresholds, require the prior approval of the Antimonopoly Committee of Ukraine ("AMC").

8.2 Transactions Subject to Prior AMC Approval

Pursuant to Article 22 of the Competition Law, the following transactions may be subject to prior AMC approval: (i) mergers or consolidations of business entities; (ii) the acquisition of direct or indirect control over a business entity; and (iii) the direct or indirect acquisition of, obtaining the ownership of, or management over the shares (participatory interests) of a business entity, if such acquisition results in the obtaining or the exceeding of 25% or 50% of the voting rights of the target business entity.

The foregoing types of transactions will be subject to prior AMC approval if the aggregate asset value or the aggregate sales volume of all of the participants to the transaction (the "Participants") for the previous fiscal year exceeds the Hryvnia equivalent of EURO 12 million (calculated on a worldwide basis) at the exchange rate of the NBU as of the last day of the previous fiscal year, provided that:

(1) the aggregate asset value or the aggregate sales volume of at least two of the Participants (calculated on a worldwide basis) exceeds the Hryvnia equivalent of EURO 1 million at the NBU exchange rate as of the last day of the previous fiscal year; and

(2) the aggregate asset value or the aggregate sales volume of at least one Participant on the territory of Ukraine exceeds the Hryvnia equivalent of EURO 1 million at the NBU exchange rate as of the last day of the previous fiscal year.

For the purposes of the calculation of the foregoing monetary thresholds, the definition of the Participant includes; not only the actual merging, consolidating, or acquiring of the target business entity, but also all of the business entities associated with such entity by relation of control.

8.3 Special Approval

The Competition Law provides that the Cabinet of Ministers of Ukraine may grant its approval to the carrying out of certain transactions under special circumstances, even if the AMC has refused to grant its prior approval to such transaction on the grounds that such transaction may cause the emergence of a monopoly in a given market, or may materially restrict competition in a given market or in a substantial part thereof. Such special circumstances are limited to cases, where the positive effects of the transaction will have a greater impact on the public interest than its negative effects. However, the Cabinet of Ministers must refuse to grant such approval if the restriction of competition would threaten the existence of the market economy in Ukraine.

8.4 Exemptions

The Competition Law establishes a list of transactions, either which by their nature qualify as violations of the Competition Law and, therefore, may not be approved by the AMC, or which are specifically exempt from the prior AMC approval requirement, as follows:

(1) the establishment of a business entity aimed at, or resulting in, the coordination of competitive behavior among the entities setting up such business entity, or between those entities and the newly established business entity. Such transactions are prohibited by the Competition Law and, therefore, may not be approved by the AMC;

(2) the acquisition of shares (participatory interests) of a business entity by a person, whose principal business is the performance of financial or securities operations, provided that such acquisition has been undertaken with the purpose of the subsequent resale of the shares and such person does not vote on any governing body of the business entity. Such

transactions may be carried out without the prior approval of the AMC, subject to the resale of such shares (participatory interests) within one year after their purchase;

(3) transactions between business entities associated by relations of control are not subject to prior AMC approval, provided that the relations of control were initially established in accordance with the requirements of the Ukrainian antimonopoly legislation; and

(4) the acquisition of control over a business entity or a division thereof, including the right to manage and to administer the property of such business entity, by an appointed receiver in bankruptcy proceedings or by a state official does not require prior AMC approval.

8.5 Liability

The Competition Law provides that the AMC is authorized to consider cases on the violation of legislation governing the protection of economic competition, and to render decisions in such cases, including, *inter alia*:

(1) to recognize the fact of violation of the legislation on the protection of economic competition;

(2) to terminate violation of legislation on the protection of economic competition;

(3) to compel state authorities, local self-governing authorities and administrative management authorities to cancel or amend their decisions or to terminate agreements constituting anti-competitive actions of such authorities;

(4) to recognize a business entity as holding a monopoly (dominant) position in a given market;

(5) to split up a business entity holding a monopoly (dominant) position in a given market;

(6) to impose penalties; and

(7) to block securities at securities accounts.

9. BANKING

9.1 General

The principal legislative acts governing the Ukrainian banking sector are the Law of Ukraine "*On the National Bank of Ukraine*" dated 20 May 1999 (the "NBU Law"), and the Law of Ukraine "*On Banks and Banking Activity*" dated 7 December 2000 (the "Banking Law"). These laws provide for a two-tier banking system, with the first tier being comprised of the NBU, and the second tier being comprised of commercial banks.

9.2 The National Bank of Ukraine (NBU)

The NBU is the central bank of Ukraine and, as such, a specialized body of state authority having the principal objective of ensuring the stability of the national currency, i.e., the Hryvnia ("UAH"), and possessing broad regulatory and supervisory functions in the banking sector. The NBU is empowered, *inter alia*, to develop and conduct Ukraine's monetary policy; to carry out the emission and to organize the circulation of the Hryvnia; to refinance commercial banks; to adopt rules for banking operations; and to regulate the formation of mandatory banking reserves. The NBU also registers commercial banks and issues banking licenses.

The principal governing bodies of the NBU are the Council and the Board. The Council is responsible primarily for the development and monitoring of the implementation of the country's monetary policy. The Council consists of 15 members, 7 of who are appointed by the Verkhovna Rada, and 7 of who are appointed by the President of Ukraine. The Chairman of the NBU acts *ex officio* as the fifteenth member of the Council. The Board's primary responsibility is the implementation of the country's monetary policy, as well as the normative regulation and supervision of the activities of the commercial banks. The Chairman of the NBU, who is nominated by the President and appointed by the Verkhovna Rada for a five-year term, heads the Board. Other members of the Board are nominated by the Chairman and appointed by the Council of the NBU.

9.3 Commercial Banks

The current Ukrainian legislation distinguishes between "universal" (general) and "specialized" commercial banks, with the latter including savings, investment, mortgage, and settlement (clearing) banks.

A commercial bank may be established only in the form of a joint stock company, a limited liability company, or a cooperative. The Cabinet of Ministers of Ukraine may establish state banks, wholly-owned by the state. Commercial banks may form banking corporations, bank holding groups, financial holding groups, and banking unions or associations.

A commercial bank becomes a legal entity from the date of its registration by the NBU. Nonetheless, it may only commence its banking services upon obtaining a banking license from the NBU.

The minimal charter capital of a commercial bank is:

(1) EUR1,000,000 (as required by Ukrainian law, which is equivalent to approximately USD923,139.70) for a local cooperative bank;

(2) EUR3,000,000 (as required by Ukrainian law, which is equivalent to approximately USD2,769,484.22) for a bank operating only within one region (oblast) of Ukraine; and

(3) EUR5,000,000 (as required by Ukrainian law, which is equivalent to approximately USD4,615,801.20) for a bank operating throughout Ukraine.

Notwithstanding that the applicable legislation does not limit the allowed participation to any maximum threshold (which was previously established at 35% of the charter capital), the permission of the NBU is still required for a Ukrainian or foreign legal entity or individual to directly or indirectly own, hold, or control various thresholds of a bank's charter capital or voting rights in its governing body, i.e., 10% or more, 25% or more, 50% or more, or 75% or more, and, at each such threshold, a new permission of the NBU must be obtained.

9.4 Banks with Foreign Participation

A foreign bank may establish its presence in Ukraine through a representative office, and/or a Ukrainian commercial bank subsidiary company.

Foreign participation in a Ukrainian commercial bank is not limited; however, the prior permission of the NBU is required for the establishment of a commercial bank with foreign participation or for the "conversion" of an existing commercial bank into a bank with foreign participation.

9.5 Banking Operations

A commercial bank carries out its banking activities pursuant to a banking license issued by the NBU. A banking license permits a bank to: (1) attract funds (deposits) from legal entities and individuals; (2) open, maintain, and carry out transactions with current accounts of clients and correspondent banks; and (3) place its attracted funds in its own name, on its own terms, and at its own risk. Only a duly licensed commercial bank may carry out all of the foregoing, which are referred to by the applicable legislation as exclusive banking operations.

In addition, a banking license will, by default, enable a bank to conduct the following transactions, without any need to obtain a separate NBU permit:

(1) transactions with "currency values" (except those transactions, for which an individual license of the NBU is required in accordance with the applicable Ukrainian currency regulations);

(2) the issuance of securities;

(3) the sale-purchase of securities pursuant to a client's authorization;

(4) transactions with securities (including underwriting) conducted in the bank's own name;

(5) the issuance of monetary guarantees and third party suretyships;

(6) factoring;

(7) leasing;

(8) the providing of safekeeping services (but not including the custody of securities);

(9) the issuance, purchase-sale, and servicing of checks, promissory notes, and other negotiable payment instruments;

(10) the issuance of banking payment cards and the conducting of operations with such cards; and

(11) the rendering of consulting and information services related to banking operations.

A duly licensed commercial bank will also be permitted to carry out the following transactions, but only subject to a separate NBU permit:

(1) investing in other legal entities or in shares issued by other legal entities;

(2) the issuance, placement, organization of circulation, and redemption of monetary lotteries;

(3) the transportation of currency values and cash collection;

(4) transacting on a client's or on the bank's own behalf with money market instruments, foreign exchange and interest based instruments, financial futures, and options;

(5) conducting trust operations with funds and securities of legal entities and individuals; and

(6) conducting securities registration and depository activities.

10. CAPITAL MARKET

10.1 General

The debt and equity securities market in Ukraine is regulated by several laws and numerous regulations and resolutions issued by the State Commission on Securities and the Stock Market of Ukraine (the "Securities Commission"). The principal legislation in this area are the Law of Ukraine *"On Securities and Stock Exchange"* dated 18 June 1991, the Law of Ukraine *"On Companies"* dated 19 September 1991, the Law of Ukraine *"On the State Regulation of the Securities Market in Ukraine"* dated 30 October 1996, the Law of Ukraine *"On the National Depositary System and Specifics of Electronic Circulation of Securities in Ukraine"* dated 10 December 1997, and the Law of Ukraine *"On the Circulation of Promissory Notes in Ukraine"* dated 5 April 2001.

10.2 Types and Forms of Securities

Ukrainian legislation recognizes the following types of securities: shares of capital stock, bonds of domestic or external state borrowing, municipal bonds, corporate bonds, treasury bills, deposit certificates, investment certificates, promissory notes and bills of exchange, and privatization securities (including privatization vouchers).

Ukrainian issuers may issue securities in registered (nominative) and bearer, documentary (certificated) and non-documentary (book-entry or electronic) form. Transfer of ownership rights to registered securities in a documentary form is effected by means of full endorsement. Ownership rights to such securities are confirmed by the securities' certificate. Ownership rights to bearer securities issued in a documentary form are transferred as of the moment of physical transfer (delivery) of the securities to a new owner, and are evidenced by the securities' certificate. Transfer of ownership rights to securities issued in a non-documentary form is effected as of the moment of crediting the securities to the relevant owner's account maintained with a securities custodian. Ownership rights to such securities are evidenced by an excerpt from the custodian's registration system.

10.3 State Commission on Securities and Stock Market

The Securities Commission is the state agency authorized to determine and implement uniform state policy in the area of development and operation of the securities market in Ukraine, and to monitor compliance of Ukrainian and

foreign entities and individuals with the legal requirements governing securities and the securities market. The Securities Commission is subordinate to the President and accountable to Verkhovna Rada of Ukraine. The Securities Commission is granted broad powers with respect to the formation of the overall legislative framework for the operation and development of Ukraine's securities market, as well as registration, licensing and enforcement powers.

10.4 Registrars

Registration of ownership rights to registered securities issued in documentary form can be performed by a *registrar* which may be either an issuer of registered securities which has obtained from the Securities Commission a permit (the "Registrar Permit") for the maintenance of a register of owners of nominative securities – only if the total number of owners of such securities issued does not exceed 500, or a special purpose legal entity (an independent registrar) which has obtained a Registrar Permit. An issuer is required to engage the services of an independent registrar if the total number of owners of the issuer's nominative securities exceeds 500.

State bodies cannot be founders or participants of a registrar. The shareholding interest of an issuer in the capital of the registrar cannot exceed 10%.

10.5 Depository System

Ukrainian legislation provides for the formation of a "National Depository System" in Ukraine, consisting of the following two levels:

(1) the higher level, comprising the *National Depository of Ukraine* and *depositories*. The *National Depository of Ukraine* is an open joint stock company with the state of Ukraine being its majority shareholder. The National Depository is to maintain accounts in securities of all Ukrainian depositories, and to carry out certain regulatory functions with respect to the Ukrainian stock market. A *depository* is a Ukrainian legal entity engaged exclusively in depository activities with securities. A depository is authorized to keep global certificates in respect of the issue of securities by Ukrainian issuers, to maintain accounts for custodians of securities, and to carry out clearing and settlement activities in respect of transactions with securities; and

(2) the lower level, comprising *custodians of securities* and *registrars of owners of securities*. A *securities custodian* may be either; a licensed Ukrainian

commercial bank which has corporate capacity to act as a custodian and which has obtained, upon the consent of the National Bank of Ukraine, a permission of the Securities Commission for the carrying out of custody activities with securities (the "Custody Permit"); or a licensed Ukrainian securities trader which has obtained a Custody Permit. A Ukrainian securities custodian may provide custody services in respect of securities only pursuant to completing a special form "Agreement for the Opening of an Account in Securities".

10.6 Securities Traders

Licenses to conduct activities as a securities trader may be granted, *inter alia*, to joint stock companies (the charter fund of which consists entirely of registered securities) and other companies that engage exclusively in the securities trading activities. Securities traders may be licensed by the Securities Commission to perform any or all of the following activities in respect of securities: (i) the activity on issuance of securities (underwrite); (ii) commission agency activities (acting as an agent for an undisclosed principal when transacting with securities); and (iii) securities transactions for its own account as a dealer.

10.7 Stock Exchanges

Securities are traded in Ukraine on several stock exchanges and the over-the-counter electronic market trading system, the PFTS. While on the exchanges volumes remain low and trading is limited to a handful of companies, trading activities are increasingly being done through the PFTS.

The current secondary market for securities in Ukraine is highly volatile and its liquidity is inconsistent. The demand for any specific security varies greatly on any given day, as does the "spread" between the "bid" and "offer" prices for such security.

10.8 State Securities

The Cabinet of Ministers of Ukraine may issue bonds evidencing domestic or external state debt.

Most of the domestic state bonds were issued as discount bonds. Domestic state bonds are non-certificated securities evidenced by book-entries at the National Bank of Ukraine. The Cabinet of Ministers of Ukraine and the National Bank of Ukraine adopted joint resolutions expressly permitting

foreign entities and individuals to invest in domestic state bonds through authorized Ukrainian commercial banks – "dealer banks". The list of "dealer banks" is determined by the National Bank of Ukraine and the Ministry of Finance of Ukraine.

In 2000 and 2001, Ukraine issued in international capital markets its first foreign state bonds (known as "Eurobonds"), denominated in Euro and in USD. These bonds are currently actively traded in international and domestic capital markets.

11. EMPLOYMENT

11.1 Legislation

The Code of Laws on Labor of Ukraine, dated 10 December 1971 (the "Labor Code"), is the principal legislative act governing employment relationships in Ukraine. The Labor Code applies to all Ukrainian and foreign enterprises, institutions, and organizations, irrespective of their ownership form, types, or area of activity, and to all individuals employing labor in Ukraine.

Article 3 of the Labor Code provides that employment relationships between enterprises with foreign investment (as well as representative offices of foreign legal entities) and their employees on the territory of Ukraine are governed by the applicable Ukrainian legislation. Thus, all employers, both foreign and Ukrainian, must comply with the provisions of the Labor Code, which apply regardless of whether the employee is a foreign or a Ukrainian national. The employment guarantees and the social security benefits granted to employees of foreign companies, or of Ukrainian companies with foreign investments, are the same as those granted to employees of other Ukrainian companies.

11.2 Labor Agreements and Contracts

Ukrainian law distinguishes between a "labor agreement" and a "labor contract". A "labor contract" is a specific form of written "labor agreement". In a labor contract, the resolution of certain issues, including the term of the contract and the grounds for the termination of the employment relationship, are determined by the parties and are not subject to the requirements of the Labor Code. Article 9 of the Labor Code, however, provides that the provisions of an employment contract may not deprive an employee of the rights and benefits, which are guaranteed by the labor laws of Ukraine. Furthermore, a labor contract may be used only if it is expressly authorized by law, and it must always be executed in writing.

Although it is usual for a written labor agreement to be concluded by the parties, the absence of such an agreement does not prevent an employment relationship from being established. In such a situation, the parties are bound by an assumed labor agreement, and the relevant provisions of the Labor Code strictly regulate the employment relationship.

Conceptually, legal entities, both local and foreign, may contract the services of individuals in Ukraine pursuant to either: (i) labor agreements or labor

contracts concluded in accordance with the Labor Code; or (ii) so-called "civil law contracts" concluded in accordance with the Civil Code of Ukraine (e.g., an independent consultant agreement).

As a rule, labor agreements are concluded for an unlimited period. However, the Labor Code allows for a labor agreement to be concluded for:

(1) a limited period agreed upon by the parties; or

(2) a period required in order to complete a given amount of work.

Article 23 of the Labor Code provides that a labor agreement may be concluded for a specified term only if the nature of the employee's work or "the employee's interests" makes it impossible to establish an employment relationship for an unlimited term. However, this provision affects only a labor agreement and not a labor contract. Pursuant to Article 21 of the Labor Code, the parties to a labor contract are afforded discretionary powers to determine the term of such contract. Other provisions, which the parties may agree upon in a labor contract include:

(1) rights, obligations, and liabilities of the parties, including the terms of their material liability;

(2) remuneration and organization of the employee's labor; and

(3) grounds for termination, including early termination.

Thus, the principal advantage of a labor contract, as compared with a labor agreement, is the discretion which the parties to a labor contract may exercise in respect of the terms and conditions of the employment and the grounds for termination, in contrast with the rigid requirements of the Labor Code. On the other hand, the principal disadvantage is that a labor contract, unlike a labor agreement, may be concluded only if it is expressly authorized by law and it must always be in writing.

11.3 Equal Job Opportunities

Article 2 of the Labor Code guarantees equal employment opportunities to all Ukrainian citizens, irrespective of their background, race, nationality, gender, language, social position, political or religious affiliation, profession, place of residence, or other factors.

Article 22 of the Labor Code forbids any unjustified denial of employment. Any direct or indirect deprivation of rights, or granting of any direct or indirect advantages, within the term of employment on the grounds specified above is unacceptable.

Finally, Article 25 of the Labor Code prohibits an employer, while concluding an employment agreement with a prospective employee, from requiring any additional documentation not specified in the Labor Code.

11.4 Labor Books

Every employee working for more than 5 days in an enterprise, must have his/her employment noted in his/her labor book. The labor book contains information about the employee and his/her past and current employment, as well as certain other information relating to the employee's work history. The labor book is vital in establishing the right of an employee to state-provided pension and other benefits. The Labor Code prohibits entering the information on disciplinary punishments into an employee's labor book.

11.5 Probationary Period

An employer has the right to establish a three-month probationary period for a newly hired employee. The imposition of a probationary period must be specifically provided in the labor agreement or the labor contract, as well as in the order on the hiring of the employee, issued by the employee's managing director. During the probationary period, the employer may dismiss the employee at any time, if the employer determines that the employee does not meet the criteria established for the job position, for which he/she was hired.

11.6 Minimum Wage

Wages may not be lower than the minimum monthly wage established in the applicable Ukrainian legislation. The amount of the minimum monthly wage is subject to frequent indexation. The minimum monthly wage was established at UAH 140 as of 1 January 2002. Starting on 1 July 2002, the minimum monthly wage shall be UAH 165. The amount of the minimum monthly wage is periodically adjusted by the Parliament to reflect increases in the cost of living.

11.7 Work Week

The regular work week is 40 hours. Any time worked over 40 hours per week is classified as overtime and may only be required in extraordinary circumstances. The Labor Code limits the total amount of overtime in one year to 120 hours, and an employee may not be required to work more than 4 hours of overtime during two consecutive days. Minors, pregnant women, and women with children under the age of three may not be required to work any overtime. Overtime must be paid at the rate of 200% of the regular hourly rate.

11.8 Holidays and Vacations

There are ten official holidays in Ukraine . Employees may be required to work on an official holiday only in extraordinary circumstances. Employees in Ukraine are entitled to an annual paid vacation of 24 calendar days, including weekends during the vacation period but excluding the official holidays.

11.9 Sick Leave

The system of sick leave in Ukraine requires the employee to submit a medical certificate only after his/her recovery, i.e., on the first working day after the employee's absence. Sick leave compensation is covered by the Ukrainian State Social Security Fund, which is formed from the employer's contributions made as a percentage of its employee's aggregate salaries.

11.10 Maternity Leave

Paid maternity leave is required for a minimum of 70 calendar days prior to the birth, and for an additional 56 calendar days (70 calendar days in the event of multiple births) after the birth. An additional unpaid leave may be taken until the child reaches 3 years of age. During the entire period of paid/unpaid leave, the employee retains the right to return to his/her job, and the full leave period is included in calculating the employee's length of service.

11.11 Termination of Employment and Job Protection

The procedure for terminating a labor agreement or a labor contract is governed by Articles 36 through 45 of the Labor Code.

Pursuant to Article 40 of the Labor Code, an employer may terminate a labor agreement before its expiration only in a limited number of cases, including

staff redundancy, the employee's systematic failure to fulfill his/her employment duties, the employee's unjustified absence from the workplace for more than 3 consecutive hours during one working day, etc. Article 36 of the Labor Code does provide, however, that a labor contract (as opposed to a labor agreement) may also be terminated on any of the grounds specified in the contract.

Ukrainian law prohibits the dismissal of pregnant women, women who have children below the age of three (or, in special circumstances supported by medical evidence, below the age of six), and single mothers who have children below the age of 14 or disabled children. Pursuant to Article 184 of the Labor Code, this rule does not apply either in the event of the liquidation of the enterprise or if the woman was on a fixed-term contract which expired. However, in these two cases, the employer is obliged to find alternative employment for employees who fall into this category.

The Labor Code provides that the dismissal of an employee, who is a trade union member, requires the prior consent of the trade union in certain circumstances. In cases where consent of the relevant trade union is required for termination, the employer should request such consent prior to the termination.

11.12 Collective Agreements

Articles 11 and 12 of the Labor Code require legal entities operating in Ukraine and employing hired labor to conclude collective agreements with the respective bodies of trade unions representing the interests of hired employees or, if there are no such bodies in existence, with elected representatives of the employees, who are authorized to sign collective agreements. Similar provisions are found in Articles 2 and 3 of the Law of Ukraine "*On Collective Agreements and Arrangements*", which came into effect on 31 July 1993.

11.13 Remuneration in Foreign Currency

Pursuant to the Decree of the Cabinet of Ministers of Ukraine "*On the System of Currency Regulation and Currency Control*," dated 19 February 1995, as amended, all employers, both resident and non-resident, are required to make work remuneration payments to employees, who are deemed to be Ukrainian "residents", exclusively in Ukrainian currency.

11.14 Work Permits

Article 8 of the Labor Code provides for equal employment opportunities for foreign nationals working in Ukraine. This Article provides that the employment relationships of foreign nationals working at Ukrainian companies or organizations are governed by the law of the employing party (i.e., Ukraine) and international agreements. In the event that an international agreement, to which Ukraine is a party, establishes rules different from those established by the applicable Ukrainian labor legislation, the provisions of such international agreement will take precedence.

The Resolution of the Cabinet of Ministers of Ukraine *"On the Procedure for the Issuance of Work Permits to Foreign Citizens and Stateless Persons"* dated 1 November 1999 (the "Work Permit Resolution"), provides that, as a general rule, any foreign national intending to be employed in Ukraine, before his/her commencement of such employment, must apply for and obtain a work permit, unless otherwise provided by an applicable international agreement of Ukraine.

To date, Ukraine has not entered into any international agreement with any foreign country providing for the employment of the nationals of such foreign country in Ukraine without a work permit. Although Ukraine is a party to certain international agreements on labor law issues with a number of CIS countries, none of these agreements allows a foreign national to work without a work permit in Ukraine.

Under the Work Permit Resolution, work permits are issued to foreign nationals by Ukrainian employment centers, provided that: (i) there are no qualified Ukrainian nationals in the respective sphere, who are suitable for the position in question; or (ii) there are significant grounds for the employment of foreign nationals as specialists. Please note that the applicable Ukrainian legislation does not provide an interpretation of the term “significant grounds”. At the same time, a document outlining such grounds should be filed, together with other documents, with the respective employment center. Presumably, the education and expertise in the respective area of the foreign national will be taken into account in evaluating each foreign national employee.

The Work Permit Resolution also covers foreign national employees, who are sent by their foreign employer to Ukraine to carry out certain work (render services) pursuant to a contract concluded between a Ukrainian legal entity and such foreign employer (i.e., on a secondment basis).

12. INTELLECTUAL PROPERTY

12.1 General

At the end of the Soviet era, Ukraine already had in place the principal legislative acts governing the protection of intellectual property and the enforcement of intellectual property rights in Ukraine. The current Ukrainian intellectual property legislation affords protection, *inter alia*, of copyright and neighboring rights, inventions, utility models, industrial designs, plant varieties, trademarks and service marks, appellations of origin, trade names, trade secrets, layouts of integrated circuits, and technical improvements, as well as procedural protections against unfair business practices. In addition, implementing regulations have been adopted, and amendments have been made with respect to the applicable civil, administrative, and criminal legislation, in order to allow the effective and adequate enforcement of intellectual property rights in Ukraine.

The abovementioned intellectual property rights are, *inter alia*, regulated by the following laws of Ukraine:

(1) Law of Ukraine *"On Copyright and Neighboring Rights"* dated 23 December 1993 (the "Copyright Law");

(2) Law of Ukraine "*On the Distribution of Copies of Audiovisual Works and Phonograms*" dated 7 December 2000;

(3) Law of Ukraine *"On the Protection of Rights in Trademarks and Service Marks"* dated 15 December 1993 (the "Trademark Law");

(4) Law of Ukraine *"On the Protection of Rights in Inventions and Utility Models"* dated 15 December 1993 (the "Inventions Law");

(5) Law of Ukraine "*On the Protection of Rights in Appellations of Origin*" dated 17 June 1999;

(6) Law of Ukraine *"On the Protection of Plant Varieties"* dated 21 April 1993;

(7) Law of Ukraine "*On the Protection of Rights in the Layouts of Integrated Circuits*" dated 5 November 1997;

(8) Law of Ukraine *"On Seeds"* dated 15 December 1993;

(9) Law of Ukraine *"On Cattle Breeding"* dated 15 December 1993;

(10) Law of Ukraine *"On Information"* dated 2 October 1992;

(11) Law of Ukraine *"On Scientific and Technical Information"* dated 25 June 1993;

(12) Law of Ukraine *"On the Protection of Information in Automated Systems"* dated 5 July 1994;

(13) Law of Ukraine *"On Protection Against Unfair Competition"* dated 7 June 1996;

(14) the Criminal Code of Ukraine dated 5 April 2001; and

(15) the Ukrainian Code on Administrative Offenses dated 7 December 1984.

Ukraine has yet to implement any special legislation for the protection of the rights of performers or recording and broadcasting organizations, or on such novel matters as electronic signatures or the registration and maintenance of Internet domain names. On the other hand, the Partnership and Cooperation Agreement, concluded between the European Community (the "EU") and Ukraine, provides that Ukraine has agreed to implement certain EU directives in the area of intellectual property and to accede to a number of international agreements.

12.2 Intellectual Property Department

During the course of 1999 and 2000, the State Patent Office of Ukraine and the State Agency of Ukraine on Copyright and Performance Rights were liquidated and their functions were assumed by the Intellectual Property Department of the Ministry of Education and Science of Ukraine (the "Department"). The Department is now responsible for the following: (i) carrying out the examination of industrial property applications; (ii) maintaining a system for the search and examination of industrial property applications; and (iii) granting patents and certificates on industrial property objects, as well as certificates with respect to copyright objects. The Department also certifies patent/trademark agents and maintains registries of patents, trademarks, and other intellectual property objects, as well as of certified patent agents. On 21 December 2000, the Verkhovna Rada adopted amendments of the relevant legislative acts in respect of the authority of the Department and certain other related issues.

12.3 International Conventions

Ukraine is a party to, *inter alia*, the following treaties in the field of intellectual property:

(1) The 1883 Paris Convention for the Protection of Industrial Property;

(2) The 1886 Berne Convention for the Protection of Literary and Artistic Works;

(3) The 1891 Madrid Agreement Concerning the International Registration of Marks;

(4) The 1952 Universal Convention on Copyright;

(5) The 1957 Nice Agreement Concerning the International Classification of Goods and Services;

(6) The 1961 International Convention for the Protection of New Varieties of Plants;

(7) The 1967 Convention Establishing the World Intellectual Property Organization ("WIPO");

(8) The 1970 Patent Cooperation Treaty;

(9) The 1977 Budapest Treaty on the International Recognition of Deposits of Microorganisms for the Purposes of Patent Protection;

(10) The 1989 Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks; and

(11) The 1994 Trademark Law Treaty.

Ukraine has also signed a number of bilateral treaties on the protection of intellectual property, and a number of multinational agreements on intellectual property matters within the framework of the Commonwealth of Independent States. Ukraine has also declared its intention to join the World Trade Organization (the "WTO"), in the near future; thus, the country would be subject to the requirements of the TRIPs Agreement.

12.4 Copyright

The Copyright Law, which was substantially modified in 2001, protects published, as well as unpublished, works of authorship. The works may be of a scientific, literary, or artistic nature. They are protected regardless of their purpose or genre, their scientific, literary, or artistic value, or their volume. The Copyright Law does not require fixation as a mandatory condition for copyright protection. It grants protection to any work of authorship, regardless of the manner of its expression. As a result, the work may exist in oral, as well as in written, form.

The Copyright Law does not set rigid limits on the range of works of authorship, in which copyright may subsist. *Inter alia*, the Copyright Law extends copyright protection to the following works of authorship:

(1) written literary works of authorship;

(2) lectures, speeches, sermons, and other oral works of authorship;

(3) musical works of authorship, with or without text;

(4) theatrical works, choreography, and other works of authorship for theatrical performance, including pantomimes;

(5) audiovisual works of authorship;

(6) sculptures, paintings, drawings, gravure, lithographs, and other artistic works of authorship;

(7) architectural works of authorship;

(8) photographs;

(9) handcrafted works of authorship, to the extent that they do not otherwise enjoy protection under the industrial property legislation;

(10) illustrations, maps, plans, and other works of authorship, which relate to geography, geology, topography, architecture, and other branches of science;

(11) theatrical interpretations of written literary works of authorship, and theatrical interpretations of folk art works, which are suitable for theatrical performance;

(12) derivative works;

(13) translations, adaptations, arrangements, and other paraphrases of original works of authorship, as well as paraphrases of folk art works (derivative works); and

(14) compilations of works of authorship, compilations of paraphrases of folk art works, encyclopedias and anthologies, and compilations of ordinary data (including databases and other compound works), to the extent that such compilations are the results of inventive work and do not infringe the rights of the authors of their constituent parts.

Other unspecified works of authorship may also enjoy copyright protection. The Copyright Law also grants protection to separate parts of works of authorship, which may exist independently from the main work (including the original name of the work). For the purposes of the Copyright Law, such parts are deemed to be separate works of authorship. Additionally, the Copyright Law also affords special protection to computer software. Computer software, as an object of copyright protection, falls under the category of written literary works of authorship.

The Copyright Law distinguishes between, and provides protection for, both the "moral rights" and the "economic rights" of the author. Moral rights in copyright are protected indefinitely. In accordance with the recent amendments of the Copyright Law, economic rights in copyright are now granted for the author's lifetime plus an additional 70-year period following his/her death.

12.5 Registration of Industrial Property Rights

Ukraine is a “first to file,” and not a “first to use,” jurisdiction. As a result, in order to protect those industrial property rights, which are subject to mandatory registration in Ukraine, it is important formally to file an application with the Department for their registration.

12.6 Trademark Protection

The current Ukrainian legislation affords protection to only two types of trademarks and service marks:

(1) marks registered with the Department pursuant to the Trademark Law; and

(2) trademarks and trade names, which are not registered with the Department, but which enjoy protection pursuant to the international agreements, to which Ukraine is a party.

Trademarks pending registration enjoy temporary protection until the relevant registration certificates are granted. The Department issues registration certificates for a term of ten years from the filing date. At the request of the owner of the mark, and upon the payment of the required extension fee, trademark registrations may be extended an indefinite number of times for additional ten-year periods.

As a member of the Madrid Union, Ukraine honors international trademark registrations extended to the territory of Ukraine, both under the Madrid Agreement and under the Madrid Protocol.

12.7 Patent Protection of Inventions and Utility Models

Ukraine follows the principle of universal novelty in granting patents. This means that an invention must be absolutely new worldwide within the relevant technological or scientific area. Inventions are required to meet each of the following requirements, in order to be granted patent protection:

(1) novelty;

(2) non-obviousness; and

(3) utility.

The Inventions Law provides for a twelve-month grace period for any public disclosure of information about an invention by the inventor or by any third person, who directly or indirectly obtained such information from the inventor.

A patent may be issued for an invention in the name of the inventor, his/her employer, or his/her legal successors. As a general rule, an inventor is entitled to patent his/her own invention unless the Inventions Law provides otherwise. In all cases, the inventor is entitled to retain indefinitely the rights of authorship in his/her invention. An invention "made for hire" should be patented in the name of the employer, to the extent that such invention is made

within the scope of the employee's employment obligations, pursuant to the direct instructions of the employer, or with the use of the expertise, know-how, secrets, and/or equipment of the employer. Employers and employees are authorized to provide for different conditions for the patenting of inventions in the employment agreements concluded by them.

Patents are granted to inventions for 20 years from the priority date. Patents for inventions related to medicine and adjacent areas may be further extended for a maximum period of 5 years. The term of patent validity is conditioned upon the payment of annual maintenance fees.

The Inventions Law provides for the concept of a declaratory patent for the protection of inventions and utility models. Only declaratory patents may protect utility models, while either a declaratory or a regular patent may be granted for an invention. Declaratory patents for inventions are issued for a term of 6 years and those for utility models for a term of 10 years.

Declaratory patents for inventions are granted on the basis of a formal examination only, to the extent provided that the invention meets the standard of local novelty. Any declaratory patent for an invention may be converted into a regular patent at the request of the applicant or a third person, provided that a demand for a substantive examination of the invention is filed within three years after the initial application date.

13. TELECOMMUNICATIONS

13.1 Introduction

Certain significant changes were introduced recently into the regulatory framework of the Ukrainian telecommunications sector. Those changes initiated, to a large extent, the process of adjusting the domestic Ukrainian regulatory framework to the fundamental principles adopted by the European Union.

As a result of such recent restructuring, the Ukrainian regulatory framework now provides for the separation of the regulatory and operational activities of the telecommunications administration (see below). As the first step toward its transformation into a traditional regulatory body, the Ministry of Communications of Ukraine (the "MOC")[1] created several umbrella organizations to take over all of its former operating functions. Consequently, all of the organizations involved in the planning, building, and operating of public telecommunications networks in Ukraine were merged into Open Joint Stock Company "Ukrtelecom" ("Ukrtelecom"). Upon the adoption of the Law of Ukraine "*On Specific Aspects of the Privatization of Open Joint Stock Company 'Ukrtelecom'*" (the "Ukrtelecom Privatization Law"), the Verkhovna Rada initiated the privatization of Ukrtelecom, which enjoyed a monopolist position on the Ukrainian telecommunications market. The Ukrtelecom Privatization Law became a directive for the Ukrainian government to take the appropriate steps aimed at Ukrtelecom's privatization and, thus, to attract significant amounts of foreign investment.

13.2 Legal Framework

The Law of Ukraine *"On Communications"* dated 17 May 1995 (the "Communications Law"), was adopted by the Verkhovna Rada of Ukraine, in order to provide for a legal, economic, and organizational framework for enterprises, associations, and governmental bodies, which are part of the telecommunication and/or postal communications networks in Ukraine.

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[1] Please note that the MOC was liquidated on 25 July 1997 and the State Committee on Communications ("SCC") was established on the basis of the MOC. The SCC has been performing all of the functions previously performed by the MOC. During the course of 2000, the SCC was reorganized into the State Committee on Communications and Information of Ukraine (the "SCCI").

Generally, the Communications Law governs the relationships among state and local governmental bodies, communications enterprises, associations, and organizations, and users of telecommunications services and radio frequencies. The Communications Law provides that communications activities in Ukraine are to be governed by:

(1) the Constitution of Ukraine;

(2) the Communications Law;

(3) other Ukrainian legislation; and

(4) acts of the Ministries and agencies of Ukraine.

On 1 June 2000, the Verkhovna Rada adopted the long-awaited Law of Ukraine "*On Radio Frequency Resource of Ukraine*" ("Radio Frequencies Law"). The Radio Frequencies Law provides comprehensive rules for the allocation, assignment, interrelation and use of radio frequencies in Ukraine, licensing of the users of radio frequencies and other relevant issues.

13.3 Licensing System

In accordance with the Communications Law, communication services in Ukraine may be provided by communication enterprises (i.e., communication operators) registered as legal entities in Ukraine and licensed by the SCCI, regardless of the ownership status of such enterprises. By amending the Communications Law in connection with the Ukrtelecom Privatization Law, resident legal entities were granted the right to own networks of general use, to carry out technical maintenance, and to use such networks. Nevertheless, the law provides that the primary communication networks are to remain in the ownership of Ukrtelecom, which is prohibited by law from transferring such networks to other entities.

The Verkhovna Rada introduced amendments of the Communications Law in connection with the adoption of the Ukrtelecom Privatization Law. Article 11 of the Communications Law, which set forth various provisions on the protection of state interests in the telecommunications sector, was amended and restated in its entirety. As a result, foreign investors are now authorized to have more than a 49% interest in the charter funds of Ukrainian telecommunication companies. At the same time, foreign investments into radio broadcasting and/or television companies remain restricted to a 30% interest in the charter funds of such companies.

The Law of Ukraine "On the Licensing of Certain Types of Business Activities", dated 1 June 2000 (the "Licensing Law"), provides that the following types of activities in the area of telecommunications are subject to licensing:

(1) providing radio communication services (with the use of radio frequencies);

(2) providing telephone communication services (except for private ['vidomchi'] communication networks);

(3) technical maintenance of telecommunication networks; and

(4) the development, testing, manufacturing, and exploitation of space infrastructure and its parts, as well as the equipment included in the space segment of satellite systems.

In the event there are more applicants than available licenses, licenses are to be granted on a competitive basis. The number, terms, and conditions for obtaining such licenses are to be established by the SCCI and published in the mass media. The SCCI also registers licenses and publishes a list of licenses granted.

14. ELECTRONIC COMMERCE AND INFORMATION TECHNOLOGIES

14.1 Electronic Commerce

14.1.1 Internet in Ukraine

Despite the rapid growth of the Internet worldwide during the past decade, the Ukrainian Internet industry is still at its early stages of development. Internet penetration is rather low in Ukraine, compared to that in Western countries (according to estimates in 2000, there were 200,000 Internet users in Ukraine, amounting to only approximately 0.4 percent of Ukraine's population), which is due, in part, to the high tariffs on access to international channels, as well as to the underdeveloped local loop. These factors help to explain why the applicable Ukrainian legislation fails properly to address the various legal issues arising in connection with the arrival of the Internet and the resulting changes in business methods in Ukraine.

Notwithstanding the above, businesses in Ukraine now overwhelmingly use electronic mail for business communications, many have the World Wide Web's resources available, and major businesses have already established their presences on the Internet. The levels of Internet penetration vary significantly, depending on the specific region of Ukraine. Statistics indicate that the majority of Internet users are located in Kyiv, while other Ukrainian regions still have significantly lower levels of Internet penetration.

With regard to electronic commerce (or "e-commerce"), the present Ukrainian law fails to address the related legal issues. Specifically, Ukrainian law does not recognize an "electronic contract" as a means for the formation of an enforceable agreement. Nor does Ukrainian law recognize "digital signatures'" as a proper means for the authentication of documents. With certain minor exceptions (i.e., when the conclusion of an oral agreement is possible), Ukrainian law requires that all contracts must be made in writing and signed. Similarly, there is no authoritative legislative guidance as to whether activities conducted over a web site that can be accessed from Ukraine, should be deemed "onshore" or "offshore" for purposes of Ukrainian law.

Nevertheless, a number of legislative bills, aimed at facilitating the development of electronic commerce in Ukraine, are either being prepared or already pending review by the Verkhovna Rada of Ukraine. These include draft Laws "*On Electronic Signature*" and "*On Electronic Documents*". Furthermore, a new

Civil Code of Ukraine, tailored to the needs of e-commerce, is set to be adopted by the Verkhovna Rada of Ukraine in the near future.

14.1.2 Tax and Accounting Constraints on E-Commerce Development

Another practical point that hinders the development of electronic commerce in Ukraine relates to the principles of the current Ukrainian tax and accounting standards. For example, the Ukrainian accounting standards, which require the proper documentation of each individual transaction during or immediately after the conclusion of such transaction, establish certain mandatory requisites for accounting documentation, including personal signatures, or other data allowing for the proper identification of a person, which, in general, e-commerce is not able to produce.

The relevant Ukrainian tax standards establish similar requirements with respect to supporting documentation. Thus, under the Corporate Profits Tax Law, corporate taxpayers are denied the deductibility of incurred expenses, which are not supported by documentation in the format prescribed by the applicable legislation. Similarly, under the VAT Law, a VAT taxpayer may take as a VAT credit (for the purpose of computing of its VAT obligations) only VAT amounts paid and supported by VAT vouchers (satisfying the prescribed requirements).

14.1.3 Electronic Banking

Currently, the existing Ukrainian electronic banking services are not regulated by law. However, no serious legal obstacles currently exist for the carrying out such of activities. Furthermore, the applicable rules of the NBU may constitute the legal basis for the rendering of banking services via the Internet, provided that the NBU is prepared to certify the software programs used to provide such Internet-based banking services.

Thus, the applicable regulations of the NBU authorize the transmission of electronic notices between a client and a bank in encrypted form, including electronic payment instructions certified by electronic digital signatures (i. e., the “client-bank” system).

The NBU rules requiring the mandatory physical presence of a client or the client’s authorized person(s) on the premises of a bank, in order to accomplish certain actions in respect of banking activities, including, in particular, the

opening of a bank account, are, nevertheless, regarded as obstacles to the further development of Internet-based banking services in Ukraine.

14.2 Information Technologies

14.2.1 Protection of Software Rights

In Ukraine, software is protected under the Law of Ukraine "*On the Protection of Copyright and Related Rights*", dated 23 December 1993 (the "Copyright Law"), as a literary work of authorship. Copyright protection extends both to operational systems and applications, expressed in source and/or object codes, including the preparatory materials and the audiovisual designs of the programs.

For purposes of the Copyright Law, "software" is defined as a selection of instructions, expressed in words, numbers, codes, schemes, symbols, or any other means of expression, comprehendible by a computer.

Copying of a computer program without charge is permitted if one copy is made (or adaptation is made) by the lawful user of the computer program, for the use of the computer program on a particular computer, or for archival purposes (to serve as a replacement of a lawfully acquired copy in a case of loss or damage).

The free reverse engineering of a computer program is permitted for the reproduction of the program's code and for the translation of its form with the view of receiving the information necessary for the attainment of the compatibility of an independently-created computer program with other computer programs, provided that the following conditions are met:

(1) the act of reverse engineering is carried out by the lawful owner of a copy of the computer program or by a person duly authorized by such lawful owner;

(2) the information necessary for the attainment of such compatibility is not known to the person specified in (1) prior to the act of reverse engineering; and

(3) the reverse engineering is limited only to those elements of the computer program, which are necessary for the attainment of the compatibility.

14.2.2 Protection of Database Rights

Rights in databases are also protected under the Copyright Law. Pursuant to the Copyright Law, "databases" are defined as collections of data, materials, or works in a form comprehendible by a machine.

Any database is afforded copyright protection if it is the result of creative work on the selection and assembling of its contents, subject to the condition that no violation of any copyright in the constituent works took place during the creation of the database.

14.2.3 Protection of Rights in Layouts of Integrated Circuits

In Ukraine, rights in layouts of integrated circuits are protected under the Law of Ukraine "*On the Protection of Rights in the Layout Design of Integrated Circuits*", dated 5 November 1997 (the "Layout Design Law").

The Layout Design Law defines a "layout of integrated circuits" (the "Layout Design") as a three-dimensional pattern of the aggregate of the integrated circuit's elements fixed in a tangible medium.

Rights in a Layout Design arise upon the registration of the Layout Design with the patent and trademark authority of Ukraine. The originality of the Layout Design is a prerequisite for its registration.

A Layout Design is presumed to be original if:

(1) it is not created by means of the direct reproduction of another Layout Design;

(2) it was not known in the field of microelectronics prior to the date of the application for its registration or prior to the date of its first use; and

(3) it is characterized by new qualities, differentiating it from other Layout Designs.

Any Layout Design submitted for registration is presumed to be original unless sufficient evidence to the contrary is provided. The rights in a Layout Design include:

(1) the right to use the Layout Design;

(2) the right to preclude other parties from using the Layout Design;

(3) the right to assign rights in the Layout Design to another person; and

(4) the right to license the use of the Layout Design to another person.

An assignment of rights in, and a license of the use of, a Layout Design are valid with respect to third parties only if they are registered with the patent and trademark authority of Ukraine. Rights in a Layout Design are evidenced by a certificate of registration of the Layout Design issued by the patent and trademark authority of Ukraine. This certificate is valid for 10 years starting from the date of the application for the registration of the Layout Design, or from the date of its first use, provided that the application for the registration of the Layout Design was filed not later than two years after the date of its first use.

As a general rule, the author of a Layout Design is entitled to register it. However, in the event that a Layout Design is created by the author in connection with the performance of the author's employment duties and/or under a specific assignment from the author's employer, then the right to register the Layout Design vests with the employer, unless the employment agreement provides otherwise. Irrespective of the above, the author retains the right of authorship, which right remains inalienable.

14.2.4 Protection of Information in Automated Databases

The protection of information in automated databases is subject to the Law of Ukraine "*On the Protection of Information in Automated Databases*" dated 5 July 1994 (the "Automated Databases Law"). The Automated Databases Law establishes principles for the regulation of relations between the parties involved in the processing of information in automated databases and the use of such information by third parties. It also provides for the protection of the rights of the owners of the information processed in automated databases.

The Automated Databases Law defines "automated databases" as systems designed for the automated processing of data. Information in automated databases is subject to protection regardless of the means of expression of the information.

The Automated Databases Law requires that access to the information in the automated databases must be subject to rules established by the owner of the processed information or by a person duly authorized by the owner. Furthermore, the Automated Database Law mandates that a person at fault for the loss or the disclosure of information from an automated database system must be required to reimburse the damages inflicted upon an interested party

as a result of such loss or disclosure. However, the owner of an automated database system is not liable for any damage inflicted on the owner of the information processed in the automated database system, unless the damage results from a breach of the rules on the protection of the information established by the owner of such information.

14.2.5 Licensing Requirements in the Area of Information Technologies

Pursuant to the Law of Ukraine "*On the Licensing of Certain Types of Entrepreneurial Activity*," dated 1 June 2000 (the "Licensing Law"), the following activities in the field of information technologies are subject to mandatory licensing:

(1) the development, production, and sale of technologies for the interception of information;

(2) the development, production, use, examination, importation, and exportation of encryption technologies, the providing of services in the area of encryption, and the sale of encryption technologies; and

(3) the development, production, and servicing of technical means for the protection of information, and the providing of services in the area of the technical protection of information.

A business entity engaging in any of the above-specified activities is required, upon the receipt of the appropriate license, to adhere to certain technical, organizational, and other relevant requirements set forth in a regulation adopted by the competent government authority. The failure to comply with such requirements may lead to the cancellation of the license for a specific activity.

15. SPECIFIC INDUSTRIES

15.1 Power

15.1.1 General

Up until the implementation of the reforms of the Ukrainian power sector, commencing in the middle of 1994, with Decree of the President of Ukraine No. 244/94 "*On Measures Regarding the Market Transformation in the Power Sector of Ukraine*", dated 21 May 1994, the Ukrainian power sector was in exclusive state ownership. It operated through integrated utility companies, which undertook the generation, transmission, and distribution functions, and it was administered accordingly. Another significant reform of this sector was implemented by Decree of the President of Ukraine No. 282/95 "*On the Structural Reconstruction of the Power Sector of Ukraine*", dated 4 April 1995.

All electricity generation stations and plants in Ukraine, as well as the respective transmission and distribution networks, and all other energy objects are unified by common production, transmission, and distribution conditions, which are centrally managed and constitute the Unified Energy System of Ukraine ("UES"). The facilities, which ensure the integrity of UES and provide for the operational and technological management thereof, as well as of the trunk and interstate transmission lines, are not subject to privatization.

In accordance with Decree of the President of Ukraine No. 1573/99 "*On Changes in the Structure of the Central Executive Authorities*", dated 15 December 1999, the Ministry of Energy of Ukraine, the State Department on Issues of Energy of Ukraine, the State Department of the Oil, Gas, and Oil-Processing Industry of Ukraine, and the State Department of Nuclear Energy of Ukraine were liquidated and the Ministry of Fuel and Energy of Ukraine assumed their respective functions. As a result, this Ministry is currently the principal managing body of the Ukrainian power sector.

The national transmission grid remains under the control of the state-owned company, Ukrenergo, which assumed the functions of all other state enterprises engaged in the state management of this sector, including the formation of the wholesale electricity market.

Despite various setbacks in its legislative regulation, Ukraine's power sector presents attractive privatization opportunities with respect to thermal power generation stations and regional electricity distribution companies. There is

also the possibility of the "greenfield" development of new power production facilities or the purchase/sale of existing facilities with regard to new strategic investors.

15.1.2 Distribution

The distribution of electricity in Ukraine is carried out by 27 regional distributors ("oblegnergos"), which purchase electricity at the wholesale electricity market from Energorynok. These distributors sell electricity to consumers in their respective regions at the regulated retail tariff. Each regional power distributor controls the regional transmission network of lines below 220kV. In addition, a number of companies are licensed to distribute energy at a non-regulated retail tariff.

15.1.3 Wholesale Electricity Market

The wholesale electricity market is formed on the basis of an agreement among the participants in the market. Currently, "Temporary Conditions for the Functioning of the Wholesale Electricity Market" have been approved by Resolution of the Cabinet of Ministers of Ukraine No. 2043 dated 5 November 1999 (the "Conditions"). It should be noted, however, that the Cabinet of Ministers has approved these temporary conditions for the functioning of the wholesale electricity market until the adoption of a law by the Ukrainian Parliament "*On the Principles for the Functioning of the Wholesale Electricity Market*". The Conditions provide that the wholesale electricity market in Ukraine functions on the basis of a "Wholesale Market Agreement". Pursuant to the Conditions, electricity generating companies must enter into bilateral purchase agreements with a specialized legal entity, which purchases electricity for subsequent re-sale to distributing companies.

15.1.4 Privatization

The privatization of power companies in Ukraine started in earnest in 1995. Privatization covered both power generation companies (i.e., only thermal power generation companies) and power distribution companies.

In an attempt to cover the impending payments of the huge external debts of Ukraine, at the end of 1999 the President of Ukraine initiated the privatization of power companies, which until that time had remained, for the most part, in state ownership. As a first step toward achieving this goal, the President approved a Decree "On Certain Issues Concerning the Privatization of the

Power Industry" dated 2 August 1999, which provided for the sale of controlling stakes in power distribution companies and blocking stakes in power generation companies. Thus, as a result of the previous years' privatizations, controlling shareholding packages for 12 power distribution companies were sold to private investors; out of these 12 power distribution companies, 6 are now in 100% private ownership.

Further privatization in the energy sector of Ukraine was predetermined by the Presidential Decree *"On Additional Measures for Reforming the Energy Sector"* of 3 December 2001. Accordingly, in 2002, controlling shareholding packages (i.e., more than 50%) of 12 power distribution companies and blocking shareholding packages (i.e., more than 25%) of 7 power distribution companies are planned to be sold through open tenders.

15.1.5 Ukraine's Energy Law

The currently effective Law of Ukraine "*On Electrical Energy*", dated 17 October 1997 (the "Electrical Energy Law"), came into force on 20 November 1997, and established the legal framework for regulating the production, transmission, distribution, and consumption of electric and thermal energy in Ukraine.

The Electrical Energy Law's stated objectives include the following:

(1) to provide protection of consumers' rights and interests;

(2) to provide for the reliable and stable functioning of UES;

(3) to ensure the creation of conditions for the secure operation of energy objects; and

(4) to promote the development of competitive relations on the electricity market in Ukraine.

In addition to the Electrical Energy Law, there are also a number of presidential decrees, government resolutions, and other normative acts regulating the production, transportation, distribution, and consumption of electrical and heat energy in Ukraine. Also, a number of new legislative initiatives, directed at the stabilization and improvement of the regulation of the energy sector, are currently being considered by the Verkhovna Rada of Ukraine.

15.2 Pharmaceuticals

15.2.1 General

The production and circulation of pharmaceuticals and medical substances generally in Ukraine are subject to strict public control rules. The Law of Ukraine *"On Medical Substances"* of 4 April 1996 (the "Medical Substances Law"), is the principal legislative act setting forth the basic requirements for the creation, registration, production, quality control, and distribution of medical substances in Ukraine. In addition, the Law of Ukraine *"On the Circulation in Ukraine of Narcotic Substances, Psychotropic Substances, Their Analogies, and Precursors"* of 15 February 1995 (the "Narcotic Substances Law") sets forth the conditions for the production and circulation of narcotic substances in Ukraine.

The specific regulatory authority for medical substances is vested with the Ministry of Health of Ukraine (the "Ministry of Health"), the State Committee of Ukraine on Medical and Microbiological Industry Matters, and a number of governing bodies empowered by them.

15.2.2 Scope of Applicability

As defined in Article 2 of the Medical Substances Law, "medical substances" are defined as "substances or their mixture of a natural, synthetic, or biotechnological origin used for pregnancy prevention, preventive care, diagnostics, and treatment of human diseases, or for a change of the organism's conditions or functions". The above definition includes active substances, ready-to-use remedies, homeopathic remedies, remedies used for determining and treating disease-producing germs and parasites, medication cosmetics and medication food supplements.

15.2.3 Registration of Medical Substances

Under the Medical Substances Law, all medical substances are admitted for their use on the territory of Ukraine only after their official state registration. The above rule excepts from the mandatory official state registration regime only such medical substances, which are produced by pharmacies, under doctors' prescriptions or at the request of therapeutic and preventive care medical establishments, from active and supplemental substances officially authorized for their use in Ukraine.

Official state registration involves a three-step procedure, consisting of pre-clinical research, clinical tests, and the filing of an application with the Ministry of Health.

15.2.4 Pre-Clinical Research

Pre-clinical research, including chemical, physical, biological, microbiological, pharmacological, toxicological, and other scientific studies, should be conducted by specialized research establishments, in order to determine the specific activity and safety of a given medical substance prior to applying for its official state registration. The detailed requirements for the conducting of such pre-clinical studies are determined by the Ministry of Health in the *"Procedures for the Conducting of Examinations of Materials of Pre-Clinical Research of Medical Substances"* and the *"Procedures for the Conducting of Pre-Clinical Research of Medical Substances and Requirements for the Conditions of Conducting Certain Studies,"* adopted by Order No. 259 of the Ministry of Health on 17 August 1996.

15.2.5 Clinical Trials

After having completed the pre-clinical studies of a given medical substance, that substance should be clinically tested, in order to establish or to confirm its effectiveness and safety. Such clinical trials should be carried out at specialized medical establishments appointed by the Ministry of Health.

The procedure for requesting clinical trials of medical substances is set forth in the *"Instruction on the Conducting of Clinical Trials of Medical Substances and the Examination of Materials on Clinical Trials",* adopted by Order No. 281 of Ministry of Health on 1 November 2000, and involves the submission of an application to the Ministry of Health, accompanied by general information on the medical substance concerned, the results of its pre-clinical studies, samples of it, and the suggested program for its clinical trial.

A decision on the conducting of the clinical trials of a particular medical substance is adopted, provided that the results of the pre-clinical studies are positive and the expected benefits of applying the medical substance significantly outweigh its side effects. Furthermore, the clinical trials may be carried out only after the mandatory assessment of the ethical, moral, and legal aspects of such clinical trials by special ethics commissions.

Applicants are required to obtain insurance policies, in order to cover the lives and the health of all volunteers for such clinical tests.

15.2.6 Registration Application

The official state registration of medical substances is carried out on the basis of the applications filed in accordance with the requirements set forth in Article 9 of the Medical Substances Law, and in Resolution No. 1422 of the Cabinet of Ministers of Ukraine *"On Adopting Procedures for the Official State Registration (Re-Registration) of Medical Substances and the Amounts of Fees for the Official State Registration (Re-Registration) of Medical Substances"* of 13 September 2000 (the "Registration Resolution"). Under the Registration Resolution, all such applications must be submitted to the State Pharmacological Center of the Ministry of Health (the "Center"), which is responsible for conducting the examination of the materials on the medical substance submitted for registration. The procedure for such examination, together with the formal and substantive requirements for the information to be submitted to the Center, are outlined in the *"Procedure for the Conducting of the Examination of Materials on Medical Substances Submitted for State Registration (Re-Registration), Together with the Examination of Materials on Introducing Changes to the Registration Documents During the Term of the Validity of the Registration Certificate",* approved by Order No. 220 of the Ministry of Health on 19 September 2000 (the "Examination Procedure Order").

Generally speaking, all registration applications must include information on the producer, the active substance, synonyms, the form of production, the indications and contraindications for treatment, dosages, sale conditions, usage, term and conditions of storage, etc. In addition, the following materials must be attached to the application for official state registration of the medical substance: reports on the pre-clinical studies, reports on the clinical trials, pharmacopoeia description (i.e., a document specifying the requirements of the pharmaceutical, its packaging, conditions and term of storage, methods of control over the quality of the pharmaceutical), or materials on the methods for controlling the quality of the pharmaceutical, the draft technology description (i.e., a document specifying the technological methods and norms of producing the pharmaceutical), or information on the production technology, samples of the medical substance, the packaging of the medical substance, and evidence of the payment of the registration fee.

Under the Examination Procedure Order, the examination of materials submitted for official state registration may not exceed 210 calendar days, or, in certain cases, 90 calendar days.

The Ministry of Health is required to adopt its decision on registering or rejecting the medical substance within one month from the date of its receipt of a positive conclusion from the Center.

In the event that the Ministry of Health decides to have the medical substance registered, it will issue a registration certificate. Normally, such a registration certificate remains valid for five years from the date of the official state registration of the medical substance. Any further use of such medical substance beyond the original 5-year registration period requires its official state re-registration in accordance with the procedures referred to above.

The registration will be denied in the event that the claims regarding the effectiveness and the safety of the medical substance prove to be unsubstantiated. In the event that the registration is denied, the Ministry of Health is required to issue a grounded written explanation within ten days from the date of the adoption of the respective decision.

15.2.7 Registration Fees and Other Costs

The fees for the official state registration (re-registration) of medical substances are established by the Registration Resolution in Euros and vary from a 25 Euro base to a 1,000 Euro base. In addition, applicants are required to pay the examination costs incurred by the Center. Although, formally, the applicant may negotiate such costs, as a matter of practice they are unilaterally imposed by the servicing institution (however, within the limits established by Order No. 55 of the Ministry of Health of 17 March 2000).

15.2.8 Licensing Requirements Production and Distribution of Medical Substances

Under Article 9 of the Law of Ukraine *"On the Licensing of Certain Types of Economic Activities"* of 1 June 2000, any "production of medical substances, wholesale [and] retail sale of medical substances", together with the production, distribution and handling of narcotic and psychotropic substances and precursors, are subject to a mandatory licensing regime. In addition, such a licensing requirement exists for the processing of, and the production of medicines from, donor blood and its components.

Such licenses are issued by the State Department on Controls over the Quality, Safety, and Production of Medical Substances and Products of Medical Designation of the Ministry of Health, provided that all of the licensing conditions are complied with, including certain technical requirements as set forth by the State Committee of Ukraine on Medical and Microbiological Industry Matters.

The production of medical substances should be carried out in compliance with the technological requirements, pharmacopoeia articles, and other state standards from active and supplemental substances, and with packaging materials allowed for use by the Ministry of Health. In the event that the producer of a given medical substance wishes to change either its active or its supplemental substance, it is required to have such change registered with the Ministry of Health.

15.2.9 Import and Export of Medical Substances

Medical substances may be imported into Ukraine only upon their proper registration with the Ukrainian state authorities and the receipt of quality certificates from the producers of such medical substances. Exceptions to that rule cover the bringing of medical substances to Ukraine for their pre-clinical study and clinical trials, for their state registration, for exhibitions, conferences, and other similar purposes without the right of distribution of such medical substances; and for personal use by individuals. Certain exceptions may also be established in cases of natural disasters, epidemics, etc. Any importation of such non-registered medical substances requires a special permit of the Ministry of Health.

15.2.10 Labeling

The labeling of medical substances is regulated by Article 12 of the Medical Substances Law and requires that the following information must appear on the outer and inner packaging of the medical substances: the name of the medical substance, the name and address of the manufacturer, the registration number, series number, consumption method, dosage of the active ingredient in each unit of substance, and the number of units per package; the consumption term; the storage conditions; and the possible restrictions on its use.

In addition, each medical substance in circulation must be accompanied by an appropriate instruction, containing the information required by Article 12 of the Medical Substances Law.

All labels of medical products distributed on the territory of Ukraine must be in Ukrainian (the introduction of that requirement has recently been postponed by the Ministry of Health).

15.2.11 Advertising

Pursuant to the Law of Ukraine *"On Advertising"* of 3 July 1996 (the "Advertising Law") and the Ukrainian antimonopoly legislation, any advertising of pharmaceutical products on the territory of Ukraine may be carried out only after the appropriate state registration of such pharmaceutical products.

Generally, advertising in Ukraine must be conducted in Ukrainian. One of the exceptions to this rule concerns the use of trademarks, which are registered in a foreign language and/or alphabet.

In addition to prohibiting unfair advertising (such as misleading, inaccurate, non-authentic, exaggerating, discriminatory, and certain other types of unfair advertising), Article 20 of the Advertising Law prohibits the advertising of pharmaceuticals, which may be sold only on the basis of doctors' prescriptions and/or which contain narcotics, such as tranquilizers or hallucinogens. The advertising of products, which purport to have special therapeutic effects regarding incurable diseases, is also deemed to constitute unfair advertising practices. Additionally, any advertising of pharmaceuticals is prohibited if it implies that (i) there is no need to consult with doctor if the pharmaceutical in question is consumed; (ii) the eventual medical effect of the product is guaranteed; and/or (iii) the pharmaceutical in question is generally accepted as a food or cosmetic product or other consumable product.

Certain other restrictions apply when placing advertisements on TV, radio, in the printed media, over the telephone and other electronic means of communications, as well as when targeting minors and/or professional medical specialists/establishments by such advertising.

15.2.12 Intellectual Property Rights in Medical Substances

Medical substances may be patented with the State Committee of Ukraine on Intellectual Property.

15.2.13 State Regulation of Prices on Medical Substances

Certain types of medical substances, both imported and domestically produced, are subject to regulated prices as determined by the Cabinet of Ministers of Ukraine. Local state authorities are also authorized to establish marginal levels of retail markups on medical substances.

15.2.14 Taxation

In Ukraine, the sale of medical substances is free of value added tax ("VAT").

16. BANKRUPTCY ISSUES

16.1 General

Ukraine's first Law "*On Bankruptcy*" was adopted on 14 May 1992. On 30 June 1999, this Law was significantly amended and restated, and now exists as the Law "*On Re-establishing the Solvency of Debtors or the Recognition of Debtors' Bankruptcy*" (the "Bankruptcy Law"). The Bankruptcy Law came into effect on 1 January 2000.

The Bankruptcy Law and certain other Ukrainian legislation establish a number of fundamental principles, which must be borne in mind when doing deals with potential Ukrainian debtors ("Debtors").

16.2 Debtors Exempt from Bankruptcy

Under the applicable Ukrainian legislation, the following Debtors have absolute or limited immunity from bankruptcy procedures:

(1) state enterprises, which fall under the category "*kazenne pidpryyemstvo*";

(2) municipal enterprises, which were exempted from the application of the Bankruptcy Law by the relevant decision of the local self-governing body; and

(3) enterprises, which are being privatized until the completion of the relevant privatization plan.

16.3 Specifics of Bankruptcy Proceedings for Certain Categories of Debtors

Bankruptcy proceedings for certain categories of Debtors have important specific features, as compared with the generally applicable bankruptcy regime. Such categories of Debtors include banks, insurance companies, securities traders, city-forming ("giant") enterprises, enterprises with dangerous production facilities (e.g., chemical, coal, nuclear, or metal producers, which have been recognized as dangerous manufacturers by a decision of the Cabinet of Ministers of Ukraine), agricultural producers, farms, and private (individual) entrepreneurs. Specific features of the bankruptcy proceedings for such enterprises include a special list of priorities for the satisfaction of creditors' claims, extension of the term of the bankruptcy hearings, special sale procedures, and restrictions on the attachment of the Debtor's assets.

16.4 Initiation of Bankruptcy Proceedings

A bankruptcy petition may be brought to a Ukrainian commercial court (hospodarsky sud) by any creditor (other than a fully-secured creditor), the Debtor itself, the State Tax Administration, or the State Control and Audit Commission. A creditor may be any individual or business entity, which possesses a non-arbitrary claim against the Debtor in an amount of not less than 300 individual monthly minimum wages (currently 42,000 UAH, which amount to approximately 7,894 U.S. Dollars), and whose claim was not satisfied within three months after the expiration of the established term for its initial satisfaction.

In principle, there are two ways in which a creditor may participate in bankruptcy proceedings: a creditor may either bring the bankruptcy petition itself or, if another party has already initiated the bankruptcy proceedings, it may join such proceedings by way of filing a participation petition.

Once the bankruptcy proceedings have been triggered, any creditor (except a fully-secured creditor) may within 1 month from the formal publication in a Ukrainian government newspaper of the commencement of bankruptcy proceedings against the Debtor, may submit a participation petition substantiating its claims against the Debtor.

A creditor, whose claims are fully-secured by collateral, is deemed to be a secured creditor, and as a matter of law, may not participate (i.e., submit a participation petition) in bankruptcy proceedings. If a secured creditor considers that its claims are not fully-secured, or if the collateral has been lost/absent, then it can participate as a creditor with respect to the unsecured part of its claims or of all its claims.

16.5 Stages of Bankruptcy Proceedings

Under Article 4 of the Bankruptcy Law, the judicial bankruptcy proceedings in Ukraine include the following stages:

(1) special proceedings for the disposal of the Debtor's assets;

(2) amicable settlement;

(3) rehabilitation proceedings ("*sanation*"); and

(4) liquidation proceedings.

Under the special proceedings of the disposal of the Debtor's assets, the Ukrainian commercial court will appoint a bankruptcy trustee ("*rozporyadnyk mayna*"), who will handle and approve the disposal of the Debtor's assets. The court may impose a moratorium on the discharge of any of the claims of the Debtor's creditors, which have arisen before the date of the initiation of the bankruptcy proceedings. This moratorium may last until the completion of the liquidation of the Debtor.

A bankruptcy trustee is an individual, who is registered as a private entrepreneur, and is licensed to conduct the management of the Debtor's assets during the formal bankruptcy proceedings. The bankruptcy trustee organizes the general meeting of the Debtor's creditors, which in turn, appoints the creditors' committee. The committee is responsible for the day-to-day control of the court bankruptcy proceedings on behalf of the Debtor's creditors.

Under the amicable settlement procedure, the parties to the bankruptcy proceedings enter into an amicable settlement agreement, under which certain categories of the creditors' claims may be written off from the Debtor's balance sheet.

Rehabilitation proceedings can be commenced by the court only upon the written request of the creditors' committee. At that stage, the manager of the rehabilitation proceedings ("*kerouyuchy sanatsiyeyu*"), who is responsible for the implementation of the Debtor's re-habilitation, will be appointed by the court.

If the creditors' committee will not approve the rehabilitation proceedings for the Debtor within the term specified by the court, or if the rehabilitation proceedings will be canceled at any stage of their implementation, the court will order the liquidation of the Debtor. These proceedings commence upon the issue by the court of resolution on the declaration of the bankruptcy of the Debtor. Under these proceedings, the court will appoint the liquidation commission, approve the bankruptcy estate of the bankrupt, sell off the bankruptcy estate, and distribute the sell-off proceeds to the creditors in accordance with the priority list for the satisfaction of the creditors' claims.

16.6 Priority of Claims

Amounts received from the sale of the bankrupt's estate will be used to pay the claims of its creditors and others in the following order:

(1) Claims of the First Priority:

- claims of creditors secured by a pledge (mortgage) of the bankrupt's assets (up to the value of the relevant collateral);

- the payment of termination allowances to the bankrupt's employees, and the repayment of a loan received by the bankrupt for the purpose of the payment of such termination allowances; and

- expenditures associated with the conduct of the bankruptcy proceedings and the expenses of the liquidators.

(2) Claims of the Second Priority:

- liabilities to the bankrupt's employees (other than in respect of the payment of termination allowances or the "repayment of the employees' contributions to the charter fund" of the bankrupt);

- liabilities arising from the infliction of harm to the life or health of an individual; and

- claims of individuals arising from their property or funds having been deposited with the bankrupt (if the bankrupt is a trust company a bank, or a "credit-financial institution", or a business entity attracting the assets of individual depositors).

(3) *Claims of the Third Priority:*

local and state taxes and other mandatory payments (including mandatory pension and social security contributions).

(4) Claims of the Fourth Priority:

claims of creditors not secured by a pledge (mortgage) of the bankrupt's assets (other than claims of the fifth priority and the sixth priority), including claims arising in the process of the management of the bankrupt's assets in the bankruptcy proceedings or in the process of the "financial rehabilitation" ("*sanatsiya*") of the bankrupt.

(5) Claims of the Fifth Priority:

claims for the "repayment of the bankrupt's employees' contributions to the charter fund" of the bankrupt.

(6) Claims of the Sixth Priority:

"all other claims".

Claims with a higher priority must be satisfied in full before any lower ranking claims may be paid. In the event that the cash proceeds from the sale of the property are insufficient to satisfy all of the claims with equal priority, then all of the claims with the same priority are to be satisfied pro-rata. Claims submitted after the expiration of the period established for their submission will not be considered and their debts will be deemed extinguished. Claims not paid due to the insufficiency of funds will also be deemed extinguished. Any assets remaining after the satisfaction of the claims of the creditors and the employees of the bankrupt are to be distributed to the "owners" of the debtor (i.e., its shareholders or holders of its participatory interests), provided that the commercial court has not adopted a resolution on the reorganization of the debtor.

16.7 Criminal Liability

Under the Criminal Code of Ukraine:

(1) an intentional concealment by an individual-participant/shareholder or by an owner of a subject of entrepreneurial activity, as well as by an officer of a subject of entrepreneurial activity, of the sustainable financial insolvency of such subject by means of the filing of untrue information, if such activity has caused substantial material damages to a creditor, is punishable with a monetary penalty from 2,000 to 3,000 monthly non-taxable incomes of individuals, or with imprisonment for a term of up to 2 years with the deprivation of the right to occupy certain positions or to conduct certain activities for a period up to 3 years;

(2) the willful making of an untrue statement (verbal or in writing) by a company's official to a respective creditor of such company about its financial incapability to meet the claims of its creditors and its obligations to make budget contributions is punishable with a monetary penalty from 750 to 2,000 monthly non-taxable incomes of individuals, or with imprisonment for a term of up to 3 years;

(3) "letting bankruptcy", i.e. the intentional activity, with mercantile motives or other personal interests, or in the interest of third parties, of the owner or corporate official of an enterprise, which has caused the sustainable financial incapability of such enterprise, if such activity has caused substantial material damages, is punishable with a monetary penalty from 500 to 800 monthly non-taxable incomes of individuals, (with the deprivation of the right to conduct certain activities for a period of up to 3 years); and

(4) an intentional concealment of property or information about the property, or about transfers of the property, of an insolvent company by its owners or corporate officials, which resulted in significant damages, is punishable with a monetary penalty from 150 to 500 monthly non-taxable incomes of individuals, or with imprisonment for a term of up to 3 months with the deprivation of the right to occupy certain positions or to conduct certain activities for a period of up to 3 years.

17. DISPUTE RESOLUTION

17.1 General

To defend its/his/her rights in a business-related dispute, a foreign or Ukrainian legal entity or individual entrepreneur may apply to an appropriate Ukrainian court, or to an appropriate arbitration tribunal or institution within or outside of Ukraine.

A legal entity's or an individual's right to apply to a Ukrainian court may not be waived by contract, even by an arbitration agreement between the parties. If an arbitration agreement exists between the parties, the party objecting to the dispute's review by a Ukrainian court must raise such objection in the relevant court proceeding before making any submission on the merits of the dispute, otherwise the court will accept jurisdiction and will proceed to review the dispute and to render a judgment.

17.2 Court System

The court system in Ukraine consists of the Constitutional Court of Ukraine and the courts of general jurisdiction.

The Constitutional Court of Ukraine is the only body of constitutional jurisdiction in Ukraine. It is authorized to review the compliance of laws and other normative acts with the Constitution of Ukraine and to issue official interpretations of the Constitution and the laws of Ukraine. The Constitutional Court is comprised of 18 judges, appointed in equal proportions by each of the President, the Verkhovna Rada of Ukraine, and the Conference of Judges of Ukraine. The term in office of a judge of the Constitutional Court is 9 years.

The courts of general jurisdiction review civil, administrative, commercial, criminal, and other cases envisaged by law. The courts of general jurisdiction are organized into the following three levels: (1) the Supreme Court of Ukraine; (2) the Supreme Court of the Autonomous Republic of Crimea, regional (oblast) courts, and courts of the cities of Kyiv and Sevastopol; and (3) district (rayon in the cities of Kyiv and Sevastopol) and city courts. A judge of a general court is appointed on a competitive basis for his/her first 5 year term by the President of Ukraine. Thereafter, the Verkhovna Rada of Ukraine elects a judge of a general court for an indefinite term.

Specialized commercial courts ("hospodarski sudy") exist within the system of the courts of general jurisdiction. A business-related dispute between business entities (including individual businessmen), or between a business entity and a body of state authority (e.g., the State Tax Administration, the Anti-Monopoly Committee, the customs authorities, etc.), will be reviewed by a commercial court having jurisdiction over the location of the respondent or otherwise having jurisdiction over such dispute under the applicable Ukrainian legislation. Except in narrowly defined cases (involving, in particular, disputes concerning ownership rights to property located in Ukraine), a commercial court will not accept jurisdiction over a dispute involving a foreign respondent which has no registered presence in Ukraine. A commercial court will handle bankruptcy proceedings in respect of an enterprise located within its jurisdiction. The commercial courts are organized into the following three levels: (1) the Supreme Commercial Court of Ukraine; and (2) the commercial courts of appeal; and (3) the local commercial courts.

17.3 Commercial Arbitration

A business-related dispute between a foreign legal entity or individual entrepreneur and a Ukrainian legal entity or individual entrepreneur may be referred by the agreement of the parties for settlement by either ad hoc or institutional arbitration, either within or outside of Ukraine. A business-related dispute involving only Ukrainian parties, at least one of which is an enterprise with foreign investment, may also be referred to either an ad hoc or an institutional arbitration within Ukraine. Currently, there are two well-established bodies of institutional arbitration in Ukraine: the International Commercial Arbitration Court of the Chamber of Commerce and Industry of Ukraine and the Maritime Arbitration Commission of the Chamber of Commerce and Industry of Ukraine.

The applicable Ukrainian legislation provides a mechanism for the enforcement in Ukraine of arbitration awards rendered within Ukraine. An arbitration award rendered outside of Ukraine will be enforceable in Ukraine in accordance with the terms of the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Ukraine is a party.

17.4 Foreign Court Judgments

Foreign court judgments will not be recognized or enforced in Ukraine in the absence of an international agreement for the reciprocal enforcement of foreign court judgments between Ukraine and the country in which the judgment was made. Ukraine has such agreements with only a few countries (mostly members of the former Soviet bloc).

18. CONSUMER PROTECTION AND PRODUCT LIABILITY

18.1 General

The principal legislative act in Ukraine in the area of consumer protection and product liability is the Law of Ukraine No. 1023-XII *"On the Protection of Consumer Rights"* dated 12 May 1991 (the "Consumer Rights Law").

Under the Consumer Rights Law, manufacturers of goods, providers of services, and merchants have the obligation to furnish consumers with goods and/or services, which comply with the established quality standards, the terms of the agreement with the consumer, and the information about the goods/services, which is publicized by the manufacturer/provider/merchant.

Pursuant to the Consumer Rights Law, manufacturers of goods must ensure the safe use of the goods for the duration of the service life period established by law or by the agreement with the consumer, or, in the absence of any relevant provisions, for a period of 10 years.

Furthermore, the Consumer Rights Law requires a manufacturer of goods to ensure the availability of maintenance services for the goods during the relevant periods of time. It also sets forth the obligations of manufacturers (merchants) toward consumers with respect to the replacement of defective goods and warranty repairs.

18.2 Liability for Damage Caused by Defective Goods (Services)

Under the applicable Ukrainian legislation, damages which are incurred by a consumer with regard to his/her life, health, or property by a manufacturer's (provider's) goods (services) must be indemnified in full by the person who inflicted the damages. The right to claim damages is vested in every damaged consumer, regardless of whether such consumer had concluded a contract with the manufacturer (provider, merchant). This right is deemed valid for the duration of the service life of the specific product or, if the service life of the product is unidentified, for 10 years from the date of manufacture of the goods (producing the works, rendering of the services). The only exception from the above rule are cases whereby damages were inflicted at fault of consumer or caused by force-majeure.

18.3 Liability for Violation of Consumer Rights

The applicable Ukrainian legislation provides for civil, administrative, and criminal liability for the violation of a consumer's rights. The scope of penalties envisioned by the Consumers Rights Law for the violation of consumer rights ranges from 10% to 1000% of the cost of the goods manufactured or sold, or the services rendered. Meanwhile, the Code of Ukraine on Administrative Offenses provides a fine for the relevant offenses in the amount of 3 to 88 non-taxable minimum monthly incomes (approximately USD9 - USD275). At the same time, under the Criminal Code of Ukraine, the maximum penalties for criminal offenses in the area of consumer protection are 500 non-taxable minimum monthly incomes (approximately USD1,550) or 3 years of imprisonment.

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