

- the losing party was not duly notified of the appointment of the arbitrator or the conduct of the arbitration proceedings;
- the losing party could not submit its explanations for valid reasons;
- the arbitration award was rendered on an issue outside the scope of the arbitration agreement;
- the arbitration panel or procedure did not comply with the arbitration agreement; or
- the arbitration award did not enter into force in, or was annulled or its execution was suspended by the court of, the country, according to the laws of which such arbitration award was rendered.

Similarly, a foreign or local arbitration award may be unenforceable in Ukraine if a Ukrainian court determines that: the object of the dispute cannot be subject to arbitration under Ukrainian legislation; or the recognition and enforcement of such arbitral award contradicts the public order of Ukraine.

## **11. CAPITAL MARKETS**

### **11.1 General**

The debt and equity securities markets in Ukraine are regulated by several laws, as well as by 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 includes the *Civil Code of Ukraine*; the *Commercial Code of Ukraine*; the *Law of Ukraine “On Securities and the Stock Market,”* dated 23 February 2006; the *Law of Ukraine “On Companies,”* dated 19 September 1991; the *Law of Ukraine “On Joint Stock Companies,”* dated 17 September 2008; 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 Depository System and Specifics of the Electronic Circulation of Securities in Ukraine,”* dated 10 December 1997; the *Law of Ukraine “On the Circulation of Promissory Notes in Ukraine,”* dated 5 April 2001; the *Law of Ukraine “On Mortgage,”* dated 5 June 2003; the *Law of Ukraine “On Mortgage Lending, Transactions with Consolidated Mortgage Debt and Mortgage-Backed Certificates,”* dated 19 June 2003, and the *Law of Ukraine “On Mortgage-Backed Bonds,”* dated 22 December 2005.

## 11.2 Types and Forms of Securities

Ukrainian legislation recognizes the following categories of securities: equity securities such as shares of capital stock and investment certificates; debt securities such as state bonds of Ukraine, municipal bonds, corporate bonds, treasury bills, deposit certificates, promissory notes and bills of exchange; mortgage-backed securities such as mortgage-backed bonds, mortgage-backed certificates, mortgage receipts (“*zastavni*”), certificates of funds of operations with real estate (“*certyfikaty fondiv operatsiy s neruhomistyu*”); privatization securities; derivative securities; and commodity-related securities (documents acknowledging the receipt of goods for shipment such as bills of lading).

Ukrainian issuers may issue securities in registered (nominative) form, bearer form and order form, as well as in documentary (certificated) form and non-documentary (book-entry or electronic) form. The transfer of ownership rights to registered securities in documentary form is effected by means of assignment. Ownership rights to bearer securities issued in documentary form are transferred as of the moment of the physical transfer (delivery) of the securities to a new owner. Ownership rights to the securities in documentary form, wherever bearer or registered, are confirmed by such securities’ certificate.

The transfer of ownership rights to both bearer and registered securities in documentary form, if such securities have been immobilized, as well as to the registered securities originally issued in non-documentary form is effected from the moment of crediting such securities to new owner’s securities account maintained with a securities custodian. Ownership rights to such securities are evidenced by an excerpt from the custodian’s registration system.

## 11.3 Securities Commission

The Securities Commission is the state agency authorized to determine and implement a uniform state policy in the area of the development and operation of the securities market in Ukraine, and to monitor the compliance of Ukrainian and foreign entities and individuals with legislation governing the securities market. The Securities Commission is subordinate to the President of Ukraine and is accountable to the Verkhovna Rada. The Securities Commission has been 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.

## 11.4 Registrars

The registration of ownership rights to registered securities issued in documentary form may be performed by either an issuer of registered securities which has obtained a permit (the Registrar License) from the Securities Commission for the maintenance of a register of owners of registered securities (only if contemplated by the issuer's charter and provided that the total number of owners of such securities issued does not exceed 150), or an independent registrar which has obtained the Registrar License. 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 150.

State bodies cannot be founders of or participants in a registrar. An issuer may not be a direct or indirect founder or participant of the registrar which is maintaining such issuer's register. Similarly, neither a registrar nor its participants may have a direct or indirect shareholding in the issuer whose register is maintained by such registrar. Finally, an issuer maintaining its own register or a registrar may not be owned by more than 10 per cent by a professional participant in the securities market, *i.e.*, registrar, securities trader, securities custodian or depository.

## 11.5 Depository System

Ukrainian legislation establishes the National Depository System, consisting of two levels, the higher level and lower level.

The higher level comprises 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, authorized to carry out certain regulatory functions with respect to the Ukrainian stock market. A depository is a legal entity organized in the form of an open joint stock company and engaged exclusively in depository activities with securities. A depository should have at least 10 shareholders that are custodians and none of such custodians should have a share of more than 25% of such depository's capital. A depository is authorized to keep global certificates in respect of the issuance of non-documentary (book-entry) 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.

The lower level comprises custodians of securities and registrars of owners of registered securities. Under Ukrainian law the license of the Securities Commission for the

performance of depositary activities of a custodian (the Custody License) may be issued either to a licensed Ukrainian securities trader or a Ukrainian commercial bank which written permit of the National Bank of Ukraine (the NBU) provides for the depositary activity and which holds a securities trader license from the Securities Commission. A Ukrainian securities custodian may provide custody services to its clients only pursuant to an agreement for the opening of an account in securities which model is approved by the Securities Commission. A securities registrar must be a legal entity which has corporate capacity to act as securities registrar and has obtained the Registrar License. A Ukrainian securities registrar is permitted to maintain the register of an issuer of securities only based on the relevant agreement between them which model is approved by the Securities Commission.

## **11.6 Securities Traders**

Licenses to conduct activities as a securities trader may be granted to companies (the charter capital of which is formed entirely of monetary funds) engaged exclusively in securities trading activities and banks. Securities traders may be licensed by the Securities Commission to perform any or all of the following activities in respect of securities: broker activities (transacting with securities in its own name or in the name of the client but at the expense of the client), dealer activities (transacting with securities in its own name and at its own expense for the purpose of subsequent resale), underwriting (placement (subscription or sale) of securities at the instruction, in the name and at the expense of the client) and securities management activities (transacting with securities for a fee in its own name but for the benefit and in the interests of a third person).

A securities trader is not permitted to hold a share in another securities trader which exceeds 10 per cent. In line with this requirement, the Securities Commission is entitled to refuse to issue the securities trader license to both the company which is 10 per cent owned by a securities trader and the company holding more than 10 per cent share in a securities trader.

## **11.7 Stock Exchanges**

Securities are traded in Ukraine on several stock exchanges and on the over-the-counter electronic market trading system, the PFTS. While on the exchanges, the volumes

remain low and trading is limited to a handful of companies, trading activities are increasingly conducted through the PFTS. In 2006 the PFTS established a subsidiary - the PFTS Stock Exchange, which was licensed by the Securities Commission as a stock exchange in 2007.

At the current time, the 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 a security.

## **11.8 State Securities**

The Ministry of Finance of Ukraine, acting upon the authorization of the Cabinet of Ministers of Ukraine, may issue bonds to finance domestic or external state debt.

State bonds can be issued either in documentary (certificated) or non-documentary forms being evidenced, in relation to the latter, by book-entries at the NBU. State bonds can be either in registered or bearer form. Foreign entities and individuals are permitted to invest in domestic state bonds through Ukrainian custodians that are clients of the NBU as depository of state securities.

Since 2000, Ukraine has carried out a number of issuances of its foreign state bonds (known as Eurobonds, denominated in Euros and in US dollars) in the international capital markets. These bonds are currently being actively traded in the international capital markets.

## **12. EMPLOYMENT**

### **12.1 Legislation**

The *Code of Laws on Labor of Ukraine* (the *Labor Code*) dated 10 December 1971, as amended, is the principal, but not the sole, 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, type, 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