

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

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 both foreign companies and Ukrainian companies with foreign investment are the same as those granted to employees of other Ukrainian companies.

12.2 Labor Agreements and Labor Contracts

Conceptually, both local and foreign legal entities may engage individuals in Ukraine pursuant to either employment agreements (or labor contracts, where appropriate) concluded in accordance with the *Labor Code*, or so-called “civil law contracts” concluded in accordance with the *Civil Code* (e.g., an independent consultant agreement). In the latter case, the individual should obtain registration as an entrepreneur with the relevant local tax office prior to signing the civil law contract.

As a rule, employment agreements must be concluded for an unlimited period. However, in a few specified circumstances, the *Labor Code* allows for an employment agreement to be concluded for:

- A limited period agreed upon by the parties, or
- The period required to complete a given amount of work.

Article 23 of the *Labor Code* provides that an employment agreement may be concluded for a limited (i.e., definite) term only if the nature of the employee’s work or “the employee’s interests” make it impossible to establish an employment relationship for an unlimited term. However, this provision affects only employment agreements, and it is not applicable to labor contracts.

Ukrainian law distinguishes between a “labor (employment) agreement” and a “labor contract.” A “labor contract” is a specific form of a written “employment agreement”. Although it is usual for an employment agreement to be concluded in writing by the parties, the absence of a written employment agreement does not prevent an employment relationship from being established. In such a situation, i.e., where a written employment agreement does not exist, the parties are bound by an implied employment agreement, and the relevant provisions of the *Labor Code* strictly regulate the employment relationship.

In contrast, in a labor contract, the resolution of certain issues (including the term of the contract and any additional grounds for the termination of the employment relationship) may be determined by the parties and may deviate from the requirements of the *Labor Code*. Article 9 of the *Labor Code*, however, provides that the provisions of a labor contract may not deprive an employee of the rights and benefits, which are guaranteed by the labor laws of Ukraine. A labor contract may be used only if it is expressly authorized by law, *e.g.*, with the CEO (as opposed to all other employees) of a company, and it must always be executed in writing.

Pursuant to Article 21 of the *Labor Code*, the parties to a labor contract have discretionary powers to determine the term of such contract. Other provisions, which the parties may agree upon in a labor contract, include:

- the rights, obligations, and liabilities of the parties, including the terms of their material liability;
- the remuneration and organization of the employee's labor; and
- the grounds for termination, including early termination.

Thus, the principal advantage of a labor contract (as opposed to an employment 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 of a labor contract is that, unlike an employment agreement, it may be concluded only if it is expressly authorized by law.

12.3 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 the granting of any direct or indirect advantages, within the term of employment on the grounds specified above, is unacceptable.

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*.

Similar, but more specific, provisions are found in Article 17 of the *Law "On Providing Equal Rights and Opportunities for Females and Males,"* which came into effect on 1 January 2006. The employers are prohibited from advertising job vacancies exclusively to males or females, or from requiring, while concluding an employment agreement with a prospective employee, any data regarding his/her private life or family planning. Collective agreements must contain certain measures on providing equal rights and opportunities for females and males and must specify the terms of fulfillment thereof.

12.4 Labor Books

Every employee working for more than five days in an enterprise must have his or her employment noted in his or her labor book. The labor book contains information about the employee and his or 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 the entering of information on disciplinary punishments into an employee's labor book.

12.5 Probationary Period

An employer has the right to establish a three-month probationary period for a newly-hired employee. For unskilled and low skilled employees, the duration of the probationary period may not exceed one month. The imposition of a probationary period must be specifically provided for 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. However, there are restrictions on the dismissal of certain categories of women, which effectively makes probation for these employees senseless.

12.6 Minimum Wage

Wages may not be lower than the officially established minimum monthly salary under the applicable Ukrainian legislation. The amount of the minimum monthly salary is subject to frequent indexation. The minimum monthly salary is currently (starting from 1 January 2009) - UAH605 (approximately US\$71 or EUR60); starting from 1 April 2009 it will be UAH625 (approximately US\$74 or EUR62); starting from 1 July 2009 - 630 UAH (approximately US\$75 or EUR62); from 1 October 2009 - UAH650 (approximately US\$76 or EUR65); and with effect from 1 December 2009 it will be UAH669 (approximately US\$79 or EUR67). The amount of the officially established minimum monthly salary is periodically adjusted by the Verkhovna Rada (Parliament) to reflect increases in the cost of living.

12.7 Work Week

The regular work week is a maximum of 40 hours. Any time worked in excess of 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 four 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. Depending on the nature of the work, it is possible to provide for variable working hours which allow the working of overtime by employees (without extra pay, but with extra vacation) within the maximum time limits described above.

12.8 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 annual paid vacation of a minimum of 24 calendar days (to include weekends during the vacation period but excluding official holidays). Certain categories of employees are entitled to additional paid vacation.

12.9 Sick Leave

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

12.10 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 (or 70 calendar days in the event of multiple births) after the birth. The employee may take additional unpaid leave until the child reaches three years of age. During the entire period of paid and unpaid leave, the employee retains the right to return to her job, with the full leave period included in calculating the employee's length of service.

12.11 Termination of Employment and Job Protection

The procedure for terminating a labor agreement or a labor contract is governed by Article 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, but not limited to: staff redundancy; the employee's systematic failure to fulfill his or her employment duties; the employee's insufficient qualifications or deteriorating health condition; the employee's unjustified absence from the workplace for more than three consecutive hours during one working day; and a number of others. In contrast, Article 36 of the *Labor Code* provides that a labor contract (as opposed to a labor agreement) may also be terminated for any 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 disabled children or children below the age of 14. Pursuant to Article 184 of the *Labor Code*, this rule does not apply in the event of the dissolution of an 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.

Under the *Labor Code*, the dismissal of an employee, who is a trade union member, requires, in certain circumstances, the prior consent of his/her trade union. In such cases, the consent of the relevant trade union should be requested prior to the termination.

12.12 Collective Agreements

Articles 11 and 12 of the *Labor Code* require legal entities operating in Ukraine and employing labor to conclude collective agreements with the relevant bodies of the trade unions representing the interests of the employees or, if there are no such trade union bodies in existence, with the elected representatives of the employees who have been authorized by their fellow employees to sign and negotiate such collective agreement with the employer. 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.

12.13 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 remunerate employees who are deemed to be Ukrainian “residents” exclusively in Ukrainian currency.

12.14 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, who are working for 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, then 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 must, before his/her commencement of such employment, 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 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 the relevant Ukrainian employment center, provided that: there are no qualified Ukrainian nationals in the relevant area who are suitable for the position in question; or there are significant grounds for the employment of such foreign nationals as specialists. It should be noted that the applicable Ukrainian legislation does not provide a definition of the term “significant grounds.” At the same time, a document outlining such grounds should be filed, together with other required documents, with the relevant employment center. Presumably, the education and expertise of the foreign national in the relevant area will be taken into account in evaluating whether or not to issue a work permit to such foreign national employee.

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

Work permits are usually issued for up to one year at a time. Work permits may be prolonged any number of times; in order to obtain such prolongations, the employer must apply to the relevant employment center one month prior to the expiration of the existing work permit. Use of foreign labor without an appropriate work permit may subject the employer to a fine in the amount of up to 20 times the statutory minimum monthly salary (approximately \$1423 at the current exchange rate) per each illegally hired foreign employee.

12.15 Personal Data

A draft law, consistent with the relevant legislation of the European Union, had been passed by the Parliament and then, after the Presidents comments, has been rejected. However, various existing statutes, including the Civil Code and the Labor Code, contain separate provisions that apply to protection of personal information and privacy.