

## CONDUCTING BUSINESS IN UKRAINE

2018



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# **CONDUCTING BUSINESS IN UKRAINE**

## **2018**

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## PREFACE

Baker McKenzie helps clients overcome the challenges of competing in the global economy. We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instil confidence in our clients.

In close cooperation with our offices worldwide, we offer expertise on all aspects of investment in the region.

Baker McKenzie's Kyiv office has maintained a leading market position in Ukraine for 25 years. We offer a full range of legal services and business solutions.

*Conducting Business in Ukraine* is intended to be a general guide for companies operating or considering investment in Ukraine. It presents an overview of the Ukrainian legal system and the regulation of business activities in the country.

We would be happy to provide you with further information regarding a specific industry or area of Ukrainian law in which you may have a particular interest.

Baker McKenzie, Kyiv office





## 1. UKRAINE — AN OVERVIEW

### 1.1 Geography, Topography and Population

Ukraine:

- covers a land area of 603,500 sq. kilometers with a coastline of 2,782 kilometers;<sup>1</sup>
- borders the Russian Federation to the east, Belarus to the north, Poland, Slovakia, Hungary, Moldova and Romania to the west, and the Black Sea and the Sea of Azov to the south; and
- has a population of approximately 42.42 million (as of 1 November 2017)<sup>2</sup>, with a population density of about 75.3 people per sq. kilometer.

<sup>1</sup>Including the data on the Autonomous Republic of Crimea (illegally and temporarily annexed by the Russian Federation in 2014).

<sup>2</sup>Information of the State Statistics Service of Ukraine does not include data on the Autonomous Republic of Crimea (illegally and temporarily annexed by the Russian Federation in 2014).

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## 1.2 Government and Political and Legal Systems

Ukraine follows a civil law system, under which the Constitution of Ukraine (the "Constitution") provides the framework for its legislative system.

The principal body of legislation consists of:

- laws adopted by the Verkhovna Rada (Parliament) of Ukraine; and
- international agreements of Ukraine duly ratified, or acceded to, by the Verkhovna Rada.

Laws are implemented through various normative acts that are adopted by the relevant government bodies (ie, the President, the Cabinet of Ministers, Ministries and State Committees).

The current 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 for national policy and a foundation for the development of a democratic state; and
- has enormous value as a legislative act as its provisions apply directly and entitle any individual to seek 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 itself mandates the preparation and implementation of a comprehensive program of legislative developments by providing for the adoption of new laws and, as deemed necessary, the amendment of existing laws.

The legal system of Ukraine comprises three major layers of normative acts:

- the Constitution;
- laws adopted by the Verkhovna Rada and international agreements of Ukraine duly ratified, or acceded to, by the Verkhovna Rada; and
- other normative acts.

Pursuant to the Constitution, Ukraine has three branches of state power:

- the legislative branch, represented by the Verkhovna Rada;
- the executive branch, represented by the Cabinet of Ministers of Ukraine (the "Cabinet of Ministers") and headed by the Prime Minister; and
- the judicial branch, represented by a multilevel system of courts, the highest being the Supreme Court.



#### The President:

- is the head of state and the commander-in-chief of armed forces;
- has significant authority over the executive branch;
- is elected every five years; and
- possesses such powers as the dissolution of the Verkhovna Rada in specific cases and the appointment of the Prosecutor General.

Under the constitutional reforms dated 21 February 2014 adopted by the Verkhovna Rada following the Revolution of Dignity, effective from 2 March 2014, the earlier constitutional reforms of 8 December 2004 were reinstated with certain amendments and the distribution of executive powers among the President and the Cabinet of Ministers was yet again shifted in favor of the Cabinet of Ministers. Some of the key constitutional rights of the President (for example, the right to appoint the Prime Minister) were returned to the Verkhovna Rada, thereby reverting the political system of Ukraine from a presidential-parliamentary republic to a parliamentary-presidential republic.

#### The Verkhovna Rada:

- is the supreme legislative body in Ukraine;
- comprises 450 people's deputies:
  - half of whom are elected through proportional representation
  - the other half are elected directly and individually by a majority vote in each voting district
- is elected for a five-year term;
- has the power to adopt laws and resolutions and approve the state budget of Ukraine;
- ratifies, or accedes to, international agreements in the form of laws of Ukraine;
- approves Prime Minister candidates; and
- appoints the Chair of the National Bank of Ukraine, the Head of the Security Service of Ukraine and several other senior government officers.

In Ukraine, a bill becomes a law once it gains a majority (226 deputies) of the votes in the Verkhovna Rada (except for certain types of laws requiring a supermajority of 300 votes), and is signed into law by the President.

#### The Cabinet of Ministers:

- is the highest body within the executive branch;
- implements laws once they are adopted;
- is led by the Prime Minister;
- is responsible before the President and the Verkhovna Rada; and
- is accountable to the Verkhovna Rada.

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The various 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.

The Prime Minister:

- is proposed to the President by the parliamentary coalition;
- is appointed by the Verkhovna Rada upon the nomination by the President; and
- has the right to nominate members of the Cabinet of Ministers (other than the Minister of Defense of Ukraine and the Minister of Foreign Affairs of Ukraine, who are nominated by the President) for the approval by the Verkhovna Rada.

The Ukrainian court system exercises independent judicial power in Ukraine and consists of:

- courts of general jurisdiction; and
- the Constitutional Court of Ukraine

The courts of general jurisdiction:

- are responsible for civil, criminal, commercial and administrative cases as well as cases on administrative offenses;
- have the following three-tier structure:
  - the Supreme Court;
  - appellate courts:
    - general appellate courts
    - commercial appellate courts
    - administrative appellate courts
  - local courts:
    - general courts (consider civil and criminal cases as well as cases on administrative offenses)
    - commercial courts
    - administrative courts.

Pursuant to the judicial reform of June 2016, there will no longer be standalone highest specialized courts in Ukraine, other than:

- the Highest Intellectual Property Court; and
- the Highest Anticorruption Court, which are yet to be created.





The Supreme Court:

- is the highest judicial body within the general jurisdiction court system; and
- comprises:
  - the administrative court of cassation
  - the criminal court of cassation
  - the civil court of cassation
  - the commercial court of cassation
  - the Great Chamber of the Supreme Court

The Constitutional Court of Ukraine is the only body authorized to exercise control over compliance with the Constitution and the laws of Ukraine, its international agreements and acts of the President, the Cabinet of Ministers and other governmental agencies.

### 1.3 Regional Structure

Ukraine is a unitary state divided into:

- 24 oblasts (regions);
- the Autonomous Republic of Crimea (illegally and temporarily annexed by the Russian Federation in 2014); and
- the cities of Kyiv and Sevastopol (each of which is deemed a separate administrative unit; Sevastopol was illegally and temporarily annexed by the Russian Federation in 2014).

Each oblast and both Kyiv and Sevastopol have a governor who is appointed by the President.

The Autonomous Republic of Crimea has its own constitution, Verkhovna Rada and government, but remains subordinate to the central Government of Ukraine.

It is anticipated that major administrative and territorial reforms will take place in Ukraine in the medium term.

Following the Russian annexation of Crimea and the City of Sevastopol in March 2014:

- a special Law of Ukraine assigned the status of temporarily occupied territories to these regions of Ukraine and established a special regime for conducting business transactions in these regions and between these regions and mainland Ukraine; and
- Crimea and the City of Sevastopol were declared, with effect from September 2014 and for the following 10-year period, a Free Economic Zone with a special tax and customs clearance regime and a number of other features aimed at protecting the businesses affected by the annexation and the future economic development of these regions upon the termination of the occupation.

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## 1.4 Economy

Ukraine:

- benefits from a consumer market of approximately 42.42 million people;
- enjoys:
  - an opportune geographical location
  - a mild climate
  - fertile land
  - a rich natural resource base
  - a highly educated labor force
  - a well-developed transport infrastructure
  - a long-established tradition of scientific research and development.

Despite the fact that Ukraine has significant potential for growth, following the Russian annexation of Crimea and the occupation of the Donbass region by Russian troops and Russian-backed separatists, the country faced serious economic and financial challenges and remains in need of investment in all sectors of industry, with many industrial plants either located in occupied territories or otherwise unable to meet the current consumer demand.

Following independence in 1991, export restrictions have been significantly reduced on various categories of products produced in Ukraine. The core export categories include:

- ferrous and non-ferrous metals and metal products;
- chemical products;
- fertilizers;
- plastics and rubber;
- agricultural products and foodstuffs;
- engineering goods;
- various types of machinery and equipment (including various types of transport vehicles);
- textiles; and
- a wide variety of raw materials.

The Ukrainian financial sector:

- has undergone substantial changes and improvements in the past several years with an effective regulatory framework being progressively created and a modern financial system, based on market principles, steadily emerging; and
- is still experiencing the negative effects of the world financial crisis, as are other economies.



The National Bank of Ukraine and the government are implementing, among others, the following measures to combat the negative consequences of the world financial crisis:

- cleansing the market of troubled banks;
- recapitalization of remaining banks;
- limitation of the outflow of capital from Ukraine; and
- facilitation of the performance of debt obligations by Ukrainian borrowers.

In 1996, shortly after the adoption of the new Constitution, the National Bank of Ukraine successfully launched the new Ukrainian currency, the Hryvnia (UAH).

## 1.5 Foreign Relations

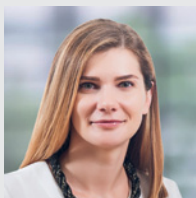
Ukraine:

- is a constituent member of the UN and various other multilateral organizations, including the IMF, IBRD, IFC, MIGA, EBRD, BSTDB, EIB, OSCE and the Council of Europe;
- has become party to more than 400 multilateral treaties and over 2,000 bilateral agreements since gaining its independence in 1991;
- joined the WTO in 2008;
- cooperates with the OECD, the European Union and NATO;
- has stated its intention to ultimately join the European Union within the next decade and to continue cooperation with NATO in various areas; and
- has signed and ratified the Cooperation Agreement with NATO, which is now in force.

Ukraine seeks to further deepen EU-Ukraine relations. The political part of the EU-Ukraine Association Agreement was signed on 21 March 2014. The economic part of the EU-Ukraine Association Agreement (the "Deep and Comprehensive Free Trade Agreement") was signed on 27 June 2014 as part of the Association Agreement ("AA").

The AA establishes major rules for political dialog and cooperation in numerous areas such as energy, transport and public finance management. The Deep and Comprehensive Free Trade Agreement significantly integrates the EU and Ukrainian markets by banning trade restrictions. The AA entered into force on 1 September 2017.

## EXPERT



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## 2. FOREIGN INVESTMENT IN UKRAINE

Ukrainian legislation provides that (with a few exceptions) foreign investors are authorized to carry out their investment activities in Ukraine on the same basis as Ukrainian domestic investors. This relates to the types of investments, the available investment vehicles and the investment targets.

### 2.1. Laws on Foreign Investment

The Law of Ukraine On Investment Activity, adopted on 18 September 1991, establishes the general principles for investment activity in the territory of Ukraine, irrespective of the nationality of the investor. The particularities of making foreign investments in Ukraine are regulated by the Law of Ukraine On the Regime of Foreign Investment (the "Foreign Investment Law"), adopted on 19 March 1996.

Under the Foreign Investment Law, the term "foreign investment" refers to all forms of value invested by foreign investors into objects of investment activity in accordance with the applicable Ukrainian legislation for the purposes of obtaining profit or a social effect. Pursuant to the Commercial Code of Ukraine (the "Commercial Code"), adopted on 16 January 2003, and the Foreign Investment Law, any Ukrainian company qualifies as an "enterprise with foreign investment" if foreign investment in its charter capital amounts to at least 10%.

Foreign investors are entitled to certain privileges and guarantees under the Foreign Investment Law as outlined below:

<b>Protection against changes in legislation:</b>	Foreign investors are guaranteed protection against changes in foreign investment legislation for a period of ten years, although certain changes in other areas of Ukrainian legislation and their implementation have, in fact, limited the applicability of the above guarantee to changes in Ukrainian legislation on matters relating to nationalization, expropriation and similar.
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<b>Protection against nationalization:</b>	Foreign investments may not be nationalized. State bodies may not expropriate foreign investments, with the exception of emergency measures (such as national disasters, accidents, epidemics, etc.), and then only on the basis of the decisions of bodies authorized to that effect by the Cabinet of Ministers of Ukraine.
<b>Guarantee for compensation and reimbursement of losses:</b>	Foreign investors have the right to be reimbursed for their losses, including lost profits and moral damages incurred as a result of the action, the failure to act or the improper performance on the part of state or municipal bodies of Ukraine or their officials with regard to their obligations to foreign investors or enterprises with foreign investment as required by law. All expenses and losses of foreign investors must be reimbursed at the current market rate and/or on the basis of a well-founded valuation certified by an independent auditor or auditing firm.
<b>Guarantee in the event of the termination of investment activity:</b>	Foreign investors are guaranteed the right to remit their revenue and withdraw their investments from Ukraine free from export duties within six months of the termination of their investment activity.
<b>Guarantee of profit repatriation:</b>	After the payment of taxes, duties and other mandatory payments, foreign investors are guaranteed the right to the unimpeded and immediate transfer abroad in a foreign currency of all profits and other proceeds legally earned as a result of their investment activity (subject to applicable currency exchange regulations).

Before 26 July 2016, the prerequisite to enjoying privileges and guarantees under the Foreign Investment Law was the registration of investments with the relevant state authorities. Today, all foreign investments, including those which were registered before 26 July 2016 and those which were not registered before or after 26 July 2016, are equally entitled to the privileges and guarantees under the Foreign Investment Law. Legal entities with foreign investments should now submit statistical reports as provided by law.

Under the Customs Code of Ukraine adopted on 13 March 2012, enterprises with foreign investments are exempted from paying import duties on their foreign investors' in-kind contributions to their charter capitals (except for goods for sale or use for purposes not directly related to business activities). However, in the event that the corresponding assets are alienated by such enterprises earlier than three years from the date of them being added to the balance of the enterprise, then the enterprise will be required to pay the applicable import duty on general grounds.

Two categories of restrictions apply to foreign investment activity in Ukraine: The first relates to general restrictions on investment activity, which are applied both to foreign and domestic investors. Pursuant to applicable Ukrainian legislation, certain types of business activity may be pursued only by state-owned enterprises (eg, the rocket industry, banknotes and certain blank forms of securities certificates, etc.). The second category relates to certain restrictions applicable only to foreign investors. For example, foreign citizens and legal entities are prohibited from owning agricultural land in Ukraine and are only authorized to own land designated for non-agricultural use under the current version of the Land Code of Ukraine.

Specifics of investment activities are set out in the Laws of Ukraine On Public-Private Partnership, On Concessions, On General Principles of Creation and Functioning of Special (Free) Economic Zones, etc.

2.2. Making an Investment

A foreign investor may make a cash contribution to a Ukrainian legal entity either through special investment accounts opened by the foreign investor with a Ukrainian commercial bank or by transferring funds from abroad directly to the bank account of its Ukrainian subsidiary.

<b>Options investors generally have when making both portfolio and direct investments in Ukraine:</b>	Open an investment bank account in Ukraine and transfer funds in a foreign currency from abroad to this investment account.
	Transfer funds in a foreign currency from abroad directly to an account of a resident in Ukraine.
	Convert funds in a foreign currency kept in an investment account at a Ukrainian commercial bank into Ukrainian currency for further investment.
	Transfer funds in Ukrainian and foreign currencies from their investment account to an account of a resident in Ukraine or an investment account of another foreign investor.

Foreign investors also may make an investment deposit at a Ukrainian commercial bank. An investment deposit consists of funds that a foreign investor, pursuant to a deposit agreement, puts into a deposit account in a Ukrainian commercial bank to receive interest. Such a deposit agreement must be in writing and must be concluded for a term of not less than one year. In addition, a deposit agreement must provide that it may not be terminated early at the initiative of the foreign investor. The general rule that foreign investments must be made only in a convertible foreign currency also applies.



### **2.3. Divestiture**

The Foreign Investment Law provides that in the event of the termination of its investment activity, a foreign investor has the right, within six months of the date of the termination of such activity, to recover its investment in kind or in the currency of the investment to the amount of the actual contribution (taking into account any possible reduction of charter capital), 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 on the basis of the actual market value of the investment at the moment of termination of the investment activity, unless otherwise stipulated by applicable Ukrainian legislation or international agreements to which Ukraine is a party.

### **2.4. Investment Incentives**

All enterprises with foreign investment are taxed on their profits on par with other Ukrainian domestic enterprises, with the exception of certain state guarantees for foreign investments and the duty-free import of in-kind contributions to charter capitals of enterprises with foreign investment (see Section 2.1 above). The Foreign Investment Law also 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, the social sphere and territories.

In addition, current 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, under which foreign investors may be granted additional privileges and benefits.

### **2.5. Dispute Resolution**

In the event of a dispute arising with respect to a foreign investment, a foreign investor may seek recourse through a number of institutions. As a general matter, the Foreign Investment Law provides that a dispute arising between a foreign investor and the state of Ukraine must be settled in Ukrainian courts, unless otherwise provided for by international treaties, while all other disputes involving a foreign investor must be settled in Ukrainian courts or in courts of arbitration (including international arbitration courts).

Furthermore, the Law of Ukraine On Foreign Economic Activity adopted on 16 April 1991 (the "LFEA") allows parties to a commercial dispute to select a forum for its resolution. In accordance with Article 38 LFEA, disputes between parties regarding foreign economic activity may be resolved

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by Ukrainian courts, the International Commercial Arbitration Court, the Maritime Arbitration Commission of the Chamber of Commerce and Industry of Ukraine, or by other dispute resolution bodies chosen by the parties to the dispute. In addition, the Law of Ukraine On the International Commercial Arbitration Court adopted on 24 February 1994, specifically provides that both foreign investors and Ukrainian enterprises with foreign investment have the right to resolve disputes between themselves and third parties in international commercial arbitration courts.

As a party to the 1966 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention or the Washington Convention), Ukraine shall recognize and enforce the awards of the International Centre for Settlement of Investment Disputes.

## **2.6. Investment Treaties**

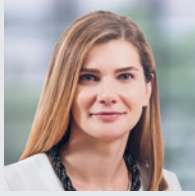
Ukraine is currently a signatory to Treaties on the Mutual Protection of Foreign Investments with various countries, including:

Albania, Argentina, Armenia, Austria, Azerbaijan, Belarus, the Belgium–Luxembourg Economic Union, Bosnia and Herzegovina, Brunei, Bulgaria, Canada, Chile, China, Croatia, Cuba, Czech Republic, Denmark, Egypt, Equatorial Guinea, Estonia, Finland, France, Gambia, Georgia, Germany, Greece, Hungary, India, Indonesia, Iran, Israel, Italy, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Macedonia, Moldova, Mongolia, Morocco, the Netherlands, Oman, Panama, Poland, Portugal, Russian Federation, San Marino, Saudi Arabia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Tajikistan, Turkey, Turkmenistan, the United Arab Emirates, the United Kingdom, the United States of America, Uzbekistan, Vietnam, Yemen and Yugoslavia.

Ukraine also signed Association Agreement with the European Union and the European Atomic Energy Community and their member states (the "Agreement") in 2014 which became effective as of 1 September 2017. Pursuant to the Agreement, parties consented to cooperate and converge economic policy, legislation and regulation across a broad range of areas, including, *inter alia*, company and financial services laws, technical and consumer standards upheld by the European Union and establishment of a free trade area over transitional period of 10 years from effective date of the Agreement.

On 16 May 2008, Ukraine became a member of the World Trade Organization.



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### 3. ESTABLISHING A LEGAL PRESENCE

Ukrainian legislation provides for a large variety of potential investment and business vehicles, all of which can be grouped into the following two principal categories: corporate and contractual.

Corporate investment and business vehicles encompass a variety of legal entities through which investors may do business in Ukraine. Contractual investment vehicles encompass joint venture agreements, joint cooperation agreements and other agreements of a similar nature. In addition, Ukrainian legislation provides for special investment vehicles for portfolio, institutional and/or private investors.

#### 3.1. Companies

The laws providing rules for the establishment, maintenance and liquidation of business legal entities in Ukraine:

- the Civil Code of Ukraine (the "Civil Code"), adopted on 16 January 2003, effective from 1 January 2004;
- the Commercial Code of Ukraine (the Commercial Code), adopted on 16 January 2003, effective from 1 January 2004;
- the Law of Ukraine On Companies (the "Company Law"), dated 19 September 1991;
- the Law of Ukraine on Joint Stock Companies (the "JSC Law"), dated 17 September 2008;
- the Law of Ukraine On the State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations, effective from 13 December 2015.

Under the Civil Code, legal entities that carry out entrepreneurial activities to earn a profit must be established in the form of companies.

The types of companies in Ukraine:

- general partnership;
- limited partnership;
- additional liability company;

- limited liability company;
- joint stock company.

Of the types of companies listed above, the most common for conducting business activities in Ukraine are joint stock companies ("JSCs") and limited liability companies ("LLCs"), both of which embody the concept of limited liability for investors.

### 3.1.1 Joint Stock Companies

Below are the characteristics of JSCs as envisaged by the JSC Law:

<b>Definition:</b>	<ul style="list-style-type: none"> <li>■ A company whose charter capital is divided into shares of equal par value.</li> <li>■ Very similar in form and operation to US corporations, German AGs, and French sociétés anonymes ("SAs").</li> </ul>	
<b>Liability:</b>	Shareholders are liable for a JSC's obligations only to the extent of their respective equity contributions to its charter capital, except for shareholders of banks which may have additional liability imposed.	
<b>Types:</b>	<ul style="list-style-type: none"> <li>■ Public (the rough equivalent of an open JSC under former legislation).</li> <li>■ Private (the rough equivalent of a closed JSC under former legislation).</li> </ul>	
<b>Establishment requirements:</b>	<b>Founders:</b>	<ul style="list-style-type: none"> <li>■ A single founder or a group of founders.</li> <li>■ The following restrictions apply:               <ul style="list-style-type: none"> <li>○ a wholly-owned subsidiary in the legal form of a JSC may not be established by another wholly-owned subsidiary (either foreign or Ukrainian)</li> <li>○ a JSC may not have among its shareholders only legal entities that are wholly-owned by the same person</li> <li>○ a subsidiary in the legal form of a JSC that is wholly-owned by a foreign company may not own agricultural land in Ukraine under the current version of the Land Code of Ukraine (the "Land Code")</li> </ul> </li> </ul>

	<b>Minimum capitalization:</b>	1,250 times the officially established minimum monthly salary as of the date of the formation of the JSC is required to establish a JSC (ie, as of 1 January 2018 until 31 December 2018, UAH 4,623,750 or approximately USD 167,040 / EUR 133,172).	
<b>Issuance of shares:</b>	<b>Public JSC:</b>	The first issuance of shares upon the establishment of either a public or a private JSC must be made exclusively by means of a private placement of shares among the founders of the JSC.	<ul style="list-style-type: none"> <li>■ May issue additional shares by means of public and private placements of shares.</li> <li>■ Further, a public JSC is obliged to include its shares into the register of at least one of the Ukrainian stock exchange.</li> </ul>
	<b>Private JSC:</b>		<ul style="list-style-type: none"> <li>■ May issue additional shares only by means of a private placement of shares.</li> <li>■ If a shareholders' meeting of a private JSC adopts a decision to carry out a public placement of its shares, then the charter of such JSC must be amended; in particular, the type of JSC must be changed from private to public.*</li> </ul> <p>* changing a JSC's type from private to public and vice versa is not considered a transformation of the JSC.</p>

<b>Registration of issuance of shares</b>	<ul style="list-style-type: none"> <li>■ An issuance of shares by both a private and a public JSC must be registered with the Ukrainian National Commission on Securities and the Stock Market (the "Securities Commission") with the registration of a share issue and an offering prospectus, a report on the results of the placement of shares and the issuance of a certificate on the registration of shares issuance.</li> <li>■ If a JSC fails to officially register any issue of its shares with the Securities Commission, any and all of the share purchase agreements entered into with respect to such shares issued, as well as any subsequent share issuances, will be deemed void.</li> </ul>	
<b>Meeting of shareholders:</b>	<b>Role:</b>	The highest governing body responsible for policy decisions of a JSC.
	<b>Conveying the meeting:</b>	<ul style="list-style-type: none"> <li>■ The period for issuing a prior notice for convening a meeting of shareholders and communicating the agenda thereof is only 30 days.</li> <li>■ JSCs (both public and private) that have 25 shareholders or less may approve shareholders' decisions by written polling, as opposed to voting in person at a shareholders' meeting, if it is envisaged by the JSC's charter.</li> <li>■ A wholly-owned JSC is exempt from the requirement to convene and hold shareholders' meetings; instead, the powers vested in the meeting of shareholders are to be exercised by the sole shareholder.</li> <li>■ A quorum of more than 50% of all voting shares is needed for proper convocation of shareholders' meetings.</li> </ul>
	<b>Voting:</b>	<ul style="list-style-type: none"> <li>■ Voting rights are based on the principle of "one share, one vote," except for cases of cumulative voting.</li> <li>■ Cumulative voting (a new voting mechanism in Ukrainian legislation) must be used for the appointment of members of the supervisory council and/or the audit commission; depending on the type of a JSC and the number of shareholders, the use of cumulative voting is either mandatory or voluntary.</li> </ul>

		<ul style="list-style-type: none"> <li>■ A supermajority vote, consisting of three-quarters of the total number of votes of the shareholders registered for the particular shareholders' meeting, is required to pass resolutions on:               <ul style="list-style-type: none"> <li>○ amendments to the charter</li> <li>○ cancellations of "treasury shares" (shares bought out by a JSC)</li> <li>○ changes to the JSC's type</li> <li>○ placements of shares</li> <li>○ placement of securities, which may be converted into shares</li> <li>○ increases/decreases of the charter capital</li> <li>○ terminations and spin-offs, save for some cases stipulated by the JSC Law</li> </ul> </li> <li>■ The charter of a private JSC may establish an additional list of matters, with some exceptions, which require a supermajority vote or even a unanimous vote.</li> <li>■ All other resolutions may be adopted by a simple majority of the votes of those shareholders registered for the relevant meeting and holding shares allowing them to cast their votes regarding certain issues.</li> </ul>
<b>Supervisory Council</b>	<b>Role:</b>	<ul style="list-style-type: none"> <li>■ Represents the interests of the shareholders between the shareholders' meetings and exercises control over a JSC's management to the extent indicated by a JSC's charter.</li> <li>■ The JSC Law establishes a list of matters that fall under the exclusive competence of the supervisory council.</li> <li>■ May establish permanent or temporary committees and elect a corporate secretary who is responsible for a JSC's relationship with its shareholders and/or investors.</li> </ul>
	<b>Requirements to members:</b>	<ul style="list-style-type: none"> <li>■ Only individuals may be elected as members of the supervisory council.</li> <li>■ Members of the supervisory council of a JSC may not be members of its management or audit commission.</li> </ul>

<b>Executive body</b>	<b>Role:</b>	<ul style="list-style-type: none"> <li>■ Manages a JSC's day-to-day business activities.</li> <li>■ Generally reports to the shareholders' meeting, as well as to the supervisory council.</li> </ul>
	<b>Form:</b>	<ul style="list-style-type: none"> <li>■ A "management board" (collective management).</li> <li>■ A "director" (individual management).</li> </ul>
<b>Auditor/audit commission:</b>	<b>Role:</b>	Conducts audit of the financial and commercial activity of a JSC.
	<b>Form:</b>	<ul style="list-style-type: none"> <li>■ A Public JSC and a Private JSC with more than 100 shareholders must elect an audit commission.</li> <li>■ A Private JSC with less than 100 shareholders must either establish the position of auditor or elect an audit commission.</li> <li>■ A JSC with 50 per cent or more shares owned by the state must elect an audit commission.</li> <li>■ A JSC with 50 per cent or more shares of which is in the charter capital of the Company wholly owned by the state must elect an audit commission.</li> </ul>
	<b>Requirements to members:</b>	<ul style="list-style-type: none"> <li>■ An audit commission must be comprised of 3 members, where the majority is independent directors.</li> <li>■ The Chairman of an audit commission must be an independent director.</li> <li>■ The corporate secretary and the members of the other bodies of a JSC may not be elected as members of the audit commission (the auditor).</li> </ul>
<b>Approval of transactions:</b>	<ul style="list-style-type: none"> <li>■ Depending on the correlation between the market value of a particular asset or service, which is the subject matter of a particular transaction, and the total assets of the JSC, certain (ie, material) transactions will require approval by either the supervisory council or the shareholders' meeting.</li> <li>■ Transactions with "interested parties" will also require approval by either the supervisory council or the shareholders' meeting.</li> <li>■ A shareholder who has voted at a shareholders' meeting against certain issues that were adopted will be entitled to request the mandatory buy-out of its shares by the JSC.</li> </ul>	

<b>Reporting and disclosure requirements:</b>	<b>"Regular":</b>	Regular reporting is the disclosure on an annual basis (for private JSCs) and a quarterly and annual basis (for public JSCs) of information on the results of the financial and business activities of a JSC.
	<b>"Special":</b>	Special reporting is the ad hoc disclosure of information on any actions that may influence the financial or business activities of a JSC and lead to a significant change in the value of its securities.
	<b>Other publication requirements:</b>	<ul style="list-style-type: none"> <li>■ If a person that directly or indirectly buy or sell voting shares of the Public JSC become an owner of the significant stake of its voting shares (5%, 10%, 15%, 20%, 25%, 30%, 50%, 75%, 95% of voting shares) then the person must notify the Company.</li> <li>■ A person intending to purchase a significant shareholding in a JSC (10% or more of voting shares) must notify a JSC in advance about its intention in writing and must disclose the notification to the Securities Commission, Stock Exchange (where the JSC is listed) and must publish the notification in the Securities Commission data base or through the person that conducts activity on disclosing of the regulatory information on behalf of the stock market members.</li> <li>■ A person who has acquired a controlling shareholding in a Private JSC (50% or more) or 50% or 75% or more shareholding in Public JSC must submit the notification to the Securities Commission. The Company must publish the notification on a website and database of the Securities Commission no later than the next day after receiving it. Such person also must make an offer to all other shareholders to purchase their shares at a price not less than the market price, and must notify the Securities Commission and the stock exchange (for a Public JSC) about such offer.</li> </ul>

	<b>Other publication requirements:</b>	<ul style="list-style-type: none"> <li>■ A person that acquired 95% or more of the ordinary shares in any type of a JSC should submit a notification to the JSC and the Securities Commission notifying on acquisition of such stake. The Company must publish the notification on a website and database of the Securities Commission no later than the next day after receiving it.</li> </ul>
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### 3.1.2 Limited Liability Companies

Below are the characteristics of LLCs as envisaged by the Civil Code and the Company Law:

<b>Definition:</b>	<ul style="list-style-type: none"> <li>■ A company established by one or more entities, the charter capital of which is divided into participatory (ie, ownership) interests.</li> <li>■ The participatory (ie, ownership) interests of participants in an LLC are expressed in the form of the respective percentages of an LLC's charter capital owned by them.</li> <li>■ There are no legal restrictions on how the participatory interests of an LLC may be distributed; this issue remains entirely within the discretion of the founders of an LLC.</li> <li>■ Participatory interests in an LLC do not qualify as "securities" for the purposes of applicable Ukrainian legislation and, therefore, are not subject to registration with the Securities Commission.</li> <li>■ The legal nature of an LLC is similar to that of a German GmbH and a French société à responsabilité limitée (SARL).</li> </ul>
<b>Liability:</b>	Investors in an LLC, ie, its interest-holders or participants, are liable for an LLC's commitments only to the extent of their capital contributions to its charter capital.



<b>Establishment requirements:</b>	<b>Founders:</b>	<ul style="list-style-type: none"> <li>■ A single founder or a group of founders.</li> <li>■ The following restrictions apply:               <ul style="list-style-type: none"> <li>○ a wholly-owned subsidiary in the legal form of an LLC (the same as with a JSC) may not be established by another wholly-owned subsidiary (either foreign or Ukrainian)</li> <li>○ an individual or a legal entity (either foreign or Ukrainian) may not be the sole founder of and/or the sole participant in more than one LLC in Ukraine</li> <li>○ a subsidiary in the legal form of an LLC (the same as with a JSC) that is wholly-owned by a foreign company may not own agricultural land in Ukraine under the current version of the Land Code</li> <li>○ the maximum number of founders/participants of an LLC may not exceed 100 legal entities or individuals:                   <ul style="list-style-type: none"> <li>□ those LLCs which are established by less than 100 founders and later expand to more than 100 participants are subject to mandatory reorganization into a JSC within one year</li> <li>□ failure to comply with this reorganization requirement or decrease the number of participants to 100 may result in the termination of an LLC upon court decision</li> </ul> </li> </ul> </li> </ul>
	<b>Minimum capitalization:</b>	No minimum capitalization requirement for an LLC.

<b>Meeting of participants:</b>	<b>Role:</b>	The highest governing body responsible for policy decisions of the LLC, which consists of the participants (ie, the interest holders) of an LLC.
	<b>Conveying the meeting:</b>	<ul style="list-style-type: none"> <li>■ The period for issuing a prior notice for convening a meeting of participants is 30 days.</li> <li>■ Meetings of the participants require a quorum of more than 50% of the votes.</li> </ul>
	<b>Voting:</b>	<ul style="list-style-type: none"> <li>■ Each participant a number of votes proportionate to the percentage of its interest in an LLC's charter capital.</li> <li>■ As a general rule, resolutions are approved by a simple majority of the votes present at a duly convened meeting of the participants.</li> <li>■ The following three resolutions require the approval of a simple majority of the votes of all of the participants (and not only the votes of those participants present at the meeting of the participants): <ul style="list-style-type: none"> <li>○ amendment of the charter and changes to the charter capital of an LLC</li> <li>○ determination of the principal activities of an LLC</li> <li>○ the expulsion of a participant from an LLC</li> </ul> </li> </ul>
<b>Executive body</b>	<b>Role:</b>	Responsible for the day-to-day operations of an LLC.
	<b>Form:</b>	<ul style="list-style-type: none"> <li>■ A "directorate" (collective management) or a "director" (individual management).</li> <li>■ The form of an LLC's management and the number of its members may be decided at the discretion of the participants as specified in an LLC's charter.</li> <li>■ The director or the directorate's members are appointed and removed by the participants' assembly.</li> </ul>



<b>Audit commission</b>	<b>Role:</b>	Exercises control over the financial and economic activities of the management of an LLC.
	<b>Requirements to members:</b>	<ul style="list-style-type: none"> <li>■ There must be at least three members of the audit commission of an LLC.</li> <li>■ The members of the directorate (director) may not be elected as members of the audit commission.</li> </ul>

In choosing between an LLC and a private JSC in establishing a wholly-owned subsidiary, LLCs appear to be more popular than private JSCs due to the various establishment and operational considerations discussed above. Generally speaking, the main general corporate benefit of an LLC in comparison with a JSC is that the procedure for the establishment and operation of an LLC is significantly less burdensome and time-consuming since an LLC does not have to issue shares or perform the procedural steps required for issuing shares. The absence of shares in an LLC makes this form of legal entity more mobile and flexible when the participants of the LLC have to change (increase or decrease) the charter capital of the company.

Still, a JSC may be preferable if it is expected that new owners may be added to the company at a higher company valuation. Whereas in an LLC share capital increases are normally performed at nominal value, a JSC is generally required to place its shares only at market price (except in some cases established by the JSC Law). In this way, a JSC can raise financing through newly-issued shares at a higher valuation without all of the shareholders being required to contribute in proportion to their shareholdings. If such financing is planned in the mid-term, a JSC, while more burdensome overall, may be a preferable option by first organizing the company as an LLC and then re-organizing it as a JSC, a procedure which may take up to one year.

### **3.1.3 Representative Offices/Branches**

Ukrainian legislation provides that representative offices are deemed to be structural divisions of an enterprise, albeit located in localities different from that of the headquarters of such enterprise. "Branches" do not technically exist in Ukraine but representative offices are their closest equivalent. Representative offices do not enjoy the status of a separate legal entity. This type of structural division must act on the basis of regulations adopted by the corresponding governing body of its founding enterprise. The manager of a representative office must act on the basis of a special power of attorney issued by the management of his/her founding enterprise.

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A foreign legal entity may establish its representative office in Ukraine 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 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 practice has been to permit a representative office to carry out a wide range of commercial activities (including signing contracts and implementing imports, exports and other transactions). Normally, such practices result in the creation of a permanent establishment for such foreign companies in Ukraine for the purposes of Ukrainian corporate income tax legislation and, thus, the commercial representative office’s activities become taxable in Ukraine on a general basis (whereas, generally speaking, the activities of a representative office are non-taxable). In some cases it is required either as a matter of law or as a matter of practice to establish a legal entity rather than a representative office (eg, for conducting telecommunications activities or for conducting activities subject to licensing, etc.).

Representative offices of foreign legal entities must be registered with the Ministry of Economic Development and Trade of Ukraine. A one-time registration fee of USD 2,500 is payable. Current Ukrainian legislation fails to provide any guidance on the procedure to be followed by a foreign business entity to open a branch in Ukraine. As a result, in practice, foreign legal entities do not carry out their business activities in Ukraine through branches, but rather through either their (commercial) representative offices registered as permanent establishments, or their wholly-owned Ukrainian subsidiaries, which are usually established in the form of LLCs.

### **3.2. Joint Venture/Cooperation Agreements**

Contractual investment vehicles are represented in Ukraine by a variety of agreements on joint business activities. The most common type of such agreements is the joint activity agreement, whereby the parties combine their funds, knowhow, business reputation, and/or publicity into their joint operations. Such contractual joint ventures must maintain separate accounting records and must establish separate bank accounts for their joint operations. Any income generated by the participants in such contractual joint ventures from their engaging in such joint operations is also taxed separately from their respective incomes generated from their principal business activities. Both domestic and foreign investors may carry out investment activities on the basis of joint activity agreements. Joint activity agreements between foreign investors and their Ukrainian partners must be registered in the manner established by the Cabinet of Ministers of Ukraine.



### 3.3. Investment Funds/Mutual Funds

The Law of Ukraine On Joint Investment Institutions, effective as of 1 January 2014 as amended (the “Investment Funds Law”), provides for specific legal vehicles to be established and maintained for the purpose of conducting portfolio investment activities. The Investment Funds Law provides that such specialized investment vehicles may be established in both unit and corporate forms. A corporate investment fund may be established in the form of either a public or private JSC.

The Investment Funds Law provides for the following classifications of types of investment funds:

<b>Open investment fund:</b>	<ul style="list-style-type: none"> <li>■ Is deemed to be open to the extent that it remains legally liable at all times to purchase back the securities issued by such fund from any investor holding such securities at any given moment.</li> <li>■ Is prohibited from paying dividends to its investors.</li> <li>■ May be established either for a fixed period of time or for an indefinite period of time.</li> </ul>
<b>Closed investment fund:</b>	<ul style="list-style-type: none"> <li>■ Is deemed to be closed to the extent that it does not remain legally liable to purchase back the securities issued by such fund from any investor holding such securities at any given moment.</li> <li>■ May be established only for a fixed period of time.</li> </ul>
<b>An “interval” investment fund (a combination of open and closed investment funds):</b>	<ul style="list-style-type: none"> <li>■ Remains liable to purchase back the securities issued by such fund from any investor holding such securities during the time period prescribed in the prospectus.</li> <li>■ Is prohibited from paying dividends to its investors.</li> <li>■ May be established either for a fixed period of time or for an indefinite period of time.</li> </ul>
<b>Diversified investment fund:</b>	Is required to comply with a number of rigid thresholds and restrictions on their investment activity for the diversification of risks associated with portfolio investment activities.
<b>Non-diversified investment fund:</b>	Are not subject to the thresholds and/or restrictions provided for diversified investment funds.

<b>Specialized investment fund:</b>	Can make investments only in the assets defined by the Investment Funds Law.
<b>Qualification investment fund:</b>	Must invest assets exclusively into one of the qualification classes, including: the united class of shares; real property class; credit assets class and other classes as defined by the Securities Commission.

The Investment Funds Law provides that venture investment funds may be established by legal entities and individuals, provided that the minimum purchase of securities in such fund by the individual investor shall not be less than 1,500 times the minimum monthly salary as of 1 January 2014 (UAH 1,827,000 or approximately USD 66,533 / EUR 53,973). Such venture investment funds enjoy the status of non-diversified closed investment funds, which carry out only private (closed) placements of securities.

According to the Investment Funds Law, every investment fund is obligated to hire a specialist company to manage its assets (an asset management company). Essentially, such asset management company will perform the functions of the management board of the investment fund to the extent that the investment fund takes the form of a corporate investment fund.

An asset management company may not begin operating on the market until it has obtained "a license to carry out professional activity on the capital market." Such license is issued by the Securities Commission. An asset management company may not, however, apply for such a license on its own behalf. Any such application may be made only by a self-regulated organization (such as the Ukrainian Association of Investment Businesses), of which the asset management company is a member.

Investment funds are authorized to replace their current asset management companies with the latter's competitors. Corporate investment funds, unlike the unit investment funds, are authorized to replace their current asset management companies with the latter's competitors on the grounds envisaged in their internal regulations upon decision of the general meeting of shareholders.

The Investment Funds Law provides that, apart from the asset management company (which performs the functions of the management board for corporate investment funds), the only other governing bodies of a corporate investment fund are the general meeting of shareholders and the supervisory council (ie, the board of directors).



Corporate investment funds issue shares to their investors. Unit investment funds issue investment certificates to their investors. The issuer of the former will be the corporate investment fund itself, while the issuer of the latter will be the unit investment fund's asset management company. Both instruments are subject to mandatory registration with the Securities Commission.

Investment funds are expressly prohibited from having more than 20% of their portfolio investments in securities issued by foreign issuers. Investment funds are also expressly prohibited from investing in foreign securities that are not listed on at least one internationally recognized stock exchange and/or over-the-counter securities trading system, a list of which is compiled by the Securities Commission.

Investment funds may terminate their activities only by means of liquidation, while the Investment Funds Law provides a list of cases when investment funds are to be mandatorily liquidated:

Corporate investment fund:	Unit investment fund:
The net value of its assets decreased to a level below the value of its charter capital.	The net value of its assets decreased to a level below minimum volume of unit investment fund assets and did not increase within a six-month period.
The time period of corporate investment fund activity ended (for corporate investment fund created for a fixed period of time).	The time period of corporate investment fund activity ended (for unit investment fund created for a fixed period of time).
The prospectus of shares for corporate investment fund was not registered within a one-year time period.	The prospectus of investment certificates for unit investment fund was not registered within a one-year time period.
An extension of the agreement or a new agreement was not concluded with the asset management company and/or custodian of corporate investment fund assets within one month of the term of such previous agreement ending.	An extension of the agreement or a new agreement was not concluded with the custodian of unit investment fund assets within one month of the term of such previous agreement ending.

The license of the asset management company and/or custodian of corporate investment fund assets was cancelled, and the agreement with another asset management company and/or custodian of corporate investment fund assets was not concluded within 30 business days.	<p>The license of the asset management company was cancelled.</p> <p>The license of the custodian of unit investment fund assets was cancelled and the agreement with another custodian of corporate unit fund assets was not concluded within 30 business days.</p>
Other grounds envisaged by law.	Other grounds envisaged by law.

Investment funds remain under the disclosure obligations to be conducted through the following means: (i) publicly available information database of the Securities Commission on the securities market (in case of public placement of securities); (ii) its webpage (in case of public placement of securities); (iii) providing information directly to investment fund participants (in case of private placement of securities); (iv) submitting information to the Securities Commission; and (v) submitting information to self-regulatory organizations of professional participants of stock market.

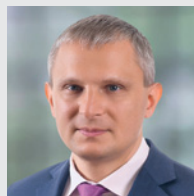
<sup>1</sup>An exchange rate of UAH 27.464086 per USD 1 is taken for these calculations.

<sup>2</sup>An exchange rate of UAH 33.856502 per EUR 1 is taken for these calculations.



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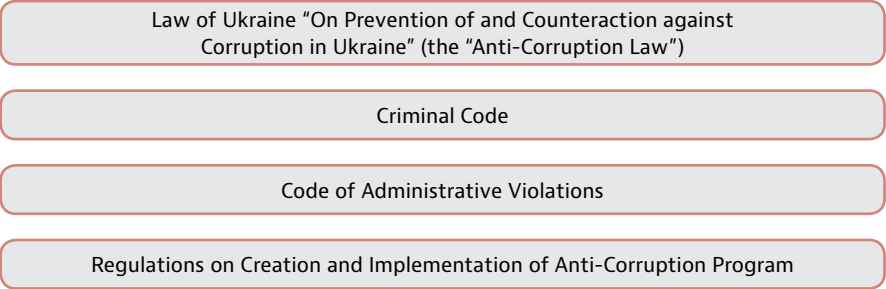
## 4. COMPLIANCE WITH ANTI-CORRUPTION LEGISLATION OF UKRAINE

### 4.1. General

Compliance issues are currently high on the list of priorities for all multinational companies doing business in Ukraine and for the Ukrainian government. First, there is a clear perception that the problem of corruption in Ukraine is significant, a fact borne out by the 2017 Transparency International Corruption Perceptions Index, which ranks Ukraine 30 out of 180 countries. Second, in an effort to address Ukraine's corruption problem, new anti-corruption legislation was introduced in Ukraine in October 2014, which made it necessary for multinational companies with Ukrainian operations to review their compliance policies and procedures. Lastly, all of the above

developments have been occurring against the backdrop of the introduction of the United Kingdom’s Bribery Act, the enhanced enforcement in the USA of the Foreign Corrupt Practices Act and the increasing level of cooperation between enforcement authorities across the USA and Western Europe in terms of oversight and regulation of the business conduct of their companies overseas, particularly in high-risk emerging markets.

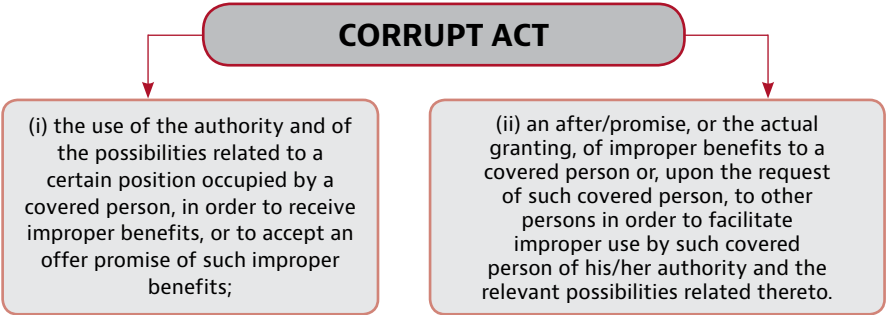
4.2. Ukrainian Anti-Corruption Legislation

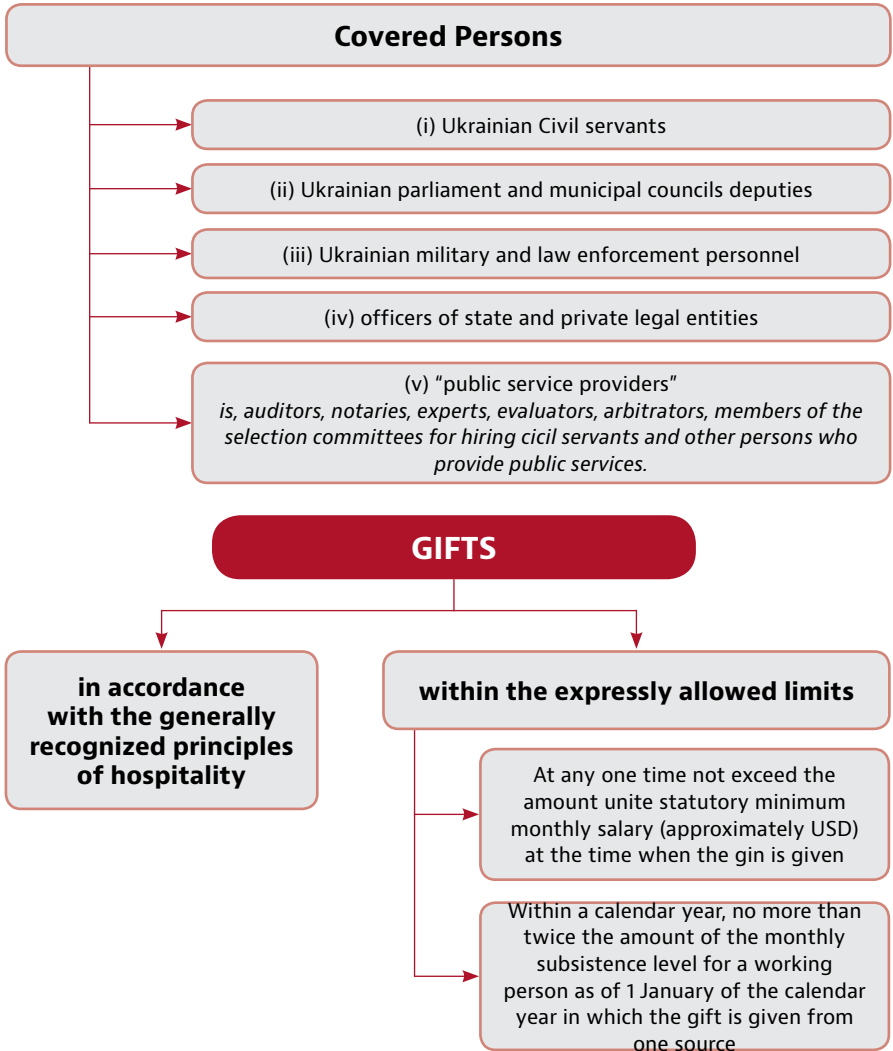


The Anti-Corruption Law establishes the main principles for combating corruption, criteria for the in-house Anti-Corruption Officer and certain obligations for the owners and managers of companies in preventing and combatting corruption. Although the Anti-Corruption Law covers the corruption misconduct of officials of legal entities ie, commercial bribery, it does not make legal entities subject to liability. Nevertheless, as of 1 September 2014, legal entities may face sanctions for the corruption offenses of their officers and employees, in accordance with the Criminal Code of Ukraine.

Corruption Misconduct

The Anti-Corruption Law defines corruption misconduct as an intentional act which has the features of corruption, and is performed by a covered person (as defined below) who is subject to criminal, administrative, civil and/or disciplinary liability.





\*The amount of both the statutory monthly salary and the subsistence level are regularly changed. Updates as to their currently applicable level should be obtained before any decision regarding the gift is made.

Any gift made for the purpose of influencing a government official's exercise of his/her functions is considered a bribe, even if its amount is negligible.

#### *Transparency Requirements*

The Anti-Corruption Law provides for certain types of information which cannot be subject to limited access (confidential), and to which access,

therefore, cannot be limited by its owner. Such information covers, in particular, data regarding any types of remuneration, gifts and/or charitable assistance received by a civil servant. In addition, information about a state official's property, income, expenses and financial obligations must be declared and is subject to public disclosure in annual property declarations.

*Limitations on State Officials' Activities*

The Anti-Corruption Law expressly requires that a state official take active measures to prevent any conflict of interests. If such a conflict arises, the state official is required to immediately disclose it.

State officials are not allowed to have any income in addition to their salaries, apart from the income received from medical or sports judging practice, teaching, or artistic or scientific activity.

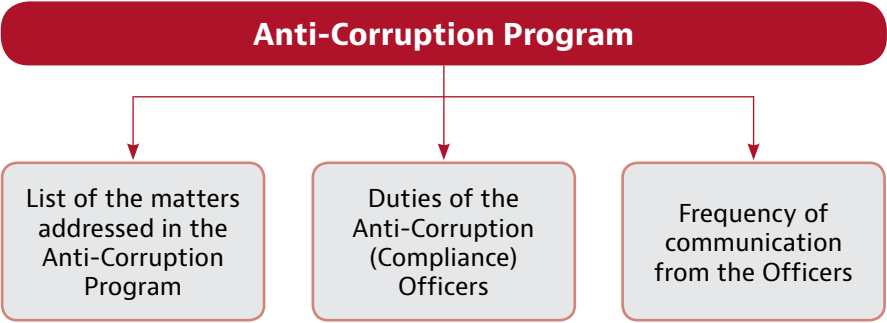
In addition, for one year after their resignation, former state officials are prohibited from occupying positions within, consulting for or representing the interests of the companies they monitored within 12 months prior to their resignation.

*Liability*

Any losses and/or damages caused by corruption misconduct must be duly compensated to the state and/or another injured party, including an individual or company.

The decisions of a state body adopted as a result of a corruption offense must be cancelled by a superior body. Transactions made in violation of the Anti-Corruption Law may be challenged in court.

**4.3 Elements to Ensure Compliance**



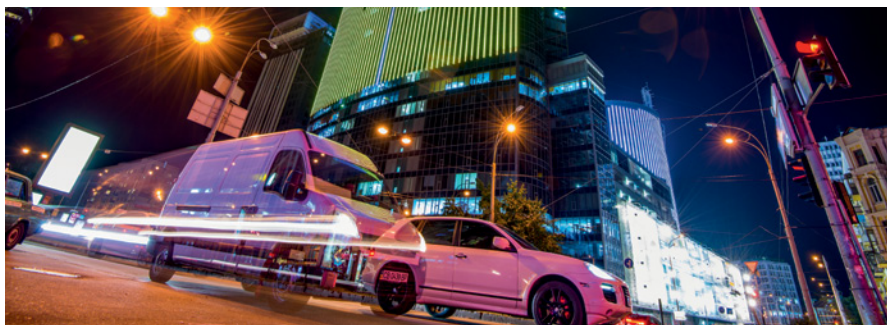


The adoption of the Anti-Corruption Program is mandatory for fully or partially state- (or municipal-) owned companies and for private companies that wish to participate in state or municipal tenders. There is a recommended template for an anti-corruption program under Ukrainian law. However, legal entities can add their own chapters to their anti-corruption programs and, thus, tailor them to their specific needs.

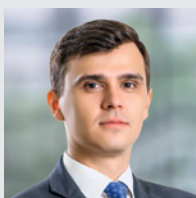
The Anti-Corruption Law does not indicate any actions or measures that could exculpate the company. However, the precautions that would protect a company from being penalized under the US or European anti-corruption legislation (eg, adopting policies, training staff, monitoring and enforcing policies, investigating allegations of violations, etc.) can be implemented in Ukraine, too, and will be a mitigating factor when the court is determining the amount of the fine for a corruption violation.

Under the Ukrainian laws applicable to employment and privacy, establishing hotlines or investigating whistleblower reports about compliance breaches requires a separate evaluation by qualified and experienced Ukrainian counsel in each particular situation to decrease the risk of claims for invasion of privacy or illegal processing of personal data.

Conducting an “anti-corruption due diligence investigation” of potential business partners and intermediaries before engaging in business activity with them is certainly recommended in order to confirm their compliance with Ukrainian and other applicable laws.



## EXPERT



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## HEAD OF PRACTICE



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Partner

## 5. TAXATION

### 5.1. General

The general principles of the Ukrainian tax system, as well as the taxes and duties (mandatory payments) which may be levied in Ukraine, are defined in Law No. 2755-VI of 2 December 2010 of the Tax Code of Ukraine (the "Tax Code"). The Tax Code stipulates that tax rates, tax exemptions and the procedures and mechanisms for tax assessments and payments may not be introduced or changed by legislative acts other than those introducing changes to the Tax Code. 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 tax legislation not less than six months before the beginning of a new budget year.

The Tax Code establishes uniform rules for filing tax returns and the settlement of tax liabilities; a statutory period of limitations of three years for the payment of tax liabilities, the rates and procedure for calculating penalty interest for late tax payments and penalties for the violation of tax rules and the administrative procedure for appealing the assessment of tax deficiencies.

### 5.2. Corporate Income Tax

Section III of the Tax Code is the principal law governing income tax liabilities of corporate taxpayers in Ukraine. It entered into force on 1 April 2011.

### CIT Payers

Resident business entities that generate profits from their activity both within and outside the territory of Ukraine;

Foreign legal entities that derive profits from Ukrainian sources (with the exception of diplomatic establishments and other organizations enjoying immunity from taxation);

Permanent establishments of foreign entities, which such foreign entities may acquire either through their fixed place of business in Ukraine or through a Ukrainian resident entity.

### CIT Non-payers\*

State authorities;

Public organizations;

Political parties;

Religious and charity organizations;

Other non-profit organizations.

\* If included in the Register of Non-Profit Institutions and Organizations.

**CIT Rate – 18%**

**Taxation Base** – financial result calculated according to Ukrainian and international accounting rules, adjusted for certain differences\*\* derived from:

(i) depreciation of fixed assets; (ii) creation of reserves; and (iii) conducting financial transactions.

\*\*Business entities whose annual income for the preceding financial year does not exceed UAH 20 million (approximately USD 710,000), may declare their financial result for CIT purposes without any adjustments.

The Tax Code also establishes special taxation rules for certain activities and transactions (eg, insurance activity).

### 5.3. Taxation of Foreign Entities

The Tax Code establishes the following general principles for taxation of foreign legal entities:

- foreign legal entities will be taxed in Ukraine on their profits derived from their commercial activities undertaken in the territory of Ukraine through a permanent establishment; and
- income derived from sources within the territory of Ukraine by foreign entities that are not engaged in commercial activities in the territory of Ukraine through a permanent establishment will be taxed at the

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time of the remittance of such income to such foreign entities or their authorized representatives and such taxes will be withheld from the sums remitted.

The Tax Code provides that a foreign entity is liable for the payment of CIT with respect to all “Ukrainian-source” income. Article 141.4 of the Tax Code provides a non-exhaustive list of the types of income, which are, per se, deemed to constitute Ukrainian-source income, including:

- interest payments;
- dividends;
- royalties;
- lease payments;
- proceeds from real estate sales in the territory of Ukraine;
- profits from securities transactions;
- profits from joint activity agreements or long-term agreements;
- broker’s or agency fees; and
- other kinds of income derived by a foreign entity from its business activity in the territory of Ukraine.

However, the Tax Code provides that the income of a foreign entity received in the form of a payment or other kind of compensation for the value of goods (works or services) supplied from abroad by a foreign entity (or its permanent establishment) to a resident shall not constitute Ukrainian-source income.

The Tax Code provides for a standard withholding tax rate of 15% to be withheld by a resident entity or by the permanent establishment of a foreign entity from the amount of any Ukrainian-source income if and when such foreign entity’s Ukrainian-source income is remitted to such foreign entity or its authorized representative by a resident taxpayer or by the permanent establishment of such foreign entity, unless an applicable bilateral double taxation treaty provides relief with respect to such withholding.

Dividends received by a foreign entity shareholder/owner of corporate rights from its shareholding/ownership rights in a resident legal entity are subject to withholding tax at the rate of 15%, unless a bilateral double taxation treaty provides otherwise.





#### 5.4. Double Taxation Treaties

Ukraine is a party to more than 70 bilateral double taxation treaties with the following countries as of January 2018:

**Table 1: Double Taxation Treaties**

Country	Signing Date	Ratification Date	Date of Entry into Force
Algeria	4 Dec 2002	5 Jun 2003	1 Jul 2004
Armenia	14 May 1996	13 Sep 1996	19 Nov 1996
Austria	16 Oct 1997	17 Mar 1999	20 May 1999
Azerbaijan	30 July 1999	2 Mar 2000	3 July 2000
Belarus	24 Dec 1993	20 Dec 1994	30 Jan 1995
Belgium	20 May 1996	29 Oct 1996	25 Feb 1999
Brazil	16 Jan 2002	4 Jul 2002	24 Apr 2006
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
Czech Republic	30 Jun 1997	17 Mar 1999	20 Apr 1999
Cuba	27 Mar 2003	20 Nov 2003	
Cyprus	8 Nov 2012	4 Jul 2013	7 Aug 2013
Denmark	5 Mar 1996	12 Jul 1996	21 Aug 1996
Egypt	29 Mar 1997	17 Mar 1999	27 Feb 2002
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
Greece	6 Nov 2000	29 May 2001	26 Sep 2003
Hungary	19 May 1995	23 Apr 1996	24 Jun 1996
Iceland	8 Nov 2006	3 Sep 2008	3 Sep 2008
India	7 Apr 1999	20 Sep 2001	31 Oct 2001
Indonesia	11 Apr 1996	29 Oct 1996	9 Nov 1998
Iran	22 May 1996	6 Dec 1996	21 Jul 2001
Ireland	19 Apr 2013	15 Jul 2015	17 Aug 2015
Israel	20 Nov 2003	16 Mar 2006	20 Apr 2006

Country	Signing Date	Ratification Date	Date of Entry into Force
Italy	26 Feb 1997	17 Mar 1999	25 Feb 2003
Japan*	18 Jan 1986	14 Mar 1988	14 Jun 1988
Jordan	30 Nov 2005	3 Sep 2008	23 Oct 2008
Kazakhstan	9 Jul 1996	15 Nov 1996	14 Apr 1997
Korea	29 Sept 1999	2 Feb 2002	19 Mar 2002
Kuwait	20 Jan 2003	19 Jun 2003	22 Feb 2004
Kyrgyzstan	16 Oct 1997	17 Mar 1997	1 May 1999
Latvia	21 Nov 1995	12 Jul 1996	21 Nov 1996
Lebanon	22 Apr 2002	19 Jun 2003	9 Sep 2003
Lithuania	23 Sep 1996	9 Dec 1997	25 Dec 1997
Luxembourg	6 Sep 1996	14 Mar 2017	18 Apr 2017
Libya	4 Nov 2008	18 Nov 2009	31 Jan 2010
Macedonia	2 Mar 1998	5 Nov 1998	23 Nov 1998
Malaysia*	31 Jul 1987	1 Jul 1988	1 Jul 1988
Malta	04 Sep 2013	13 Apr 2017	28 Aug 2017
Morocco	13 July 2007	18 Feb 2009	30 Mar 2009
Moldova	29 Aug 1995	23 Apr 1996	27 May 1996
Mongolia	1 Jul 2002	6 Mar 2003	6 Mar 2003
Montenegro**	22 Mar 2001	4 Oct 2001	29 Nov 2001
Mexico	23 Jan 2012	2 Oct 2012	6 Dec 2012
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
Portugal	9 Feb 2000	22 Mar 2001	11 Mar 2002
Pakistan	23 Dec 2008	18 Nov 2009	1 Jan 2012
Romania	29 Mar 1996	21 Oct 1997	17 Nov 1997
Russian Federation	8 Feb 1995	16 Oct 1995	3 Aug 1999
Serbia**	22 Mar 2001	4 Oct 2001	29 Nov 2001
Slovakia	23 Jan 1996	12 Jun 1996	22 Nov 1996
Saudi Arabia	2 Sep 2011	18 Sep 2012	1 Dec 2012
Slovenia	23 Apr 2003	21 Mar 2007	25 Apr 2007
Singapore	26 Jan 2007	22 Oct 2009	18 Dec 2009

Country	Signing Date	Ratification Date	Date of Entry into Force
South Africa	28 Aug 2003	4 Feb 2004	23 Dec 2004
Spain*	1 Mar 1985	7 Aug 1986	7 Aug 1986
Sweden	15 Aug 1995	23 Apr 1996	4 Jun 1996
Switzerland	30 Oct 2000	10 Jan 2001	26 Feb 2002
Syria	5 Jun 2003	4 Feb 2004	4 May 2004
Thailand	10 Mar 2004	23 Sep 2004	24 Nov 2004
Tajikistan	7 Sep 2002	5 May 2003	1 Jun 2003
Turkey	27 Nov 1996	16 Jan 1998	29 Apr 1998
Turkmenistan	29 Jan 1998	17 Mar 1999	21 Oct 1999
United Arab Emirates	22 Jan 2003	19 Jun 2003	9 Mar 2004
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

\* Ukraine continues to apply the treaties that were concluded by the former Soviet Union with the mentioned states.

\*\* Ukraine-Yugoslavia treaty applies to Ukraine's relations with Serbia and Montenegro.

## 5.5. Taxation of Permanent Establishments

As mentioned above, for the purposes of the Tax Code, permanent establishments of foreign entities are deemed to be independent (of such foreign entities) as taxpayers in Ukraine.

**"Permanent establishment of a foreign entity" in Ukraine is created:**

(i) through a fixed place of business through which the business activities of such foreign entity are either fully or partially conducted in Ukraine

(ii) through an agent, commissioner or other resident entity acting in a similar capacity

The definition of a permanent establishment is aligned with the definition under most double taxation treaties. Thus, the domestic definition of a permanent establishment includes (i) a construction site and (ii) the provision of services, including consultancy services, by a foreign entity through its employees working in Ukraine for a period exceeding six months in any 12-month period.

At the same time, the Tax Code (i) introduces a “safe harbor” with respect to the provision of personnel (secondment) services and (ii) provides for the types of activities that do not give rise to a permanent establishment, eg, preparatory and auxiliary activities.

The Tax Code provides that income derived by a foreign entity that conducts its business activities in Ukraine through a permanent establishment is subject to taxation at the general tax rate of 18%.

### 5.6. Value Added Tax

In accordance with Article 180.1 of the Tax Code, any Ukrainian or non-Ukrainian legal entity will be required to pay VAT, if that entity:

- has sold goods (or provided works or services), including via global or local computer networks, subject to VAT during the last 12 calendar months with an aggregate value in excess of the UAH 1 million threshold (approximately USD 35,000)
- imports (ships) goods into the customs territory of Ukraine

The Tax Code outlines the scope of transactions (i) subject to VAT and (ii) excluded from VAT as follows:

Transactions subject to VAT	Transactions excluded from VAT
<ul style="list-style-type: none"><li>■ The sale of goods (or the provision of services) on and within the customs territory of Ukraine.</li><li>■ The import of goods into the customs territory of Ukraine.</li><li>■ The export of goods out of the customs territory of Ukraine.</li><li>■ The provision of services by foreign persons to VAT registered payers and other qualifying recipients on and within the customs territory of Ukraine.</li></ul>	<ul style="list-style-type: none"><li>■ The issuance, placement and cash sale of securities.</li><li>■ The interest or commission element of lease payments pursuant to a financial lease agreement.</li><li>■ The transfer of title to pledged property pursuant to a loan agreement and its return to the pledger after the expiry of such agreement (conditions apply).</li><li>■ The provision of insurance and re-insurance services.</li></ul>



The basic VAT rate is 20% of the contractual value of the relevant goods (services), but not less than the original purchase price thereof or, in case of the sale of produced goods, not less than the arm's length value thereof (for goods imported into Ukraine this value cannot be lower than their customs value with the excise tax and import customs duty included).

A reduced rate of 7% is applied to the sale and import of medicine and medical devices. A 0% tax rate is provided by the Tax Code for the export of goods.

Effective from 1 February 2015, Ukraine has switched to electronic VAT administration and introduced VAT accounts. On 1 July 2017, Ukraine introduced a system of automatic blocking of risk-bearing VAT invoices (what constitutes a risk factor is specifically determined in the legislation).

## **5.7. Personal Income Tax**

### ***5.7.1 Introduction***

Issues of personal income taxation are principally regulated by the Tax Code, including tax rates, tax residency rules and determination of taxable income, tax administration, tax credit rules and others.

### ***5.7.2 Tax Rates***

Effective from 1 January 2016, the general tax rate applicable to almost all income received by a resident individual in Ukraine is 18%.

Tax residents can benefit from certain tax exemptions and reduced tax rates (eg, 5% applicable to income from sales of real estate and movable property; under certain conditions such income can be exempt). The Tax Code establishes the tax rate applicable to dividends paid by Ukrainian CIT payers at a level of 5% (9% on dividends distributed by institutes of joint investment, foreign entities and entities that do not pay Ukrainian CIT), while interest, royalties and capital gains are taxed at 18%. Winnings and prizes are subject to personal income tax at a flat rate of 18%.

Special rules of taxation are established for inherited property, securities and other specific items.

Reduced tax rates for business income and other incentives are prescribed for certain categories of individual entrepreneurs.

Additional military tax at 1.5% is levied on the income that is subject to personal income tax and a couple of categories of income that are exempt from personal income tax.

### 5.7.3 Tax Residency

The concept of the determination of tax residency, which is incorporated into the Tax Code, is now very similar to that of most bilateral double taxation treaties drafted on the basis of the OECD Model Tax Convention.

Specifically, unlike prior Ukrainian legislation, which linked the taxable status of a foreign individual solely to his/her physical presence in Ukraine for more than 183 days in a tax (calendar) year, the Tax Code lays down a number of additional conditions (eg, domicile, center of vital interests, citizenship, etc.) under which a foreign individual may be treated as a tax resident in Ukraine.

#### Criteria for determination of the resident status of a person:

- A tax resident of Ukraine is an individual who has a permanent residence in Ukraine.
- If an individual has a permanent residence in more than one country, he/she will be a tax resident in that country with which he/she has closer personal or economic ties (eg, his/her center of vital interests). The Tax Code specifically outlines that the place of permanent residence of the members of an individual's family or the place of an individual's registration as a business entity (as a subject of entrepreneurial activity) will be a sufficient (but not exclusive) condition for determining the location of the center of vital interests of such individual.
- If it is impossible to determine the country in which the individual has his/her center of vital interests, or if the individual does not have a permanent residence in any country, then the individual will be considered a Ukrainian tax resident if he/she is present in Ukraine for at least 183 days of the tax period (including days of arrival and departure).
- If it is impossible to determine tax residency on the basis of the above provisions, then the individual will be a tax resident of Ukraine if he/she is a Ukrainian citizen.
- The Tax Code stipulates that an individual's own identification of his/her principal place of residence on the territory of Ukraine according to the procedure established by the Tax Code, or the registration of an individual as a self-employed person in Ukraine, will constitute a sufficient basis for identifying such individual as a tax resident of Ukraine.
- A person who fails to qualify as a Ukrainian tax resident will be considered a "non-resident" for the purposes of the Tax Code.

The criterion of "one's own identification," as well as the variety of criteria in and of themselves, combined with the absence of clear guidance, might create situations where an individual is treated as a tax resident in several jurisdictions simultaneously. Moreover, the above set of criteria makes it



difficult in practice to identify the correct criterion when several can easily be applied. The latter circumstances can also create a conflict between two residences. In the majority of cases, the rules of applicable double tax treaties may be applied to solve such residency conflicts.

#### **5.7.4 Taxable Income**

Ukrainian residents are taxed on their aggregate worldwide income. Non-resident individuals are taxed only on all income derived from sources within Ukraine. Non-resident individuals are not eligible for certain exemptions or deductions available to residents for personal income tax purposes.

The Tax Code provides a list of items specifically included in the gross income of either a resident or a non-resident individual. These include gifts, insurance payments and premiums, rental income, fringe benefits (including the cost of received property, food, assistance of home service staff, expense reimbursements and amounts of financial aid, etc.), amounts of punitive (versus actual) damages received, forgiven debts and obligations, interest and dividend income, investment income and inheritances.

At the same time, a number of items are specifically excluded from the taxable income of both residents and non-resident individuals. Apart from such excluded items, the Tax Code allows an individual resident taxpayer to claim as non-taxable deductions certain expenses made during the tax year, provided that such expenses can be confirmed by the relevant documents. In particular, an individual resident taxpayer will be able to claim a deduction for the following: part of the interest payments made under a loan secured by a mortgage provided that the loan is used to finance the purchase or construction of the taxpayer's principal home, charitable contributions of not more than 4% of the taxpayer's annual taxable income, a certain amount of expenses paid to educational institutions for professional or higher education, and a certain amount of expenses paid to health institutions for personal medical needs.

The Tax Code also allows certain categories of low-income taxpayers to reduce their income by the amount of the "social tax benefit."

Taxes paid by a resident taxpayer outside Ukraine may be taken as credits against Ukrainian taxes due (provided an applicable tax treaty allows this) 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.

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### **5.7.5 Tax Administration**

The general rule of the Tax Code is that it is the duty of the payer of source income, ie, "tax agents" in the parlance of the Tax Code, to report, charge, collect and remit personal income tax to the government. Thus, employers are deemed to be tax agents with respect to the personal income tax and military tax due on the wages and salaries payable to their employees. The relevant tax returns are filed by tax agents quarterly and the remittance is made when income is paid.

If income is received from payers who are not regarded by the Tax Code as tax agents, then the recipients would be obligated to file an annual tax return for the year in which such income is received. A tax return may also be filed voluntarily if a tax resident, otherwise not required to file a tax return, wishes to claim applicable tax credits. The return must be filed by the income recipient by 1 May of the year following the reporting year. Sums due for personal income tax and military tax must be paid by 1 August of the year following the reporting year. Personal income tax and military tax are payable the currency of Ukraine.

### **5.8. Payroll Taxes**

The payment of social insurance contributions is regulated primarily by the Law of Ukraine No 2464-VI "On Unified Mandatory State Social Insurance Contributions" of 8 July 2010, effective from 1 January 2011.

Employees in Ukraine who are deemed insured by virtue of their employment are guaranteed social security benefits including a pension. Employers are liable by law to make payroll-based Unified Mandatory State Social Insurance Contributions ("Unified Contributions") for insured employees to the State Pension Fund. Such contributions are then divided by the State Pension Fund between the relevant state funds (Pension Insurance Fund, Temporary Disability, Birth and Burial Fund, Unemployment Insurance Fund and Industrial Accident and Professional Disease Disability Insurance Fund).

The Unified Contribution to be paid by an employer is not deducted from employees' salaries, but must be paid by the employer in addition to their salaries. Effective from 1 January 2016, Unified Contribution is payable at a rate of 22%.

The Unified Contribution is payable by the employer at the time income is paid. All payroll taxes must be paid by wire transfer to the appropriate state treasury accounts at the same time as the employer withdraws funds from





a bank to pay salaries to its employees or pays salaries to the bank accounts of its employees.

Effective from 1 January 2016, the employee-paid Unified Contribution (3.6%) was abolished.

The maximum taxable base for the purposes of Unified Contribution constitutes 15 times the minimum monthly salary (which is UAH 55,845 (approx. USD 1,995) as of January 2018). Any portion of the taxable base in excess of the maximum taxable base is exempt from taxation for the purposes of Unified Contributions. The same cap, rates and rules apply for resident individuals and foreigners employed in Ukraine.

### ***5.8.1 Employees with Disabilities***

Under the law “On the Social Protection of Disabled Persons in Ukraine”, regardless of its organizational form, each company is required to hire persons with disabilities. The number of such disabled persons must constitute at least 4% of the total workforce of the company. Where an organization employs 8-25 individuals, at least one disabled person must be employed. Employers failing to comply with the above rules are liable for annual penalties. The penalty is calculated as the average annual salary of the employees of that company multiplied by the number of disabled persons that should have been hired.

## **5.9. Land Tax**

Among other taxes, the Tax Code provides for land tax. Pursuant to the Tax Code, payments for land are established in the form of land tax or a land lease payment, which is determined on the basis of an assessment of the value of the land or, if the assessment has not been conducted, on the basis of its area. The owner of the land (other than the state) is required to pay land tax. Under a land lease agreement, the lessee of state-owned or municipal-owned land must pay rent but is not responsible for paying land tax.

For example, under the Tax Code, if the normative pecuniary valuation of the land has been carried out, the local municipal authorities may establish land tax at a rate of up to 3% per annum of the normative pecuniary valuation of the land and, for agricultural land, up to 1% per annum. This tax is paid on a monthly basis at 1/12 of the annual tax.

The State Agency of Ukraine for Geodesy, Cartography and Cadastre may issue extracts from technical documentation on the normative pecuniary valuation of a particular plot.

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For each of the years following the normative pecuniary valuation of the land the original valuation is adjusted by a coefficient of indexation, which is calculated and established for the relevant year by the State Agency of Ukraine for Geodesy, Cartography and Cadastre in accordance with the formula stated in the Tax Code.

The yearly lease payment (rent) for land may not be lower than 3% (1% for agricultural land) and may not be higher than 12% of the normative pecuniary valuation of the land.

### **5.10. Excise Duty**

Excise duty is an indirect tax on some goods (products) that are defined by law as being excisable. Excise duty is included in the value of excisable goods and is payable by:

- Producers of excisable goods (products) in the customs territory of Ukraine (including those produced in accordance with tolling mechanisms);
- Entities that import excisable goods into the customs territory of Ukraine;
- Individuals (both Ukrainian and foreign) who transport excisable goods (products) into, or who ship excisable goods (products) from outside of, the customs territory of Ukraine;
- Wholesale suppliers of electricity;
- Licensed producers of electricity that sell electricity outside the wholesale electricity market;
- Owners of cargo trucks that are reconfigured into excisable passenger cars; and
- Entities engaging in the retail sale of certain excisable goods.

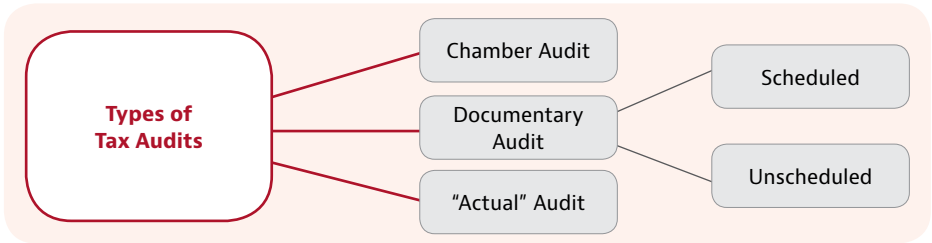
The list of excisable goods (products) includes alcoholic beverages, beer, tobacco products, cars, petrol and diesel and electricity.

The rates of excise duty on excisable goods (products) are primarily established as a fixed rate per item. Excise duty is calculated as follows: a fixed rate is applied to the price per item sold or imported. Exported goods are not subject to the excise duty.

The excise tax on retail of certain excisable goods is established at 5%.

Effective from 1 March 2016, Ukraine introduced an electronic system for the administration of fuel sales.

### 5.11. Tax Controversies



The chamber tax audit is conducted by tax auditors of the tax office on the basis of tax returns and other mandatory filings of the taxpayer related to the computation of the taxpayer's tax liability. A scheduled on-site tax audit of a taxpayer is carried out only if and when such audit is scheduled in the "plan of works" of the relevant tax office, which has to be published online. An unscheduled on-site tax audit, in contrast to a scheduled one, is not pre-planned and is conducted upon the occurrence of any of the statutory defined events, eg, when a taxpayer fails to file a tax return.

Effective from 1 September 2013, a special type of unscheduled on-site tax audit has been introduced in relation to compliance with transfer pricing legislation ("TP Audit"). A TP Audit differs from regular tax audits in scope, duration and grounds for conducting them.

The expected frequency of tax audits depends on the type of tax audit in question. A chamber tax audit may be carried out by the Ukrainian tax authorities on a discretionary basis. A scheduled on-site tax audit may not be carried out more than once during the course of a calendar year for high-risk taxpayers, once during the course of two calendar years for medium-risk taxpayers and once during the course of three calendar years for low-risk taxpayers. An unscheduled on-site tax audit may be conducted only upon the occurrence of one or more of the statutory defined events. In any event, each taxpayer is likely to be audited at least once every three years, which corresponds to the applicable statute of limitations.

TP Audits may not last longer than 18 months. In certain cases, such as submitting requests to foreign tax authorities and price experts, etc., the duration of the tax audit may be extended by another 12 months.

The general rule is that the Ukrainian tax authorities can exercise their authority to issue an assessment of a taxpayer's liability with respect to a tax return only within a period of 1,095 days (2,555 days for transfer pricing

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purposes) following: (a) the final statutory date for filing the tax return or (b) the date of the actual filing of the tax return, whichever is later. After the expiration of this period of limitations, the taxpayer may not be assessed for additional taxes, tax penalties or late payment interest for such tax liability. The period of limitations does not apply if a tax return was not filed or if a taxpayer's officer was found guilty of a tax evasion offense.

A tax audit starts with a review of the correctness of the tax returns filed by the taxpayer and how they reconcile with the taxpayer's tax ledgers. Based on their findings, the tax auditors usually proceed with an in-depth study of the taxpayer's commercial documentation. As a matter of law, a taxpayer may be denied otherwise deductible expenditures if they have not been properly documented.

For the purposes of checking a tax return, the auditing tax officer may require the taxpayer to produce documents or information in the taxpayer's possession or within its power to secure, and which may be reasonably required to establish whether the tax return is incorrect or incomplete. In certain circumstances, the Ukrainian tax authorities may conduct an unscheduled on-site tax audit of a taxpayer on the basis of information obtained from a third party. Special conditions may apply giving the tax authorities the right to access information protected by legal privilege or bank secrecy.

The Ukrainian tax authorities may send requests to foreign tax authorities for assistance in obtaining documents and information from third parties located in their jurisdictions. Such documents and information may also be requested from foreign tax authorities pursuant to an applicable double tax treaty.

The penalties for the failure of a taxpayer (a) to file a tax return or to do so in a timely fashion, (b) to pay taxes or do so in a timely fashion or (c) to comply with other tax obligations, can be generally divided into three broad penalty categories: administrative, financial (tax) and criminal. Financial (tax) penalties are imposed by the Ukrainian tax authorities and may be appealed by a taxpayer either (a) at a higher level tax office in accordance with the administrative appeal procedure or (b) in an administrative court in the course of tax litigation. Criminal penalties are imposed by criminal courts in cases of tax evasion of significant amounts.

Under applicable law, the Ukrainian tax authorities may not enforce the collection of outstanding taxes, tax penalties and/or penalty interest without going through the preliminary administrative or court procedure of agreeing the tax obligations with the taxpayer. The recovery of tax debt from the bank accounts of a taxpayer or from the property of an individual or from debtors of the taxpayer is possible only based on court decision.

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**HEAD OF PRACTICE**

**Serhiy  
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## 6. CURRENCY REGULATIONS

### 6.1 General

Ukraine maintains a restrictive regime of cross-border payments, currency purchase and currency exchange transactions, which is subject to frequent changes by the regulator — the National Bank of Ukraine (the “NBU”). Clients are therefore advised to seek up-to-date professional advice before engaging in any transaction involving cross-border settlements and currency purchases or exchange activities.

The principal act of legislation in Ukraine in the area of currency regulation is the Decree of the Cabinet of Ministers of Ukraine “On the System of Currency Regulation and Currency Control” (the “Currency Decree”), dated 19 February 1993. In recent years, the NBU has adopted a large number of regulations and instructions implementing the Currency Decree. A new Law on currency regulation, replacing the Currency Decree, is expected to be adopted in 2018.

### 6.2 Status of the National Currency

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

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### 6.3 Use of Foreign Currency in 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 collateral, may legally be carried out only under a permit from the NBU issued on a case-by-case basis (the so-called “individual license”).

The foregoing rule does not apply to foreign currency transfers performed within Ukraine by a Ukrainian commercial bank or financial institution under its general license to carry out foreign currency transactions, issued by the NBU.

### 6.4 Transfer of Foreign Currency from Ukraine

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

- transfer of foreign currency abroad by a Ukrainian resident individual within the limit determined by the NBU
- transfer of foreign currency abroad by a Ukrainian resident individual or non-resident individual within the limit of the amount previously imported into Ukraine by such resident or non-resident on a legal basis
- transfer of foreign currency abroad by a Ukrainian resident (legal entity or individual) in discharge of a contractual obligation in such foreign currency to a non-resident in respect of payment for goods, services, works, intellectual property rights, or other property rights acquired or received by such resident from such non-resident (an acquisition of securities or other “currency valuables” does not fall within this exemption)
- payment of interest under a loan or income earned (eg, dividends) from foreign investment in foreign currency abroad
- repatriation from Ukraine abroad of the amount of foreign investment in foreign currency previously made in Ukraine upon the termination of the relevant investment activity
- payment in foreign currency abroad to the European Organization for the Safety of Air Navigation as a fee for aircraft navigation services
- transfer of foreign currency abroad by a foreign investor (or its representative office in Ukraine) to other investors based on a production sharing agreement

### 6.5 Other Licensable Transactions

Under the Currency Decree, an individual license of the NBU is required, among other things, for:

- repatriation and transfer of funds in UAH into Ukraine, if in excess of the amounts in UAH which have been transferred abroad on legal grounds



- deposit of funds in foreign currency and other “currency valuables” (eg, securities, banking metals, etc.) in an account or on deposit outside Ukraine (except for, among other things, the opening by a duly licensed Ukrainian commercial bank of a correspondent account with a foreign bank, and the opening of a bank account with a foreign bank by a Ukrainian resident individual for the duration of such individual's stay abroad)
- investment abroad, including transfer of foreign currency abroad in connection with the acquisition of assets and securities

In addition, receipt of a foreign currency loan by a Ukrainian resident (including a Ukrainian commercial bank) from a non-resident is subject to prior registration of such loan with the NBU.

### **6.6 Settlements under Export and Import Contracts**

Ukrainian legislation allows settlements under export or import contracts between a Ukrainian resident and a non-resident to be carried out in foreign currency as well as in UAH. If in foreign currency, the foreign currency proceeds of a Ukrainian resident under an export contract (except for export of services, other than transport and insurance services, and intellectual property rights) must be collected on such resident's bank account within 180 days from the date of the customs clearance of the exported goods. Similarly, goods prepaid by a Ukrainian resident in foreign currency, pursuant to an import contract concluded with a non-resident, must be imported and cleared through the Ukrainian customs within 180 days from the date on which such resident's prepayment was made.

In addition, 50% of the foreign currency proceeds of individual entrepreneurs, legal entities and foreign representative offices are subject to mandatory sale for (conversion into) UAH.

### **6.7 Purchase of Foreign Currency**

A resident Ukrainian legal entity or individual entrepreneur may acquire non-cash foreign currency in Ukraine only through a duly licensed Ukrainian commercial bank or other licensed non-bank financial institution, and only in a limited number of cases and with the submission of various documents to such bank or non-bank financial institution confirming the legitimacy of the purchase. Such a purchase will be permitted where such resident needs to discharge payment obligations to a non-resident in connection with:

- purchase of goods or services from such non-resident; repayment of a loan extended by such non-resident and/or the payment of interest thereon

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- payment of dividends or other income earned as a result of such non-resident's investment

The NBU has recently established new requirements for individuals and corporate entities intending to purchase foreign currency for a cross-border transfer to prove the legality of the funds used for such purchase.

## **6.8 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 licensed financial institutions, and only on the inter-bank currency market of Ukraine.

## **6.9 Borrowing from Non-Residents**

The NBU sets a maximum permitted rate of interest (the "Maximum Interest Rate") for loans extended by foreign lenders to Ukrainian borrowers and may refuse to register a loan agreement with an interest rate exceeding the Maximum Interest Rate. The Maximum Interest Rate applicable to loans in freely convertible currencies is as follows:

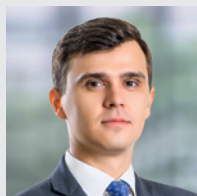
- for fixed-interest rate loans:
  - with a maturity of up to one year – 9.8% p.a.
  - with a maturity of one to three years – 10% p.a.
  - with a maturity over three years – 11% p.a.
- for floating-rate loans – LIBOR for three-month USD deposits plus 750 basic points.

## **6.10 Temporary Restrictions on Currency Transactions**

Following the Russian annexation of Crimea in March 2014, and subsequent military conflict in certain eastern regions of Ukraine, a number of laws and regulations were adopted in Ukraine aimed at, among other things, terminating the provision of banking and financial services in the occupied territories and regulating payments within Crimea and between businesses and individuals residing in Crimea and mainland Ukraine. Such payments are subject to a special legal regime until the respective territories are under foreign occupation.

Starting from the end of 2014, the NBU introduced a number of temporary restrictions on certain currency transactions (cross-border payments in particular) intending to stabilize the currency market in Ukraine. Such restrictions include, among other measures, limitations on the repatriation of dividends from outside Ukraine and suspension of payments from outside Ukraine under certain NBU individual licenses. The restrictions are expected to remain in effect throughout 2018 unless lifted by the NBU. Please seek our advice on the current status of these restrictive measures.



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## 7. CUSTOMS REGULATIONS

### 7.1. Introduction

The general principles of customs regulations in Ukraine, as well as the procedures for customs clearance, control and other related issues, are regulated by the Customs Code of Ukraine (the “Customs Code”), effective as of 1 June 2012.

In addition to the Customs Code, the applicable Ukrainian legislation on customs consists of the Law of Ukraine On Customs Tariffs of Ukraine dated 19 September 2013. The principal law governing import and export VAT, as well as the refund of export VAT, is Section V of the Tax Code of Ukraine dated 2 December 2010 (the “Tax Code”).

The most recent provisions to and developments of the Customs Code and the Ukrainian customs legislation were made in furtherance of the accession of Ukraine to the World Trade Organization (WTO) to harmonize Ukrainian customs legislation with WTO rules. The main changes relate to the simplification of customs procedures, customs valuation rules, protection of IP rights and customs control procedures.

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The Customs Code is designed to, among other things, harmonize the customs legislation of Ukraine with the International Convention on the Simplification and Harmonization of Customs Procedures and the Convention on Temporary Admission, as well as to implement the World Customs Organization SAFE Framework of Standards to Secure and Facilitate Global Trade into national legislation.

On 1 January 2016, the Deep and Comprehensive Free Trade Area, which is a part of the EU-Ukraine Association Agreement, became provisionally applicable. It eliminates import duties on most goods imported from the EU into Ukraine and vice versa.

On 11 July 2016, the Governments of Canada and Ukraine signed the Canada-Ukraine Free Trade Agreement which, upon entering into force, immediately eliminates Canadian import duties on 99.9% of Ukraine's current exports to Canada and Ukrainian import duties on 86% of Canada's current exports to Ukraine.

Upon the annexation of Crimea by the Russian Federation, the Parliament of Ukraine adopted the Law of Ukraine On Establishing the Free Economic Zone "Crimea" and the Specifics of Conducting Economic Activity in the Temporarily Occupied Territory of Ukraine, effective as of 27 September 2014. According to this law, the supply of goods from Crimea to mainland Ukraine is treated as import and the supply of goods from mainland Ukraine to Crimea is treated as export for customs clearance purposes.

However, according to Resolution of the Cabinet of Ministers of Ukraine No. 1035 dated 16 December 2015, the supply of goods to/from mainland Ukraine from/to Crimea under all customs regimes is suspended as of 17 January 2016. Transfer of personal belongings and a limited amount of food products is still permitted. The resolution does not apply to (i) the supply of electricity to and from Crimea, (ii) the supply of "strategically important" goods from Crimea to mainland Ukraine or (iii) the supply of humanitarian aid to Crimea. These restrictions have recently been cancelled as the result of the judicial review of the Resolution. While the restrictions are no longer in force, the Higher Administrative Court granted the Cabinet of Ministers of Ukraine the leave for appeal.

As of 1 January 2016, the Russian Federation suspended the CIS Free Trade Agreement with regard to Ukrainian goods and imposed other restrictive measures (banned the import of a number of Ukrainian agricultural goods and prohibited the transit of Ukrainian goods through its territory). Ukraine, in turn, reciprocated by imposing customs duties on certain goods of Russian



origin from 2 January 2016 until 31 December 2018, and banned certain agricultural goods and pesticides originating from Russia from 10 January 2016 until 31 December 2018. On 20 January 2016, the Cabinet of Ministers of Ukraine extended the ban to certain foodstuffs of Russian origin.

On 4 February 2016, the Parliament of Ukraine adopted the amendments to the Customs Code that should allow gas backhaul operations. Import duties on ferrous metal scrap were cancelled as of 10 November 2016.

Set forth below is a brief overview of the main provisions of customs regulations in Ukraine:

1. Declarant (Importer of Record)
2. Customs Broker
3. Registration Procedure
4. Customs Clearance
5. Customs Regimes
6. Certification and Control
7. Customs Valuation Rules
8. In-Kind Contribution
9. Customs Control

## 7.2. Declarant (Importer of Record)

By law, both legal entities and individuals may act as importers of record vis-à-vis the Ukrainian fiscal authorities in connection with the customs clearance of commodities and/or vehicles imported into/exported from Ukraine.

Under the Customs Code, an importer of record is an entity that carries out customs clearance in its own name or in whose name the customs clearance is carried out.

The importers of record and their authorized representatives are responsible for:

**Declaring commodities and vehicles**

**Presenting, upon request of the fiscal authorities, commodities and vehicles for customs control and customs clearance**

**Submitting documents and additional information necessary for the fulfillment of customs procedures to the customs body**

**Paying taxes and duties**

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### **7.3. Customs Broker**

All procedures and operations regarding customs clearance of goods (products) shipped through the customs border of Ukraine may be conducted through a customs broker. A customs broker is a legal entity carrying out customs clearance formalities on behalf and in the name of the importer of record. To conduct customs brokerage activity in Ukraine, the entity must obtain a permit. Only a Ukrainian business entity may obtain such a permit and act as a customs broker. Customs brokers should be included in the official register of customs brokers. The Finance Ministry has prepared a draft law allowing entities to operate as customs brokers without permits; the Parliament has not adopted it yet.

### **7.4. Registration Procedure**

To conduct import/export operations, a business entity must be accredited with its local customs office.

The procedure for registration and list of required documents are established by the Procedure for Registration of Entities that Carry out Operations with Goods, approved by Order of the Finance Ministry of Ukraine No. 552 dated 15 June 2015.

Please note that under the Customs Code, the customs clearance of goods can be carried out at any customs office regardless of the place of registration of the importer of record.

### **7.5. Customs Clearance**

The customs clearance of goods (products) is certified by a special stamp (or a special mark in case of electronic customs declarations) of the fiscal authorities, placed on a customs declaration, after which the goods (products) may be legally released for free circulation into the customs territory of Ukraine.

Customs clearance is conducted by the fiscal authorities to confirm information about the goods (products) and vehicles shipped through the customs border of Ukraine. Customs clearance is conducted in places where the appropriate customs subdivisions authorized to conduct customs clearance are located.

The main document required for customs clearance of goods (products) is a customs declaration filed by an importer of record (or by the customs broker acting on his/her behalf).

The Customs Code establishes the procedure for obtaining preliminary decisions and declarations. Under the Customs Code, all importers of



record can apply for and obtain preliminary rulings of the fiscal authorities regarding (i) the classification of goods, (ii) the confirmation of the goods' country of origin and (iii) approval for declaring goods under various customs regimes. Preliminary decisions are valid for up to three years.

Under the Customs Code, importers of record can declare goods before the goods reach the customs territory of Ukraine or before the goods are delivered to the customs clearance office by means of submitting a preliminary customs declaration.

The Customs Code provides an exhaustive list of documents to be filed to determine the customs value of goods and the fiscal authorities cannot request documents that are not on the list, which makes customs clearance more transparent and predictable.

The importer of record is also required to submit the following documents:

- documents confirming the authority of an entity or individual(s) to represent the importer/exporter before the fiscal authorities (customs/broker agreement, power of attorney, permit for conducting customs brokerage activities)
- customs declaration
- customs value declaration (where applicable)
- supporting documents for the declared customs value of the goods (products) (eg, foreign trade contract, invoice or document that specifies the value of goods (products), etc.)
- payment documents, financial and accounting documents, official price lists, etc.
- documents substantiating the provision of security or other guarantees, if required
- transportation documents (SMGS, CIM, air waybill, bill of lading, etc.), license of the customs carrier, etc.
- documents required under a particular customs regime
- documents specifying the code of goods (products) under the Ukrainian Customs Tariff (UKTZED)
- documents proving the right to apply tariff preferences or tax benefits, if any
- documents specifying the country of origin of goods (products) (ie, the certificate of origin)
- documents proving that the relevant taxes and duties have been paid (eg, payment orders, cash slips, promissory notes)
- other certificates, licenses and permits, if required.

However, it should be noted that under the Customs Code, the importer of record may be required to submit additional documents specified by applicable legislation. The list of required documents may be expanded at the request of the fiscal authorities in the event of (i) discrepancies in the documents provided by the declarant or (ii) the importer and exporter being related parties.

Under the Customs Code, customs clearance of goods should not exceed four business hours from the presentation of goods and submission of the full set of documents (including the customs declaration) to the fiscal authorities.

It should be specifically noted that the Customs Code introduces the concept of the Authorized Economic Operator. An Authorized Economic Operator is entitled to (i) use simplified customs clearance procedures, (ii) automatic application of the general method for determining the customs value of goods (the contract price method) and (iii) carry out specific types of activity, such as opening and operating a bonded customs warehouse, temporary storage warehouse or customs cargo warehouse.

## 7.6. Customs Regimes

The following customs regimes would apply depending on the purpose of the transfer of goods (products) through the customs border of Ukraine:

import	re-import
export	re-export
transit	temporary import
temporary export	bonded warehouse
free customs zone	customs free trade store
inward processing	outward processing
destruction	surrender to the state

The importer of record may choose the customs regime for the goods (products) shipped through the customs border of Ukraine in accordance with the purposes of their transfer, upon provision of all necessary documents to the customs office for customs control and clearance.

### 7.6.1 Import

Import is the main customs regime for the delivery of goods (products) into the customs territory of Ukraine. The import regime contemplates free circulation of goods so imported into Ukrainian territory without any further



customs restrictions and post-clearance customs control, provided that all applicable customs duties and taxes have been paid properly and in full.

The import regime requires:

- submission of all necessary documents certifying the purposes and conditions for bringing the goods (products) into the customs territory of Ukraine
- payment of all applicable taxes and duties in accordance with the laws of Ukraine
- compliance with the non-tariff regulation regime and other restrictions.

### **7.6.2 Re-Import**

Re-import is the regime where goods that were shipped or declared to be shipped outside the customs territory of Ukraine re-enter the customs territory of Ukraine, with exemption from customs taxes and without the application of non-tariff measures. Re-import may be applied to (i) goods that are shipped to the customs territory of Ukraine and (ii) goods that remain under customs control or are placed under another customs regime.

Re-import of goods (products) is generally exempt from VAT, customs duties and excise tax, except for goods that were cleared under the export customs regime and are being returned to the exporter due to his/her failure to meet the terms and conditions of the contract.

The goods (products) may be cleared under the re-import customs regime if:

- the goods may be identified as those released outside the customs territory of Ukraine
- the goods (products) re-enter the customs territory of Ukraine no later than within the timeframes established by the law
- proper documents are filed with the fiscal authorities
- the goods (products) re-enter the customs territory of Ukraine in the same condition in which they were at the moment of their export, except for natural wear and tear or losses during transportation and storage.

Export duty, if paid upon the exportation of goods (products), is to be reimbursed provided that the goods (products) are (i) re-imported into the customs territory of Ukraine within six months of the date of their exportation and (ii) remain in the same condition in which they had been exported.

### **7.6.3 Export**

Export of goods (products) is the main customs regime for final exportation of goods (products) outside the customs territory of Ukraine.

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Export of goods (products) is allowed upon completion of the following formalities:

- submission of appropriate documents for the export of such goods (products)
- payment of export customs duties with respect to certain types of goods (products)
- application of 0% VAT to exported goods (products), save for VAT exempt exports.

No excise tax applies to exported goods (products).

#### **7.6.4 Re-export**

Re-export is the customs regime where goods (products) initially delivered into Ukraine or a free customs zone may be shipped from the customs territory of Ukraine without the application of export customs duties or any non-tariff measures.

Re-export of goods (products) is allowed upon completion of the following formalities:

- Submission of appropriate documents for re-export of such goods (products), including documents required for the identification of the goods
- Provision of a permit in cases established by the law.

Re-export of goods is generally exempt from VAT. The 0% VAT rate is applied to goods that were cleared under the import customs regime and are being returned to a non-resident due to his/her failure to meet the terms and conditions of the contract, provided that the goods (i) are re-exported outside the customs territory of Ukraine within six months of the date of their importation and (ii) remain in the same condition in which they had been imported.

Import customs duties paid upon importation of goods into the customs territory of Ukraine may be reimbursed to the importers or their successors.

#### **7.6.5 Transit**

Goods (products) and/or commercial vehicles may be moved across the territory of Ukraine under customs control between two fiscal authorities or within one fiscal authority's area of operation without the use of such goods, without the application of customs taxes or any non-tariff measures.

The Customs Code provides that the following additional mandatory conditions must be satisfied for the transit of goods (products):



- The goods (products) may not be used or modified, except for natural wear and tear or losses during transportation and storage.
- The goods (products) may not be used on the territory of Ukraine for any purposes other than their transit.
- In certain cases, a special permit may be required to move products (goods) under the transit regime.
- The identification marks, if applied, must be intact.
- The products (goods) under the transit regime must be delivered to the ultimate customs post within a certain pre-defined period of time.

### **7.6.6 Temporary Import**

Under the Customs Code, goods (products) of foreign origin may be imported into Ukraine on a temporary basis for a particular purpose with full or conditional exemption from customs taxes and without the application of any non-tariff measures, provided that such goods (products) are imported for a period not exceeding three years.

The following commodities can be imported on a temporary basis: Goods (products) imported for the purposes of demonstration or use at exhibitions, fairs, conferences, etc. Professional equipment for preparing reports, making records for the mass media or making movies

Containers, trays, packages and any other commodities imported in connection with any commercial operation, provided that such importation is not a commercial transaction

Samples and advertising films, provided that they remain in the ownership of a person who stays or resides outside the territory of temporary importation and they were not used in Ukraine for the purpose of gaining profit

Goods (products) imported for educational, scientific and cultural proposes

Personal items of passengers and commodities imported for the sports purposes

Materials for advertising tourism

Means of transportation that are used exclusively for the purposes of moving passengers and commodities across the customs border of Ukraine

Aircraft imported into Ukraine by Ukrainian airlines based on the operating lease

Spare parts and the equipment intended for the repair or maintenance of vehicles already imported on a temporary basis

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Additionally, commodities specified by the Customs Code as well as commodities identified in Annexes B.1 – B.9, C, D and E of the Convention on Temporary Import (the “1990 Istanbul Convention”), if the criteria of the 1990 Istanbul Convention are satisfied, are allowed for temporary import into Ukraine.

Customs clearance of certain goods (products) imported into Ukraine under the temporary import regime would require the issuance of a guarantee.

The guarantee should be provided in the form of a cash bond to the amount equal to the amount of taxes, duties and excise tax due under the import regime with respect to such goods (products) as of the date of filing the customs cargo declaration. The cash bond should be paid back upon re-export of the goods (products) based on the written application of the importer.

If goods (products) are imported into the customs territory of Ukraine under the temporary importation customs regime on the basis of A.T.A. carnets, no additional (eg, cash bond) guarantee should be provided because, in accordance with provisions of the 1990 Istanbul Convention, the A.T.A. carnet book would serve as an international guarantee for temporary import. A full conditional exemption or partial conditional exemption should apply to goods imported into the customs territory of Ukraine in a temporary import customs regime.

Full conditional exemption provides for exemption from customs taxes. The exemption should apply to goods specifically defined by the Customs Code as well as Annexes B.1 – B.9, C and D of the 1990 Istanbul Convention

Partial conditional exemption requires payment of 3% of the amount of customs taxes payable in case of delivery of goods under the import customs regime each month

### **7.6.7 Temporary Export**

Under the Customs Code, goods and commercial vehicles of Ukrainian origin may be exported from Ukraine on a temporary basis with full conditional exemption from customs taxes and without the application of any non-tariff measures, provided that such goods and commercial vehicles are reimported into Ukraine within the period of temporary export. The period of temporary export should not exceed three years. This period can be prolonged by the fiscal authorities.

### **7.6.8 Bonded Warehouse**

Under the bonded warehouse customs regime, goods (products) imported into Ukraine are stored at bonded warehouses under customs control with



full conditional exemption from customs taxes and without the application of any non-tariff measures.

The general maximum term for the storage of imported goods (products) at a bonded warehouse is three years (1095 days), while for excisable goods (products) such term may not exceed one year (365 days) from the date of their placing under the bonded warehouse regime.

Upon the expiration of the storage term the goods (products) should be declared under another customs regime with the payment of the relevant import customs duties, taxes and excise tax due.

The maximum term for the storage of the goods (products) designated for export at a bonded warehouse may not exceed one year as of the date of their placing in a bonded warehouse. Before the expiry of this term, the goods (products) should be exported from the customs territory of Ukraine.

Opening and operating bonded warehouses requires a permit from the fiscal authorities.

#### ***7.6.9 Free Customs Zone***

A free customs zone regime whereby goods (products) of foreign origin that are imported into or exported from free customs zones outside the customs territory of Ukraine with exemption from customs taxes and without the application of any non-tariff measures, and Ukrainian goods (products) are imported into the free customs zone with the application of customs taxes and non-tariff measures.

#### ***7.6.10 Customs Free Trade Store***

Under the customs free trade store regime, goods (products) that are not intended for free circulation in the customs territory of Ukraine are permitted to be sold without the payment of any customs taxes or the application of any non-tariff measures, provided that such goods (products) are sold within special areas under customs control, such as points of admission on the customs border of Ukraine intended for international connections and other relevant areas, and are designated for export outside the customs territory of Ukraine.

#### ***7.6.11 Inward Processing Customs Regime***

Under the regime of inward processing in the customs territory of Ukraine, goods (products) originating from other countries may be temporarily brought into the customs territory of Ukraine with conditional relief from

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VAT, customs duties and taxes and without the application of any non-tariff measures to such goods (products), upon issuance of a financial guarantee (if applicable), provided that such goods (products) will be re-exported outside the customs territory of Ukraine. A permit from the fiscal authorities is required to clear the goods under the inward processing customs regime.

The number of processing operations is unlimited. The processing may include the following types of operations with commodities:

- the processing of goods (products)
- the processing, assembling and dismantling of goods (products)
- the repair of the goods (products), including modernization, renovation and adjustment and calibration
- the use of goods (products) that improves or facilitates the processing of the goods

The term for the inward processing regime of goods (products) in the customs territory of Ukraine is established by the fiscal authorities on a case-by-case basis. The term for inward processing may be prolonged by the fiscal authorities; however, the total term of processing should not exceed 365 days. Good originating in Ukraine (except for fuel and energy) used for processing foreign goods (products) could be cleared under the export customs regime.

If the processed goods are to be sold in the customs territory of Ukraine, such goods should be placed under the import customs regime with due payment of all applicable taxes and duties. The sale of processed goods in the customs territory of Ukraine by a foreign company is to be performed through its duly registered representative office, which would carry out customs clearance of the processed goods.

#### **7.6.12 Outward Processing Customs Regime**

Under the outward processing customs regime, Ukrainian goods (products) are processed outside the customs territory of Ukraine without the application of any non-tariff measures to such goods, provided that such goods or the processed goods will be imported back into Ukraine. A permit from the fiscal authorities is required to clear the goods under the outward processing customs regime. The total period for processing the goods may not exceed 365 days.

Goods (products) that are imported after warranty repair abroad are subject to full conditional exemption from VAT and customs duties if imported within the period of outward processing. Partial conditional exemption applies to the processed goods.



### **7.6.13 Destruction**

Destruction is the customs regime whereby goods (products) brought into the customs territory of Ukraine are subject to destruction under customs control, with the full conditional exemption from import customs taxes and without the application of any non-tariff measures. A permit of the fiscal authorities is required to clear the goods under the destruction customs regime. Waste generated as a result of destruction should be subject to customs clearance requirements and customs duties and taxes depending on the claimed customs regime.

### **7.6.14 Surrender to the State**

Under the regime of surrender of goods (products) for the benefit of the state, the owner of the goods (products) may abandon the goods (products) in favor of the state without paying any customs taxes or the application of any non-tariff measures. A permit of the fiscal authorities is required to clear the goods under this customs regime. Goods determined by the Cabinet of Ministers of Ukraine may not be surrendered to the state (expired goods, nuclear and hazardous waste and goods the storing and sale of which would exceed sales proceeds, etc.).

This regime may be a convenient way to avoid unreasonable customs clearance costs if they become applicable to the goods for any reason (eg, the customs have classified the goods under a code entailing a substantially higher import duty than the importer is ready to pay, or the customs office requests a permit/license that the importer does not possess, or if it's too costly/burdensome to ship the goods back from Ukraine).

## **7.7. Certification and Control**

Certification of goods (products) is the activity designed to confirm the compliance of goods (products) with Ukrainian local statutory requirements of product quality and their consumer characteristics.

### **7.7.1 Sanitary and Epidemic Certification**

According to the Law of Ukraine On Provision of Sanitary and Epidemical Protection of Citizens dated 24 February 1994 (the "Sanitary Protection Law"), the importation of certain goods into Ukraine is subject to sanitary and epidemiological expert examination and is allowed if a sanitary and epidemiological certificate, which certifies the safety of products for human health, is issued by the Consumer Protection Service of Ukraine. If the sanitary and epidemiologic examination was performed in the state of export and the relevant certificate was issued in such other state, the results of the examination may be recognized in Ukraine based on an agreement on mutual recognition of expert examination results. An examination shall be performed

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for products included on the List of Goods Subject to State Control upon Transfer through the Customs Border of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1031 dated 5 October 2011.

Preliminary state control functions at the border, in particular, sanitary and epidemiological, veterinary and sanitary, phytosanitary and ecologic control, which were performed by various state authorities in the past, have now been delegated to the fiscal authorities and are performed according to the “single window” principle in the form of preliminary documentary control. This is aimed at the simplification and acceleration of control procedures at the border.

Further, pursuant to the EU Ukraine Association Agreement, Ukraine has committed to bringing its sanitary and phytosanitary and animal welfare legislation closer to that of the EU, establishing a mechanism for the recognition of equivalence of sanitary or phytosanitary measures. In connection with this, once equivalence is formally recognized by the importing party, the following is to be procured: (i) the reduction of physical checks at the frontiers, (ii) simplified certificates and (iii) pre-listing procedures for establishments as appropriate.

### ***7.7.2 Radiological Control***

All products, with the exception of electricity and products transported through pipelines, are subject to radiological control at customs.

### ***7.7.3 Certificate of Origin***

A certificate of origin of goods is mandatory in the following cases: (i) when preferential customs duty rates are applied, (ii) when quantitative restrictions or other restrictive measures apply to the goods and (iii) if it is required pursuant to the laws of Ukraine or Ukraine’s international treaties.

On 8 November 2017, the Parliament of Ukraine adopted the Law on joining the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin, which establishes more favourable origin rules (including a diagonal cumulation) within the “Pan-Euro-Med” area. The Convention is expected to enter into force at the beginning of 2018.

## **7.8. Customs Valuation Rules**

The customs value of goods imported into Ukraine is the basis for the calculation of import custom duties and taxes and normally includes the cost of goods, insurance costs and transportation costs of the goods up to the Ukrainian customs border. Depending on the actual circumstances, including contractual arrangements, in addition to the aforementioned



costs, a Ukrainian importer of record may be required to include royalties (payable for the right to use trademarks and other IP rights) into the customs value of those goods, provided that the Ukrainian importer must directly or indirectly (eg, via third parties) pay those royalties, other license fees and/or other income as a condition/direct consequence of the importation of the goods being valued at customs.

The Customs Code provides an exhaustive list of documents to be filed for determining the customs value of goods. The Customs Code precludes the fiscal authorities from requesting documents other than those on the list. The Customs Code establishes an exhaustive list of cases where the customs value may be viewed to be incorrect: (i) the customs value is computed improperly, (ii) not all documents required under the list are filed, (iii) the valuation method applied by the importer of record is inconsistent with the terms prescribed by the Customs Code or (iv) receipt by the fiscal authorities of official information from foreign fiscal authorities regarding the falsity of the declared customs value.

### ***7.8.1 Import and Export Customs Duties***

Customs duties are imposed on top of the declared customs value of imported goods confirmed and accepted by customs. Rates of import customs duties in Ukraine normally range from 0% to 60% according to the Ukrainian Customs Tariff. Ukrainian customs legislation establishes three levels of rates for the payment of customs duties on imported products.

A preferential rate of customs duties is applied based on Ukraine's international agreements, which establish special preferential customs regimes (eg, the EU-Ukraine Association Agreement and the Free Trade Agreement between the EFTA States and Ukraine).

Reduced rates of customs duties are applied to goods originating from WTO member states and countries that have been granted a most-favored nation regime in Ukraine based on a bilateral or regional treaty.

Customs duties are payable in full for all other goods and products not covered in the two categories described above.

Import customs duties should apply to the customs value of imported goods and may be deducted for corporate income tax purposes.

Export duties are levied only for certain limited categories of products (eg, livestock, oil seeds, waste and scrap of ferrous metals and gas, etc.).

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### 7.8.2 Import VAT

As established under the Tax Code, generally the import of goods is subject to Ukrainian VAT at a general rate of 20%, with a special 7% rate being applicable to permitted medicines and medical products, levied on top of the tax base for imported goods.

For the purpose of VAT, the tax base for goods imported into Ukraine should be determined based on their contract price but shall not be lower than their customs value. The excise tax and import customs duty are to be added to the tax base for VAT. The customs value should include the following costs incurred by the importer or to be paid by the importer for the imported goods, which should be added to the contract price: (i) transportation, (ii) loading/unloading, (iii) insurance, (iv) brokerage, agency, commission and other fees and (v) payments for the use of intellectual property (royalties).

The cost thus determined shall be converted into Ukrainian currency at the National Bank of Ukraine with the exchange rate effective as of 12 am (midnight) of the day the customs declaration is filed or the customs formalities are carried out (if no customs declaration is filed).

The following goods imported into Ukraine may be exempt from import VAT:

Art and cultural goods	International technical assistance
Fish caught by ships registered in Ukraine	Goods and commodities designated for the use of diplomatic and consular offices and their personnel

### 7.8.3 0% Export VAT

Export of goods is generally subject to 0% VAT. VAT-exempt supplies deprive a VAT payer of the right to claim input VAT.

Export VAT should be determined based on the contract price, which may not be lower than the purchase price of the goods or, if they were produced by the taxpayer, not lower than at arm's length price.

For VAT purposes, goods are viewed to be exported if and when their export is evidenced by the customs cargo declaration. More specifically, to confirm the export operation subject to 0% VAT, the taxpayer must file the original customs cargo declarations with the stamp of the customs office confirming that the export operation has been completed. The electronic customs cargo declarations are to be provided by the customs office that carried out the customs clearance of the goods.





In addition to the stamped customs declaration, the following main documents should support the export operation:

- the contract for the export of goods
- the payment documents
- the shipping documents (transfer and acceptance statements, waybills and invoices, etc.)

VAT should arise only if the actual shipment of the exported goods (ie, the transfer across the customs border), supported by the customs declaration, is executed.

#### **7.8.4 Import Excise Taxes**

Please refer to section 5.10 above for information on excise taxes payable in Ukraine.

### **7.9. In-Kind Contribution**

Importation of property as an in-kind share capital contribution by a foreign investor is exempt from customs duty in Ukraine.

However, this rule does not apply if the importer disposes of such property within a three-year period. The position of the Ukrainian fiscal authorities is that the rule applies not only to an asset deal but also to a share deal, as the sale of shares of a foreign participant is equal in the view of Ukrainian fiscal authorities to the sale of such assets. If the share or asset sale took place within three years of the importation of the assets, the company is obligated to pay the exempted amount of import duties applied to such imported property to its local customs office.

### **7.10. Customs Control**

Fiscal authorities are allowed to carry out customs control of the accuracy of the imported goods' customs value determined. Customs control procedures may be executed at the moment of the goods' customs clearance and their transfer across the customs border of Ukraine and after the completion of customs clearance procedures and admission of goods across the customs border of Ukraine (eg, the post-audit procedure).

During the customs control procedure, the fiscal authorities verify the accuracy of the information stated in the customs declaration and other documents submitted to the fiscal authorities for customs clearance.

The Customs Code introduces several types of post-audit control, which would be performed in the form of (i) on-site documentary audits

(scheduled and unscheduled) and (ii) off-site documentary audits. Documentary audits are not to take longer than 30 business days. Scheduled documentary on-site audits will not be conducted more often than once per year and certain importers of record, eg, Authorized Economic Operators, may be audited only once every two-and-a-half years.

Customs control at the moment of customs clearance may be executed in the form of:

- analysis of documents
- interviewing the importer's officials
- examination of imported products
- comparison of the reported customs value with the customs value of identical or similar goods or with the information available in information databases of the fiscal authorities
- other forms of control

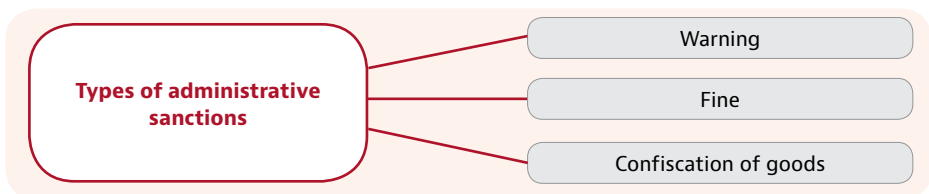
The post-audit procedures may be executed in the form of:

- verification of the data filed by the importer
- conducting chamber audits
- conducting scheduled and unscheduled on-site customs audits
- filing enquiries with the fiscal authorities of foreign states and other Ukrainian state authorities

When the fiscal authorities reveal inconsistencies in the reported customs value of imported goods they may issue a decision on the assessment of the customs value of the imported goods. This would lead to re-computation of the tax liabilities and application of additional customs duties, as well as the imposition of financial penalties on the importer, unless the importer decides to challenge the decision with the fiscal authorities of a higher level or in court.

### **7.10.1 Liability**

Based on the results of the customs inspection, the fiscal authorities may hold the inspected company responsible for breach of customs rules. Section XVIII of the Customs Code provides the following administrative sanctions for violations of customs rules and regulations:





Depending on the type of violation committed, the fine against company officials could amount to 10 to 1,000 times the non-taxable minimum (currently UAH 17 or USD 0.7), ie, currently from UAH 170 to UAH 17,000 or approximately USD 6.5 to USD 650. In certain cases, the fine may even amount to 100% or 200% of the value of the goods and involve confiscation of those goods, or 300% of the unpaid customs taxes.

The Customs Code introduces a procedure for amicable agreement (compromise) between the fiscal authorities and importers of record in disputes related to alleged violations of customs procedures, which, if successful, results in a no-administrative-liability record for importers of record (ie, the person would be deemed not to have committed an offense).

Importers of record are exempt from administrative liability for unintentional mistakes not resulting in the unlawful exemption from, or reduction of, customs duties and taxes or non-application of non-tariff regulations.

There is a six-month limitation period under Article 467 of the Customs Code with respect to customs violations. Normally, it starts from the moment of the violation. However, in case of on-going violations, this six-month period elapses from the date of discovery of the violation by the Ukrainian fiscal authorities.

Please note that administrative sanctions such as confiscation of goods may be imposed only on the basis of a court decision. The fiscal authorities may not confiscate the goods.

### ***7.10.2 Criminal Liability***

The concept of corporate criminal liability was introduced into Ukrainian law on 23 May 2013 with effect from 27 April 2014. Legal entities may be liable for certain criminal offenses (eg, money laundering, terrorism, bribing an executive of a private legal entity).

In turn, Article 201 of the Criminal Code provides for the criminal liability of individuals for smuggling an exhaustive list of items, including cultural valuables, weapons, poisonous substances, narcotics and explosives. The maximum liability for smuggling any such listed items may be 12 years of imprisonment with confiscation of the property (smuggled goods and the guilty individual's property).

Smuggling goods other than those expressly listed in Article 201 of the Criminal Code is not deemed to constitute a criminal offense but can result in administrative liability.



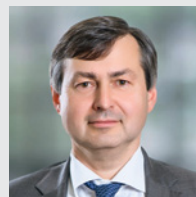
#### EXPERT



**Andrii  
Grebonkin**

Senior  
Associate

#### HEAD OF PRACTICE



**Serhiy  
Piontkovsky**

Managing  
Partner

## 8. PROPERTY RIGHTS TO REAL ESTATE

### 8.1 General

Under the Civil Code of Ukraine, dated 16 January 2003, as amended (the “**Civil Code**”), three types of property ownership (private, state and municipal) exist in Ukraine. In contrast to the former system of state and collective ownership of property in the Soviet era, private ownership is specifically recognized and honored in Ukraine.

Under Article 26 of the Constitution, foreign citizens enjoy the same rights and freedoms and bear the same responsibilities as Ukrainian citizens, including property rights. According to the Civil Code, foreign citizens and legal entities are entitled to own property in Ukraine, unless otherwise provided for in international treaties involving Ukraine or other Ukrainian laws. The Ukrainian courts ensure protection of property rights in accordance with the applicable Ukrainian laws.

Property rights to real estate (ownership and different use rights) are subject to state registration according to the procedure established by the



Law of Ukraine on State Registration of Property Rights to Real Estate and their Encumbrances, dated 1 July 2004. On 1 January 2013, a restated version of this law came into force and a new property rights registration system became effective. As a result, the State Register of Property Rights to Real Estate administered by the Ministry of Justice of Ukraine (the “**Property Rights Register**”) was created. The Property Rights Register contains, among other things, unified information on property rights to land plots, buildings, structures and premises inside buildings, etc., as well as the existing encumbrances, including mortgages and lease rights thereto. The Property Rights Register replaced the numerous property rights registers, which contained information on restrictions to and encumbrances over real estate, such as the State Register of Mortgages and the State Register of Prohibitions on Alienation of Real Estate, etc.

Under the Law of Ukraine on State Registration of Property Rights to Real Estate and their Encumbrances, the documents for the state registration of property rights may generally be submitted to any notary or other state-accredited registrar (including a notary) authorized in the region (or Kyiv or Sevastopol, as applicable), in which the respective real estate is located. As an exception, in the event of a notary-certified transaction, the state registration of property rights must be completed by the same notary who certified the relevant agreement and is authorized in the respective region (or Kyiv or Sevastopol, as applicable), in which the real estate is located or in which either party to the transaction has a registered address.

Property rights to land plots can only be registered in the Property Rights Register after the state registration of such land plots with the unified state cadaster registration system (the “**State Land Cadaster**”), containing information on the size and designated use of land plots, their owners, encumbrances, as well as various other features of the land plots. The State Land Cadaster was introduced by the Law of Ukraine on the State Land Cadaster, effective since 1 January 2013.

Information on the rights to land plots or other real estate registered in the Property Rights Register and the State Land Cadaster is publicly available for all individuals and legal entities. In particular, any person or legal entity can obtain information about real estate, as well as about the holder of the rights thereto, from the Property Rights Register and the State Land Cadaster in paper or electronic form. In addition, as of 30 June 2015, it is possible to order an extract from the State Land Cadaster via the Public Cadastral Map website and obtain such extract at any administrative

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services center, irrespective of the location of the land plot, on the basis of the principle of extraterritoriality.

## 8.2 Lease of Non-Land Real Estate

The lease of real estate (with the exception of land) in Ukraine is governed by the Civil Code, the Law of Ukraine on the Lease of State and Municipal Property dated 10 April 1992, as amended (the “**State Property Lease Law**”), as well as other laws and regulations.

The Civil Code and the Commercial Code contain general provisions governing the lease of movable and immovable property. In particular, according to the Civil Code, the lease of a building (or other capital structure), or part thereof, must be concluded in writing, notarized and registered in the Property Rights Register if entered into for a period of three years or longer. The Commercial Code defines the essential components of a lease agreement.

According to the Decree of the Cabinet of Ministers of Ukraine On State Duty, for the notarization of a lease agreement by a state notary<sup>1</sup>, parties to it must pay a state duty of 0.01% of the contract price of a lease agreement for a building or other capital structure, capped at 50 times the “non-taxable minimum income” (currently, UAH 850 (equivalent of UAH 17 x 50) or approximately USD 32), and 0.01% of the land appraisal (made on the basis of state-approved methodology) for a land lease agreement. The private notaries’ fees are normally higher than the amount of state duty. However, they are negotiable.

The State Property Lease Law primarily regulates the lease of state and municipal property. However, its provisions may also apply to the lease of private property, unless otherwise expressly provided for by a lease agreement or applicable laws.

## 8.3 Land Ownership

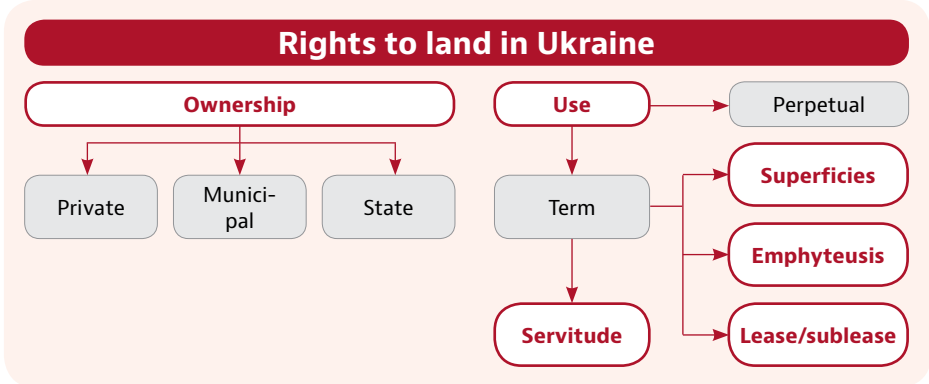
The principal act of law regulating land issues in Ukraine is the Land Code of Ukraine, dated 25 October 2001, as amended (the “**Land Code**”), which entered into force on 1 January 2002. The Land Code applies to all types of land in Ukraine; it governs the legal relations of Ukrainian and foreign individuals and legal entities, state-owned companies, Ukrainian state and municipal authorities and foreign states and international organizations in the area of the ownership, use and disposition of land in Ukraine. The Land

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<sup>1</sup> There are two categories of notaries in Ukraine: the smaller of the two includes notaries who are employed by, and provide notarial services through, the state notarial offices. The larger one includes all other notaries who practice privately.

Code clearly distinguishes between agricultural and non-agricultural land and establishes specific legal treatment for each type of land.

The Land Code provides for the following types of rights to land in Ukraine:

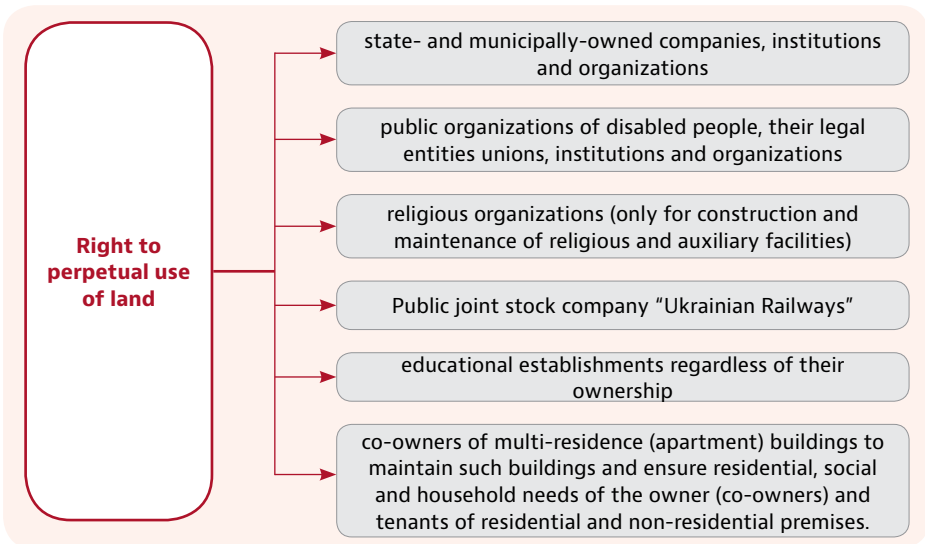


The Land Code expressly states that there are three types of land ownership in Ukraine: private, municipal and state. Subject to certain limitations, Ukrainian individuals and legal entities are not restricted in the ownership, use or disposition of land. According to the Land Code, state or municipal land must be sold to individuals and legal entities exclusively on a competitive basis (auction), except when the purchaser of the land plot is the owner of a construction located on this land plot and in some other cases.

Foreign individuals, foreign legal entities and foreign states are allowed to own, use and dispose of certain non-agricultural land in Ukraine, but are explicitly prevented from owning agricultural land. Foreign legal entities may only own non-agricultural land, within a city, if they purchase buildings, structures or land plots for construction purposes, and, outside a city, if they purchase buildings or structures. However, state or municipal land may be sold to a foreign legal entity if it establishes and registers its permanent establishment as a commercial representative office in Ukraine. The sale of state-owned, non-agricultural land to a foreign legal entity or to a foreign state may be undertaken by the Cabinet of Ministers of Ukraine, subject to the prior approval of the sale by the Verkhovna Rada of Ukraine (the Ukrainian parliament), except for state-owned non-agricultural land occupied by objects to be privatized, which can be sold by state privatization authorities, subject to the prior approval of such sale by the Cabinet of Ministers of Ukraine. Municipal non-agricultural land may be sold to a foreign legal entity or to a foreign state by the relevant municipal authorities, subject to the prior approval of the sale by the Cabinet of Ministers of Ukraine.

The Land Code does not appear to directly grant the right to own any land in Ukraine to Ukrainian companies with 100% foreign investment. It stipulates that only those Ukrainian legal entities that have been founded by (i) Ukrainian individuals or legal entities and (ii) foreign entities, may own land in Ukraine. This discrepancy appears to be an anomaly and the relevant amendments to the Land Code will need to be adopted to remove this defect. However, the Land Code does not contain any similar restrictions with respect to the lease of land by Ukrainian legal entities with 100% foreign investment (for more details, please see 8.4 below).

The right to perpetual (ie, an indefinite period of) use of land may now only be granted to:



The Land Code contains a number of transitional provisions that postpone or limit the application of certain provisions until a future date. One of the most important of these, to represent the so-called "moratorium on the turnover of agricultural land" (as summarized in the chart below), states that: until the adoption of the law aimed at regulating the turnover of agricultural land in Ukraine, (i) all state- and municipally-owned agricultural land plots may not be sold and (ii) certain parts of privately-owned agricultural land may not be sold or otherwise alienated (unless such alienation occurs as a result of inheritance, exchange for another land plot in compliance with statutory requirements or termination of land ownership rights for public purposes), may not be contributed to the charter capital of a legal entity and the permitted use of the land mentioned in item (ii) above may not be changed (unless changed for the purposes of any such plot being used for production-sharing purposes). At



the end of 2017, the above moratorium was extended to 1 January 2019, which marks the earliest possible date for its cancellation. The Land Code does not contain any similar restrictions with respect to non-agricultural land.

## Moratorium on the turnover of agricultural land

*until 1 January 2019!*

**state- and municipally-owned agricultural land of any permitted use**

ban on sale

**privately-owned agricultural land relating to:**

- agricultural commodity land
- individual household land allocated in kind to the owners of land shares
- land shares

ban on sale and other alienation

ban on contribution to charter capital

ban on changes to permitted use

### 8.4 Land Leases

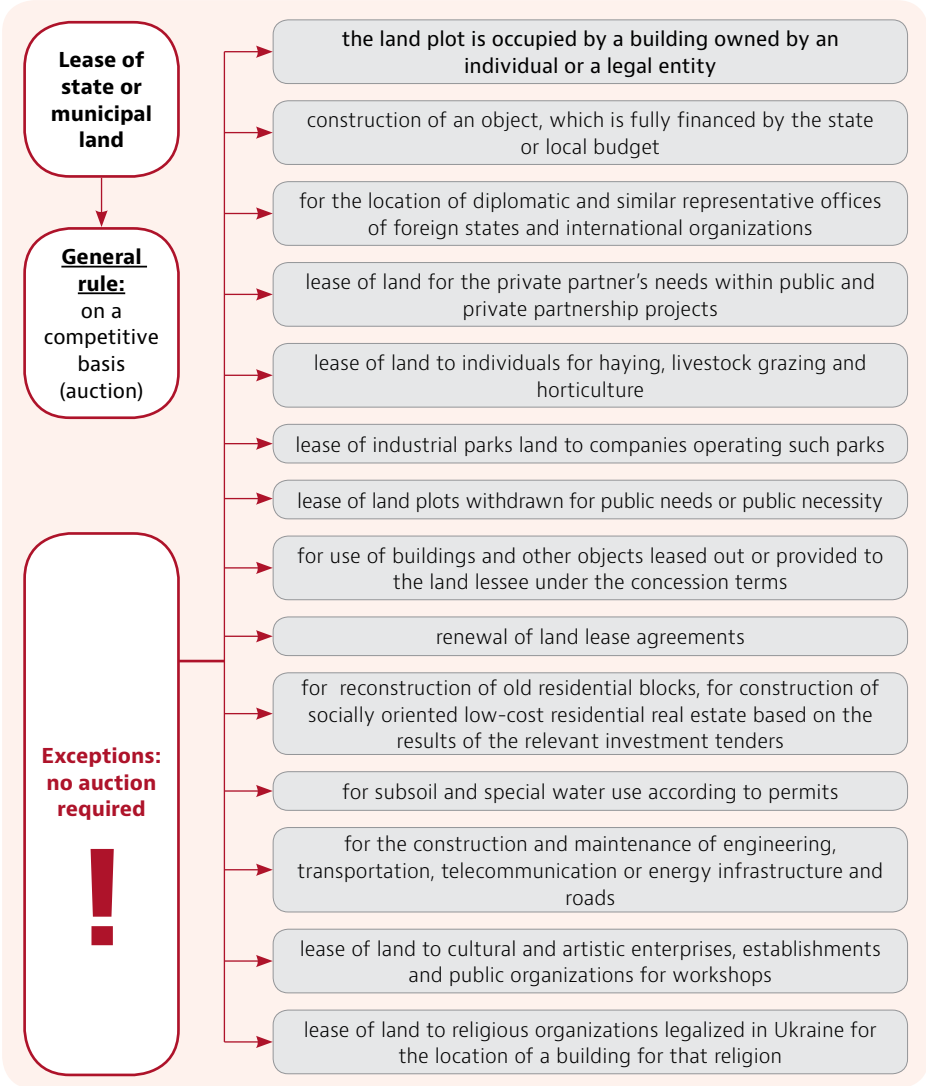
The Land Code contains a number of general provisions with respect to land leases. In particular, it provides that a land lease is the contractual, limited-in-time possession and use of a land plot for the lessee's commercial and other activities, which is granted for compensation. All Ukrainian and foreign individuals and legal entities, foreign states and international organizations may lease land in Ukraine. Under the Land Code, a land plot may be leased out for a period of up to 50 years upon expiration of which such lease could be renewed for another period of up to 50 years and so on. The Land Code establishes the right of a lessee to sublease a land plot, subject to the lessor's consent. The term "lessors of land plots" is defined to include only land owners or their authorized representatives.

More specifically, land lease relations are regulated by the Law of Ukraine on Land Lease, dated 6 October 1998, as amended (the "**Land Lease Law**").

According to the Land Lease Law, a land lease agreement must be executed in writing and must contain a set of essential terms. Those terms are provided for in the Land Lease law and the Model Land Lease Agreement approved by Resolution of the Cabinet of Ministers of Ukraine No. 220, dated 3 March 2004, as amended. In particular, a land lease agreement should contain the following mandatory conditions: the leased object (its location, cadastral number and area), the lease term, the amount of rent and grounds for its revision, the terms for rent payment and the liability for failure to pay rent on time. A land lease must be notarized at the request of either party to the agreement.

The procedure for leasing state and municipal land is set forth in the Land Code and the Land Lease Law. Currently, state or municipal land can be leased out pursuant to a decision of the respective body of executive power (ie, the Cabinet of Ministers of Ukraine or local state administration) or the local council. As a general rule, a tenant of a state and municipal land plot is determined at an auction.

The Land Code waives the auction requirement in some cases as follows:



Currently, the Land Code establishes the requirements and procedure for holding land auctions.

### 8.5 Third-Party Rights

The Land Code recognizes certain rights of third parties to a land plot within the concepts of "servitudes" (easements) and "good-neighborliness". The Land Code contains detailed descriptions of various types of servitudes and the procedures for their establishment and termination.

Under the concept of "good-neighborliness", land owners and land users are obligated to use the land in a manner that will cause the least possible inconvenience and discomfort to the landowners and land users of neighboring land plots (in particular, in terms of shading, smoke, and smell and noise pollution).



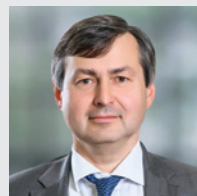


#### EXPERT



**Oleksand  
Kez**  
Associate

#### HEAD OF PRACTICE



**Serhiy  
Piontkovsky**  
Managing Partner

## 9. PRIVATIZATION

### New page in history of Ukrainian privatization: Law 2269

7 March 2018 signified the beginning of a new era in privatization in Ukraine as the new Law of Ukraine On Privatization of State and Municipal Property no. 2269-VIII dated 18 January 2018 (the "Law") took effect. The Law is, without a doubt, the most comprehensive reform of the privatization system since 1992. It has been developed with significant support from international financial institutions, such as the European Bank for Reconstruction and Development, as well as legal and technical experts, with significant input from the Ministry of Economic Development and Trade of Ukraine. Such special attention only proves the important role this reform plays in the economic growth of Ukraine. In short, the Law simplifies and clarifies the procedures applicable to the



sale of state and municipal property and speeds up the overall process from the transfer of assets to the privatization authorities, to post-privatization control and supervision.

The first conceptual novelty is that, instead of having six interrelated groups of assets with different sale methods applicable to each of them, privatization assets are now divided into two groups — large privatization assets (LPAs) and small privatization assets (SPAs). LPAs are shares in joint-stock companies and key assets of companies, the asset value of which exceeds UAH 250 million and where the state owns 50% of shares or more. All other assets fall into the SPA category. Notably, the Law establishes a new principle pursuant to which all assets that are not prohibited from privatization can be sold. From a buyer's perspective, this means that any asset not prohibited from privatization by virtue of the law can be sold, for example, at the buyer's initiative, regardless of whether it is listed as an LPA or SPA.

As for the qualification criteria for buyers for the purposes of privatization, the Law introduces a rule pursuant to which a person who used to be a party to a privatization agreement, which was later terminated as a result of this person's violations, cannot qualify as a buyer. Furthermore, the Law explicitly provides that persons under the national sanctions regime, as well as Ukrainian legal entities the beneficial owners of which have not been disclosed in breach of the applicable law, shall be prohibited from participating in the sale of privatization assets. Interestingly, if the winner of the auction refuses to sign the sale and purchase agreement in respect of an LPA or SPA, the winner and its end beneficiary shall not be allowed to participate in any future auction for the sale of such an asset. This approach allows the government to cut off disreputable investors and requires buyers to think more carefully when selecting a partner for a privatization project.

The Law strengthens buyers' control over the financing of privatization deals. The buyer attracting the financing to purchase the privatization asset must now provide information on its creditor, who must meet the requirements of buyers of privatization assets stipulated in the Law.

### ***Sale of Large Privatization Assets***

Regarding sale of LPAs, the Law reduces the risks associated with determining the starting price. From now on, the price will be determined by a professional adviser engaged by the privatization authority. This may eliminate the conceptual conflict that used to be embedded in the law when the starting price was determined by valuation, which should have reflected

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the fair market value of the asset, while, in principle, the fair market value would be determined as a result of the auction. However, this only applies where an investment adviser is engaged, since, if the CMU decides not to involve an adviser, the starting price would still be determined by the privatization authority based on the results of an independent valuation.

As for the actual sale process, the default option is an “English” auction with at least two bidders. However, if only one bidder is qualified, the LPA may be sold directly to that buyer at a price not less than the starting price. If the LPA is not sold by auction or direct buy-out, the sale shall be made via auction where the starting price should be determined by indicative bidding with the bid secured by the auction deposit (either in cash or as a bank guarantee).

The Law expressly provides for cases when an LPA may be sold with a 25% or 50% decrease from the starting price via an “English” auction. However, it is not entirely clear when the privatization authorities shall announce the indicative bidding action, ie, immediately following the very first auction where the LPA has not been sold, or after two failed auctions when the starting price has been decreased by 25% and 50%, respectively. These tools give a certain degree of flexibility to the privatization authorities, allowing them to choose the sale method appropriate to each particular asset depending on its individual characteristics.

Furthermore, the Law allows the privatization agreement to be governed by the laws of England and Wales at the buyer’s request. However, this option is only available until 2021 if the Ukrainian Parliament does not extend it in the future. Although the extent of the applicability of English law to privatization agreements is still to be determined on a case-by-case basis, potential buyers may view the mere possibility of incorporating a set of warranties and indemnities into a privatization agreement as an attractive option.

The key point in the new Law is the issue of protection of buyers’ rights. The provisions governing the content of a privatization agreement, even if governed by Ukrainian law, may include a set of warranties of the seller as to information on the LPA, and the respective liability for breaching them. Further, after a privatization agreement has been signed, the target company shall not conclude any agreements that are beyond its ordinary course of business without the buyer’s prior consent, eg, asset pledge, set-off, suretyship.





Given that many of the state or municipal enterprises have a significant amount of (typically simulated) indebtedness, the Law introduces an important protection mechanism: no bankruptcy proceedings shall be brought, within one year following completion of a privatization deal, against a privatized company based on grounds that relate to a period prior to the deal's completion. On top of that, once a privatization agreement has been signed, no changes to the custody account relating to arrest or placement of other encumbrances shall be made until the title to the LPA passes to the buyer. These protection measures would allow buyers to directly control any cash-out from the target company after signing the sale and purchase agreement, as well as increase the overall attractiveness of the asset.

### ***Sale of Small Privatization Assets***

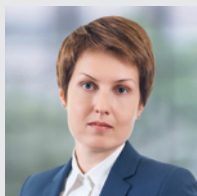
With regards to the privatization of SPAs, the key novelty is the mandatory sale of SPAs via an electronic auction system. The privatization authorities, acting as auctioneers, would conclude the agreements via e-platforms that are functionally capable of holding privatization auctions. All of the processes relating to submission and acceptance of bids as well as determination of the winner of the e-auction would be automated and would not require the privatization authorities' involvement until the binding sale and purchase agreement is being executed.

In terms of the auction process, the default scenario would be an "English" auction with no less than two bidders, and if there is only one bid submitted in respect of an SPA, the asset shall be sold directly to that bidder. If the SPA is not sold, the starting price for the asset shall be decreased by 50%. If the SPA still does not sell, the starting price shall be decreased again by 50% and the asset shall be sold at a "Dutch" auction.

To some extent, the protection of buyers' rights is also applicable to the sale of SPAs. Prohibition of bankruptcy within one year following completion of the deal, as well as placement of an encumbrance over the shares, remain actual for the sale of SPAs.

Once all the major bylaws are approved by the government, all the tools provided by the Law should positively affect the privatization process and complete the long-awaited 'sale' of state and municipal assets.

## EXPERT



**Olga  
Mikheieva**  
Senior Associate

## HEAD OF PRACTICE



**Oksana  
Simonova**  
Partner

## 10. COMPETITION LAW

### 10.1 Overview of Applicable Legislation

The following laws, regulations and guidelines primarily regulate competition law matters in Ukraine:

1. the Law of Ukraine On Protection of Economic Competition (the "Competition Law")
2. the Law of Ukraine On the Antimonopoly Committee of Ukraine
3. the Law of Ukraine On Protection Against Unfair Competition (the "Unfair Competition Law")
4. the Law of Ukraine On State Aid (the "State Aid Law")
5. the Law of Ukraine On Public Procurement (the "Public Procurement Law")
6. the Regulation On the Procedure for Filing Applications with the Antimonopoly Committee of Ukraine for Obtaining of Prior Approval of the Concentrations of Undertakings (the "Concentration Regulation")
7. the Guidelines for the Assessment of Horizontal Concentrations (the "Horizontal Merger Guidelines")
8. the Regulation On the Procedure for Filing Applications with the Antimonopoly Committee of Ukraine for Obtaining of Prior Approval for the Concerted Actions of Undertakings (the "Concerted Actions Regulation")
9. Typical Requirements for Vertical Concerted Actions
10. the Regulation On the Standard Requirements relating to Concerted Actions of Business Entities for their General Exemption from Obtaining Prior AMC Approval
11. the Leniency Regulation (the "Leniency Regulation")
12. the Methodology of Establishing the Monopoly (Dominant) Position of Undertakings on the Market
13. the Methodology of Establishing Control Relations
14. the Guidelines for Calculation of Fines for Violation of Ukrainian Competition Law (the "Fining Guidelines")
15. the Guidelines on Application of the State Aid Law (the "State Aid Guidelines")





The Antimonopoly Committee of Ukraine (the “AMC”) is the state regulator in the sphere of competition law. It has the authority to investigate infringements of competition law and impose fines, as well as to clear transactions that require prior approval from the AMC.

The Competition Law has extra-territorial effect. This means that its provisions extend to transactions, relations, agreements and actions that take place among and are carried out by Ukrainian and/or foreign persons in or outside of Ukraine if they could affect competition in Ukraine.

The Competition Law and related legislation regulate the following matters:

1. merger control issues
2. anticompetitive concerted actions of undertakings and governmental authorities
3. abuse of a monopoly (dominant) market position
4. restrictive and discriminatory conduct of undertakings
5. unfair competition and advertisement
6. review of public procurement rules violations
7. state aid

## 10.2 Merger Control

Transactions Subject to AMC Approval:

The Competition Law requires prior AMC approval for the following transactions (ie, “concentrations”) if the financial thresholds described below are exceeded:

- (i) mergers or consolidations of business entities
- (ii) acquisition of direct or indirect control over a business entity or part thereof, including through:
  - direct or indirect acquisition into ownership, lease, concession or management of a significant part of assets of a business entity (including in the process of liquidation); or
  - appointment to the positions of chairperson and/or deputy chairperson of the supervisory/management board or other supervisory/executive body of persons, who already hold similar positions in other business entities; or creating a situation where more than half of the members of the mentioned bodies hold similar positions in other business entities
- (iii) establishment of a business entity by two or more business entities that will engage in independent business activities over a prolonged period, provided that such establishment does not result in the

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coordination of competitive conduct among the founding business entities, or among them and the newly established entity

- (iv) direct or indirect acquisition of, obtaining ownership of or management over the shares (participatory interests) of a business entity if such acquisition results in obtaining or exceeding 25% or 50% of the voting rights in the highest governing body of the target business entity

#### Financial Thresholds:

The foregoing types of transactions are subject to prior AMC approval if:

- the aggregate worldwide asset value or turnover of all parties to the transaction exceeds EUR 30 million while the Ukrainian asset value or turnover of each of at least two parties to the transaction exceeds EUR 4 million for the fiscal year preceding the year of the transaction;

OR

- the Ukrainian asset value or turnover of the target, or sellers of assets, or at least one of the founders of the new business entity exceeds EUR 8 million, while the worldwide asset value or turnover of the other party exceeds EUR 150 million for the fiscal year preceding the year of the transaction.

The thresholds are to be calculated on a group level, meaning all parties related by control to the transaction parties should be taken into account when doing the calculations.

#### Exempted Transactions:

The following transactions do not qualify as “concentrations” and, thus, do not require prior merger control approval even if the financial thresholds are exceeded:

- (i) establishment of a business entity aimed at or resulting in coordination of competitive behavior between its parents or its parents and the new business entity (this transaction may qualify as concerted actions and may require approval for concerted actions)
- (ii) acquisition of shares (interest) in a business entity by a financial institution for the purposes of re-sale within one year and on the condition that the acquirer does not exercise voting rights attached to such shares (interest)



- (iii) intra-group transactions, provided, however, that a group has been established in compliance with Ukrainian merger control requirements (ie, all necessary AMC approvals were obtained for transactions leading to the establishment of the group if and when such approvals were required in the past)
- (iv) acquisition of control over a business entity or a division thereof, including the right to manage and administer the assets of such entity, by an appointed receiver (in insolvency proceedings) or by a state official

#### Procedures and Timing:

If the transaction qualifies as concentration, and financial thresholds are exceeded, filing is to be made to the AMC and prior approval is to be received before the transaction can close. The filing obligation is mandatory, and even foreign-to-foreign transactions with no material nexus to Ukraine have to be cleared by the AMC if the financial thresholds are exceeded.

In 2016, the AMC simplified disclosure requirements for merger control filings and introduced a simplified fast-track filing review procedure, which takes up to 25 calendar days from the date of its receipt. Fast-track review is available for transaction where:

- (i) only one party is active in Ukraine
- (ii) the combined market share of parties on the same (horizontal) market does not exceed 15%
- (iii) the combined market share of parties on vertically integrated markets does not exceed 20%

The standard Phase I review procedure takes 45 calendar days (15 days for initial review and 30 days for substance review). The Phase II review procedure (if establishing grounds to prohibit the transaction) is limited to 135 days from the date of Phase II notice to parties.

Transactions cleared by the AMC have to be completed within one year from the date of approval, unless the authority allows a longer period.

The AMC may prohibit the concentration if it leads to monopolization or a substantial restriction of competition in the respective market or a significant part thereof.

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Approval of the Cabinet of Ministers of Ukraine:

If the AMC refuses to grant its approval to the notified transaction, the Cabinet of Ministers of Ukraine may grant such approval under special circumstances. These special circumstances are limited to cases where the positive effects of the transaction will have a greater impact on public interest than its negative effects.

### **10.3 Anticompetitive Concerted Actions**

Prohibited Concerted Actions:

The Competition Law prohibits any actions/arrangements/conduct of business entities which resulted or may result in prevention, elimination or restriction of economic competition on any product market in Ukraine. The list of prohibited concerted actions includes:

- (i) fixing prices or other conditions for purchase or sale of goods
- (ii) limiting production, markets, technological development or investments, or assuming control over them
- (iii) dividing markets or sources of supply according to territory, type of goods, sale or purchase volumes, types of sellers, purchasers or consumers, or otherwise
- (iv) distorting results of tenders, auctions or bids
- (v) ousting from the market or limiting access to (exit from) the market for other business entities, purchasers or sellers
- (vi) applying different terms to equivalent transactions with other business entities, placing them in a competitively disadvantageous position
- (vii) making the conclusion of contracts subject to acceptance of additional obligations, which, by their nature or according to commercial practice, are not relevant to the subject matter of the concluded contracts
- (viii) substantially limiting the competitiveness of other business entities on the market without objective, justifiable reasons
- (ix) engaging in similar actions (or failing to act) on the market, which resulted or may result in prevention, elimination or restriction of competition when an analysis of the situation on the market proves the absence of objective reasons for such actions or failure to act

Such concerted actions resulting or that may result in prevention, elimination or restriction of economic competition on any product market in Ukraine are prohibited unless they are individually allowed by the AMC (under the procedure established by the Concerted Actions Regulation) or fall under a limited number of exemptions.



#### Available Exemptions:

The Competition Law provides for de minimis exemption, block exemption and general exemption, under which the parties (if they qualify) do not need to obtain prior AMC approval in order to engage in the described concerted actions. Under the de minimis exemption, the aggregate market share of the parties (on a group level) in any product market cannot exceed 5%.

Under the block exemption, the aggregate market share of the parties (on a group level) cannot exceed 15% (for horizontal or mixed concerted actions) or 20% (for vertical or conglomerate concerted actions) in any product market, unless the following financial thresholds are exceeded by the parties to such actions:

- (i) the aggregate worldwide asset value or turnover of all parties to the concerted actions exceeds EUR 12 million for the preceding fiscal year; provided that:
  - the aggregate worldwide asset value or turnover of at least two of the parties to the concerted actions exceeds the equivalent of EUR 1 million for the preceding fiscal year; and
  - the aggregate Ukrainian asset value or turnover of at least one party to the concerted actions exceeds the equivalent of EUR 1 million for the preceding fiscal year.

These thresholds are to be calculated on a group level, meaning all parties related by control to the parties to the concerted actions should be taken into account when doing the calculations.

Under the general exemption, the prohibition does not apply if the restrictions set by a party relate to the use of its products supplied by such party or other suppliers, the purchase of products from other business entities or the sale of such products to other business entities, unless such restrictions (i) result in a substantial restriction of competition, including monopolization on any product market, (ii) restrict access to such market for other business entities or (iii) result in economically unjustified price increases or a shortage of the respective goods. It is expected that the general exemption will be removed from the Competition Law in the very near future.

It should also be noted that neither de minimis exemption nor the block exemption applies to the vertical concerted practices as there is a separate list of exemptions relating to the vertical concerted actions that is envisaged by the Typical Requirements relating to Vertical Concerted Actions (the "Vertical Guidelines"), adopted by the AMC in October 2017, which are in effect as of 5 December 2017.

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According to the Vertical Guidelines, starting from 5 December 2017, certain types of vertical arrangements are exempted from the necessity of getting the AMC approval, subject to the following conditions:

- the market shares of the supplier and the buyer in the respective relevant markets do not exceed 30%
- subject to the preceding paragraph, if the vertical arrangements are to be performed between an association of retailers and its members or such association and its suppliers (provided that no member of the association has a total annual turnover exceeding EUR 25 million for the previous fiscal year)
- concerted actions are to be performed between contractor and subcontractor (with certain exemptions)

At the same time, the Vertical Guidelines prohibit implementation of the following concerted actions without the AMC's approval:

- vertical concerted actions to be implemented between competing undertakings (with some exceptions)
- hard-core restrictions, such as price-fixing, restrictions on the territory or customer type (with some exceptions)
- any non-compete obligations concluded for more than five years or for an unidentified period of time (with some exceptions)
- obligations of the buyer not to produce, buy, sell/resell the goods after the termination of an agreement (with some exceptions)
- any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing supplier(s)

#### **10.4 Abuse of a Monopoly (Dominant) Position**

Dominant entities are subject to certain restrictions on their activities.

Under the Competition Law, an entity can be considered as holding a monopoly (dominant) position, if it:

- has no competitors in the market;
- does not face significant competition, in particular due to the limited possibility for other companies to enter the market in connection with certain privileges, barriers, etc.;
- holds 35% or more of the market share, unless it proves that it faces competition on the relevant market; or
- has a lower market share, but does not face any significant competition in the market.

The following unilateral conduct of a dominant entity is considered abuse of dominance and is prohibited:



- setting prices or other conditions for purchase or sale of goods, which could not have been set if there was significant competition on the market
- applying different prices or other conditions to equivalent transactions with business entities, sellers or purchasers without reasonable justification
- making the conclusion of contracts subject to a business entity's acceptance of additional obligations, which, by their nature or according to commercial practice, are not relevant to the subject of the concluded contracts
- limiting production, markets or technological development, which harmed or may harm other business entities, purchasers or sellers
- refusing (partially or in full) to purchase or sell goods in the absence of alternative sources of such supply or purchase
- significantly limiting the competitiveness of other entities without objective, justifiable reasons
- establishing barriers for entering into (exiting from) the market or removing sellers, buyers or other market participants from the markets, etc.

This list is not exhaustive. Thus, any other type of harmful, restrictive conduct (or failure to act) from a dominant entity may also potentially be considered abusive.

The Competition Law also establishes the concept of “collective dominance” according to which entities are considered dominant (unless they prove otherwise) if:

- the aggregate market share of up to three entities, which have the largest market shares in the same product market, exceeds 50%
- the aggregate market share of up to five entities, which have the largest market shares in the same product market, exceeds 70%

The exceeding percentage is not in itself a problem; an entity has to abuse its dominant position/substantial market power to be liable under the Competition Law.

Entities holding a dominant position on the market face higher risks of being scrutinized by the AMC.

## 10.5 Unfair Competition and Advertisement

Unfair competition is deemed any competitive act that contradicts trade and other good-faith customs in business. Unfair competition is prohibited in Ukraine.

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Unfair competition issues are regulated by the Unfair Competition Law, which determines the following unfair market practices that result in liability for business entities who engage in them:

- (i) unauthorized use of a commercial name, trademark, advertisement materials, packaging materials and other marks that belong to another business entity
- (ii) unauthorized use of the goods of another manufacturer or copying their appearance
- (iii) comparative advertisement
- (iv) discrediting business entities (spreading false, misleading or inaccurate information) or their goods
- (v) coercion toward boycotting or discriminating against a business entity
- (vi) bribing an employee or manager of a supplier or customer
- (vii) attaining unlawful advantages in competition
- (viii) spreading misleading information
- (ix) unlawfully collecting, using or disclosing commercial secrets

## **10.6 Public Procurement**

Public Procurements in Ukraine are governed by the Public Procurement Law, which approved the mandatory transition of all public procurement to the e-procurement system ProZorro since August 2016. The Public Procurement Law provides for three public procurement procedures:

- Public bids
- Competitive dialogue
- Negotiable procurement procedure

Under the Public Procurement Law, appeals against any decisions, actions or omissions of the contracting authority may be filed through the e-procurement web portal at any stage of the tender procedure.

The AMC was determined as the public procurement review body responsible for considering appeals regarding violations of the public procurement rules.

## **10.7 State Aid**

In August 2017, the State Aid Law came into force. The State Aid Law established the legal basis for monitoring state aid to business entities, mechanisms for exercising control over the compatibility of such aid and determined the AMC as the state aid regulator in Ukraine.

Types of state aid include subsidies and grants, capital injections on preferential terms, debt write-offs, state guarantees, tax incentives, deferral





of tax, duties or other mandatory payments to state budget, indemnification of losses and others. The state aid can only be granted following notification to the AMC and receipt from the authority of its decision.

The AMC is responsible for reviewing notifications on state aid from its providers and deciding whether such new state aid is compatible with the internal market, as well as making decisions on recovery of incompatible state aid. The State Aid Law also provides for the concept of *de minimis* aid in an amount not exceeding EUR 200,000 that a single undertaking may receive over a rolling three-year period, which is not subject to notification to the AMC.

Under the State Aid Law, state aid is deemed compatible if it is granted in order to:

- (i) provide consumers with socially important goods, given such aid is non-discriminatory in terms of origin of such goods; and
- (ii) indemnify losses caused by natural or man-induced emergencies pursuant to the law.

State aid may be found compatible if it is granted to:

- (i) contribute to social and economic development of regions with poor living standards or a high unemployment rate
- (ii) implement nationwide programs or address nationwide social and economic needs
- (iii) contribute to the development of certain types of business activities or undertakings operating in certain economic areas, unless this violates the effective international treaties of Ukraine approved by the Ukrainian Parliament
- (iv) support and preserve national cultural heritage, provided it has minor impact on competition

Also, in October 2017, the AMC issued the State Aid Guidelines, which interpret the provisions of the State Aid Law to the state providers and recipients.

## **10.8 Liability for Infringements of Competition Law, Immunity/Leniency**

Actions Qualifying as Infringements:

The following activities, among others, are recognized as violations of the Competition Law, resulting in liability for parties that engaged in them:

1. Anticompetitive concerted actions by business entities or state/municipal authorities

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2. Abuse of a monopoly (dominant) position
  3. Failure to comply with AMC decisions or partial compliance
  4. Restrictive or discriminatory activities
  5. Failure to obtain AMC approvals for concentrations or concerted actions where such approvals were required
  6. Failure to submit information at the request of the AMC, or submission of incomplete or incorrect information
  7. Impeding AMC officials during the course of audits, raids or collection of documents or data carriers

#### Sanctions:

The following sanctions may be imposed on undertakings for competition law infringements:

- fines
- splitting-up of business entities
- administrative fines for officials/employees of undertakings and state/municipal authorities
- compensation of third-party damages
- invalidation of transactions
- ban on the entity's foreign economic activities
- confiscation of goods from turnover if such goods were produced/sold using or copying other parties' goods/trademarks
- recovery of incompatible state aid

#### Fines That May Be Imposed:

The AMC is authorized to impose the following fines for various types of competition law infringements:

1. up to 1% of the parties' annual turnover for the year preceding the year in which the fine is imposed for:
  - (i) coercion toward competition law infringements
  - (ii) failure to submit information at the request of the AMC, or submission of incomplete or incorrect information
  - (iii) impeding AMC officials during audits, raids or collection of documents or data carriers
  - (iv) restricting business activities of an undertaking in response to the latter's complaint to the AMC regarding competition law infringement
2. up to 5% of the parties' annual turnover for the year preceding the year in which the fine is imposed for:



- (v) failure to obtain merger control or concerted actions approval for transactions/activities that required approval (the AMC may also apply to a court to invalidate the respective transaction if it led to monopolization of any product market or if it significantly restricted competition on any product market in Ukraine)
  - (vi) coercion toward engaging in anticompetitive concerted actions
  - (vii) discrimination of competitors
  - (viii) engaging in activities prohibited by the Unfair Competition Law
3. up to 10% of the parties' annual turnover for the year preceding the year in which the fine is imposed for:
- (ix) actual performance of anticompetitive concerted actions (the AMC may also apply remedial measures (ie, impose certain obligations on parties to concerted actions) in order to restore competition on the market)
  - (x) abuse of monopoly (dominant position)
  - (xi) failure to comply with AMC decision or partial compliance

Fines may be imposed based on the turnover of the infringing parties on a group level (including all persons/entities related to the infringers by control).

#### Fining Guidelines:

On 15 September 2015, the AMC approved the Fining Guidelines, which made the AMC's process of calculating fines more predictable and transparent.

Under the Fining Guidelines, horizontal anticompetitive concerted actions that led or may lead to elimination, distortion or limitation of competition in the market are considered as the "most severe." The recommended fine for such infringements is 15% of the turnover generated from sales or purchase of products which are directly or indirectly related to the infringements.

Implementing a transaction without approval from the AMC may qualify as a "severe" infringement (where it resulted in market monopolization or a significant restriction of competition in the markets) or a "medium severe" infringement (where implementing a transaction without approval from the AMC did not lead to market monopolization or a significant restriction of competition). Abuse of dominance and other types of anti-competitive concerted actions, as well as some other types of infringement, may qualify as severe infringements as well.

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The recommended fine for severe infringements is up to 10% of the turnover generated from the sales on the market in which concentration has taken place or in the adjacent markets.

The recommended fine for medium severe infringements, if there is an overlap in the parties' activities (including their related parties), is between UAH 510,000 and 5% of the turnover generated from sales on the market in which the concentration has taken place or in adjacent markets – starting from the completion of the transaction until the merger control application is filed to the AMC or for the last fiscal year preceding the year in which the fine is imposed. If the parties' activities do not overlap and they are active in different and non-adjacent markets, the recommended fine is between UAH 170,000 and UAH 510,000.

The fine amounts may be increased further or reduced by 50% if there are aggravating or mitigating circumstances.

The Fining Guidelines also establish guidelines for calculating fines for other types of infringements (eg, providing inaccurate or incomplete information or failing to provide information at the request of the AMC (the maximum fine is 1% of group turnover), etc.).

#### Statute of Limitation/Appeal of AMC Decisions:

The general statute of limitation for holding undertakings liable for competition law infringements is five years from the date of committing the infringement. For continued infringement, the undertakings may be held liable within five years after the termination of infringement.

The five-year statute applies to all types of infringements except for failing to submit information at the request of the AMC, submitting incomplete or incorrect information or impeding AMC officials during the course of audits, raids or collection of documents or data carriers (for which a three-year statute of limitation applies).

The AMC's decisions may be challenged in commercial courts within two months from the date of receiving the decision. Reviewing claims against the AMC's decisions in lower commercial courts is limited to a two-month term.



### AMC Powers in Investigating Infringements:

The AMC is entitled to investigate and make decisions in cases of abuse of dominant positions, infringement of the Unfair Competition Law, anti-competitive actions/omission of state bodies/agencies, submission of incomplete/inaccurate information to the AMC, non-submission of information to the AMC at its request, etc.

The Competition Law provides that the AMC is authorized to consider cases on competition law infringements and to render decisions in such cases, including:

- recognizing the violation
- ordering the termination of the violation
- ordering the elimination of the violation's consequences
- compelling state authorities, local self-governing authorities and administrative management authorities to cancel or amend their decisions or to terminate such authorities' agreements constituting anti-competitive actions
- recognizing a business entity as holding a monopoly (dominant) position in a given market
- recognizing a business entity as abusing its monopoly (dominant) position
- ordering the splitting-up (divestiture) of a business entity abusing its monopoly (dominant) position in a given market
- imposing fines
- blocking securities on securities accounts

### Leniency (Immunity):

In 2012, the Leniency Regulation was approved to allow undertakings to apply for immunity in cases regarding anticompetitive concerted actions. In order to receive immunity from the AMC, an undertaking must:

- be the first to voluntarily inform the AMC regarding the anticompetitive concerted actions (this has to be done prior to the AMC issuing a statement of objection in the investigation)
- provide exhaustive information and evidence to the authority to enable the AMC to issue its decision in the case
- cease any participation in the anticompetitive conduct subject to investigation

## 10.9 Competition Law Reforms: Achievements and Expectations

The Ukrainian competition legislation has significantly altered in the last year and a half. The reasons for this are a notable change in the AMC's composition and the willingness of newly appointed AMC members to

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comply with Ukraine's obligations relating to the implementation of the Association Agreement with the European Union. The main reforms, which were recently implemented, are as follows:

1. Starting from May 2016, financial thresholds triggering a requirement for merger control filing were increased and became effective, while the market share triggering threshold (35%) was abolished.
2. A mechanism of preliminary consultations with the AMC is now available to allow filing applicants to consult with the authority regarding the scope of disclosure in filings.
3. A simplified fast-track filing review procedure (not exceeding 25 calendar days) and a limitation for the Phase II review period (135 calendar days) were introduced.
4. A new Concentration Regulation was approved, which simplified disclosure requirements for parties in the course of filing preparation on one hand, while requiring profound economic analysis for transactions that may impact competition in Ukraine on the other hand.
5. Applicants in merger control filings are now required to disclose the beneficial owners of their groups; failure to do so serves as a ground for rejection of filing by the AMC as being incomplete.
6. Applicants can now offer remedies in situations where the AMC identifies grounds for prohibition of notified transactions.
7. The Fining Guidelines (providing for greater clarity on calculation of fines that may be imposed by the AMC) were approved and the authority committed to following them despite their non-binding nature.
8. Starting from July 2015, the AMC voluntarily started publishing non-confidential versions of its decisions and, in March 2016, the publication became binding on the AMC, providing for greater transparency of the AMC's activities.
9. In December 2016, the AMC approved the Horizontal Merger Guidelines, which provide guidance on the authority's assessment of concentrations involving potential or actual competitors on the same product market.
10. In August 2017, the State Aid Law became fully effective.



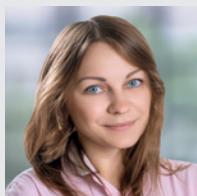
11. In October 2017, the AMC adopted the Vertical Guidelines, which provide clearer guidance on the permitted and prohibited concerted practices.
12. In December 2017, changes to the Competition Law came into force, providing the AMC with the right to return the merger control and/or concerted actions filings without consideration if any party to the notified transaction is subject to governmental sanctions on the basis of the Law of Ukraine "On Sanctions." The authority has also been granted with power to cancel its previously issued approvals of transactions where sanctioned companies were involved.

The completed reforms represent a broader effort to harmonize the Ukrainian competition law with that of the European Union and generally make Ukraine a friendlier place to do business in. While the reforms have been supported and welcomed by the business community and legal experts, there is still a number of unresolved issues that need to be addressed by the AMC and the Ukrainian Parliament, including:

1. approval of the draft law on calculation of fines for competition law infringements, which will make the Fining Guidelines mandatory for the authority
2. revision of the Concerted Actions Regulation (which remained unaddressed during the first wave of reforms)
3. implementation of the simplified conditions for mergers involving exchange of technology



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# 11. DISPUTE RESOLUTION

## 11.1 Introduction

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 Ukraine, for the resolution of disputes.

Starting from 15 December 2017, judicial reform was implemented in Ukraine, by which the judicial system was reorganized and new procedural legislation was introduced.

In Ukraine, the courts of general jurisdiction are organized according to the principles of territoriality and specialization, and include local courts, appellate courts, and the Supreme Court consisting of specialized cassation courts, as shown in Diagram 1 in Section 11.2.

Local courts consist of common courts and specialized courts (ie, commercial and administrative courts). Local common courts consider civil and criminal cases, cases on administrative violations and, in certain situations, administrative cases as well. Local commercial courts exercise jurisdiction over disputes arising out of commercial relations (commercial cases), while local administrative courts administer justice in disputes connected with legal relations in the area of state and municipal governance (administrative cases), except for those assigned to the jurisdiction of local common courts, as mentioned above.

The appellate instance courts are composed of the appellate courts of general jurisdiction (having competence over civil cases, criminal cases and cases on administrative violations), appellate commercial courts and appellate administrative courts.

Cassation supervision is carried out by the relevant cassation specialized court in the structure of the Supreme Court.

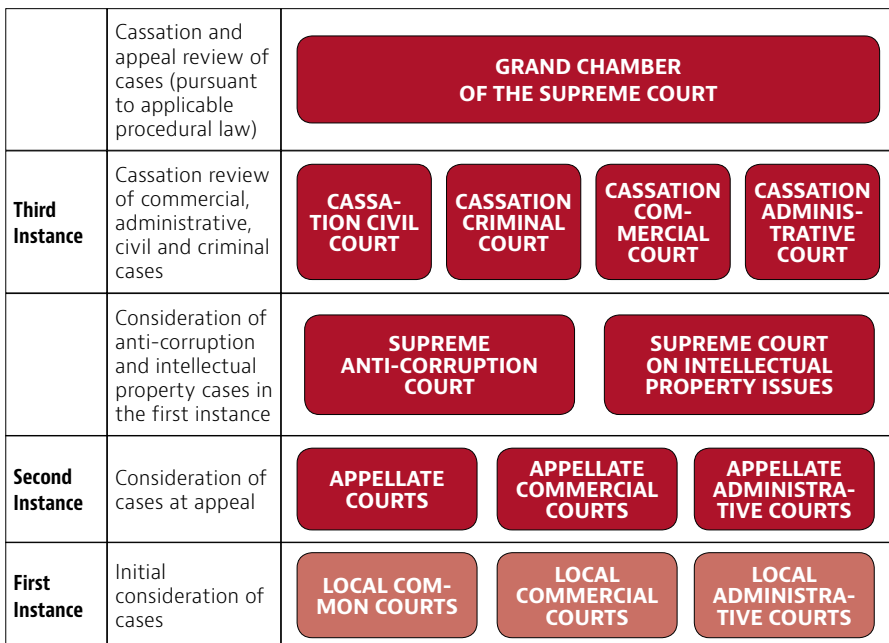


The Supreme Court consists of five chambers: the Cassation Civil Court, the Cassation Criminal Court (both acting as the cassation instance court for cases resolved by the local and the appellate common courts), the Cassation Commercial Court (acting as the cassation instance court for cases resolved by the local and the appellate commercial courts), the Cassation Administrative Court (acting as the cassation instance court for cases resolved by the local and the appellate administrative courts) and the Grand Chamber of the Supreme Court (responsible for the uniform application of legislation by the cassation courts and acting as the appellate instance court in cases considered by the Supreme Court).

Each cassation court consists of separate chambers specializing in particular categories of case. In particular, the Cassation Commercial Court includes separate chambers for resolving corporate disputes, bankruptcy cases, disputes concerning protection of intellectual property rights and antimonopoly disputes.

In addition, there will be two new courts: the Supreme Court on Intellectual Property Issues and the Supreme Anti-Corruption Court. Both shall act as first instance courts in resolving cases of their specialization. Such courts are being established and do not operate yet.

**Diagram 1: The Ukrainian Court System (2017 onwards)**



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Since Ukraine is a civil law country, the exercise of judicial power is based on the application of statutes. However, the Ukrainian courts, when resolving cases, must refer to and consider decisions of the Supreme Court regarding the application of relevant provisions of Ukrainian law applicable to the disputed relations of the parties. At the same time, the Ukrainian courts should take into consideration judgments of the European Court of Human Rights, which are a source of law in Ukraine.

## **11.2 Commercial Litigation in Ukraine**

For the resolution of business-related disputes, 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 Ukraine. A legal entity's/individual's right to apply to a Ukrainian court may not be waived by contract, not even by an arbitration agreement between the parties. If an arbitration agreement exists between the parties, the party objecting to the review of the dispute by a Ukrainian court must raise such objection in the relevant court proceedings before making its first submission on the merits of the dispute; otherwise, the court will accept jurisdiction and will proceed to review the dispute and to render a decision.

Currently, the specialized commercial courts exist within the system of courts of general jurisdiction (ie, "*hospodarski sudy*" or "commercial courts"). As a general rule, a business-related dispute between business entities (including individual entrepreneurs) shall be reviewed by the commercial court having jurisdiction at the location of the respondent, according to the rules of the Commercial Procedural Code of Ukraine, dated 6 November 1991 (as amended in 2017). However, it should be noted that all corporate disputes between a company and its participant (shareholder) as well as all corporate disputes between the founders (shareholders) of a company shall be considered by the commercial court having jurisdiction at the location of the company. Such disputes shall be considered by a commercial court even when one of the parties is an individual (rather than a legal entity or an individual entrepreneur). In all other cases involving individuals, commercial cases shall be considered in the local common courts under the rules of the Civil Procedural Code of Ukraine, dated 18 March 2004, as amended in 2017. In general, there are no limitations (including monetary limits) on the jurisdiction of the commercial courts, other than specialization and territorial factors.

According to the Law of Ukraine "On Court Fee," with amendments effective starting from 15 December 2017, the court fee for bringing an action at a commercial court has changed. Currently, the maximum court fee for filing a

monetary commercial claim is approximately USD 20,500. If the claim is non-monetary, the court fee shall be approximately USD 60.

The Law of Ukraine "On International Private Law," dated 23 June 2005, envisages broader opportunities for consideration of cases with a foreign element by the Ukrainian courts compared to the Commercial and Civil Procedural Codes. According to the court practice on disputes involving foreign companies published by the Supreme Commercial Court of Ukraine, the Ukrainian courts' jurisdiction over disputes involving a "foreign element" should be established in accordance with the Law of Ukraine "On International Private Law."

**Disputes with a "foreign element,"  
reviewed by Ukrainian courts**

- (1) if the parties previously agreed on the Ukrainian court's jurisdiction;
- (2) the damage which is the subject of the dispute was caused in the territory of Ukraine; or
- (3) an act or event, which is the ground for the dispute, took place on the territory of Ukraine, etc.

**Exclusive jurisdiction of Ukrainian  
courts on consideration of  
disputes with a "foreign element"**

- (1) disputes over real estate located in Ukraine;
- (2) disputes over intellectual property rights that require registration in the territory of Ukraine;
- (3) bankruptcy disputes, provided that the debtor is incorporated under the laws of Ukraine; or
- (4) cases relating to issuance or annulment of securities originating in Ukraine, etc.

The abovementioned provisions of the Law of Ukraine "On International Private Law" appear to have been adopted in order to make Ukrainian law consistent with the Hague Convention on Choice of Court Agreements of 30 June 2005. In this regard, Ukraine signed the Convention on 21 March 2016. However, it has still not ratified the Convention and has not amended its procedural legislation accordingly. There remains a certain inconsistency in the application of the above provisions by the Ukrainian courts.

Under the Commercial Procedural Code of Ukraine, the court venue is determined following the territorial principle. Generally, disputes are considered by the commercial court at the location of the respondent. Cases

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for the conclusion, modification, termination or recognition as null and void of agreements are considered by the court at the location of the debtor party to such agreement (ie, the party under an obligation to provide the services, to transfer assets, etc.).

The exclusive venue for disputes involving title to property, the illegal use of property or the removal of obstacles to the use of property is established by the court at the location of such property. Disputes over the registration and recording of rights to securities are exclusively considered by the commercial court at the location of the securities' issuer, while disputes arising out of transportation agreements are considered by the court at the location of the transportation organization. The Kyiv City Commercial Court has exclusive jurisdiction for cases where the respondent is a central governmental authority or where state secrets are involved.

In commercial proceedings, the claimant may seek issuance of an injunction before the commencement of the court proceedings or during consideration of the case by the competent court. In its request for injunctive relief, the claimant may ask the court to impose one or several measures, such as the arrest of funds or other assets of the respondent, or ordering the respondent or third parties to refrain from certain actions.

The new procedural rules, which became effective on 15 December 2017, provide for more procedural measures to be applied in order to prevent or punish abuse of procedural rights by the parties to dispute, which usually result in significant delays in the proceedings. The new rules have extended the range of evidence which can be considered by the court, recognized electronic documents as acceptable, conferred independent expert opinions to the same status as court expertise opinions, etc. The new rules also provide for more specific regulations related to court fees' allocation and compensation of damages, occurred as a result of injunctive relief measures.

In addition, a number of legislative acts have been enacted recently in order to protect the rights of shareholders and other owners of commercial enterprises from unlawful corporate takeovers. Such amendments to the rules of commercial and civil court procedure, as well as to the provisions of corporate legislation, substantially improved the consideration of corporate disputes by the courts.

**Rules prohibit the application of the following injunctive measures in corporate disputes:**



prohibition on holding general meetings of shareholders or other meetings of the owners of a commercial enterprise and prohibition on issuing decisions at these meetings

prohibition on providing the register of privileged shares or information about the shareholders or other owners of a commercial enterprise by the shares issuer, the registrar, the keeper or the depository for holding general meetings of shareholders of a commercial enterprise

prohibition on shareholders or other owners of a commercial enterprise participating in general meetings of shareholders, and prohibition on establishing the legal capacity of general meetings of shareholders or other meetings of the owners of a commercial enterprise

prohibition on executing a decision of the Deposit Guarantee Fund regarding appointment of an authorized person or implementation of temporary administration or liquidation of a bank, or prohibition on such authorized person of the Deposit Guarantee Fund performing certain actions

It is also established that the claimant may seek, and the court may grant, only those injunctive relief measures which are stipulated in the Commercial Procedural Code of Ukraine.

As a general rule, in accordance with the recently amended Law of Ukraine "On Enforcement Proceedings," effective court decisions are subject to compulsory execution by the enforcement authorities (state enforcement officers or private enforcement officers, who started to perform their duties on 5 January 2017), at the location of the debtor or the debtor's assets.

In addition, the Law of Ukraine "On State Guarantees Regarding Enforcement of Court Decisions" establishes the procedure for enforcement of court decisions rendered against state bodies, institutions and state-owned companies. This procedure is applied by the state enforcement authorities where a decision remains unenforced six months after commencement of the enforcement proceedings. In such cases, further enforcement of the court decision is to be carried out by the state treasury authority, and the debt shall be recovered from the state budget. In certain cases, such recovery can be made even before expiry of the six-month term (eg, if the debtor has no recoverable assets).

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### **11.3 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 agreement of the parties, for settlement by either ad hoc or institutional international commercial arbitration, either within or outside Ukraine. A business-related dispute involving only Ukrainian parties may be referred to either an ad hoc or an institutional arbitration only in the territory of Ukraine (ie, domestic arbitration) and is not subject to international commercial arbitration. At the same time, disputes of Ukrainian legal entities with foreign investments between themselves or their participants, as well as their disputes with other Ukrainian entities, may be referred to international commercial arbitration.

It should be noted that, in an attempt to fight unlawful corporate takeovers and abusive practices of the local arbitration courts, the legislation on domestic arbitration was substantially amended. Such categories of cases as, for example, real estate, labor, corporate disputes and disputes on establishment of legal facts have been exempted from disputes which can be resolved by means of domestic arbitration. Disputes which arise from corporate relations between a company and its participant (founder, shareholder), including a former participant, or between the participants (founders, shareholders) relating to the establishment, activity, management or termination of their company (ie, corporate disputes) cannot be resolved by international commercial arbitration and must be referred to the competent Ukrainian court.

Currently, there are two well-established institutional arbitration bodies in Ukraine: the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry.

### **11.4 Enforcement of Foreign Court Decisions**

Foreign court decisions will be recognized and enforced in Ukraine only based on the relevant international agreements or under the reciprocity principle, which is presumed to operate unless otherwise proved. Ukraine has international agreements on the reciprocal enforcement of foreign court decisions with several countries, mostly members of the former Soviet Union and/or Soviet bloc.

A foreign court decision will not be enforced in Ukraine if it is determined that: it did not come into force; and/or Ukrainian courts or other Ukrainian authorities have exclusive jurisdiction over such disputes; and/or a Ukrainian



court has rendered a decision or is currently considering a dispute in the same matter between the same parties and such consideration had started before opening of the proceedings by the foreign court; and/or the established term for applying for enforcement of a foreign decision expired; and/or under Ukrainian legislation, a disputed matter is not subject to a court's consideration. Ukrainian courts will also not recognize a foreign court decision against a party which was not given an opportunity to participate in the proceedings due to improper notification, or if the enforcement of such court decision would threaten the interests of Ukraine, or in other cases prescribed in international treaties and Ukrainian legislation.

In addition, it is possible for an interested party to seek injunctive relief measures in the process of recognition and enforcement of foreign court decisions. The same rule applies for the enforcement of foreign arbitration awards, discussed in paragraph 11.5 below.

From 15 December 2017, the new procedural rules governing recognition and enforcement of foreign court decisions in Ukraine became effective. The new rules provide for improved regulation of application of injunctive relief measures to be applied and general procedure of recognition and enforcement of the foreign court decisions in Ukraine.

### **11.5 Enforcement of Foreign Arbitral Awards**

Foreign arbitral awards are, in general, easier to enforce in Ukraine than foreign court decisions, since Ukraine is a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The new procedural rules, which became effective starting from 15 December 2017, significantly improved the mechanism of recognition and enforcement of arbitral awards. In particular, the procedure of filing applications for recognition and enforcement was improved, the mechanism of applying injunctive relief measures was improved, etc.

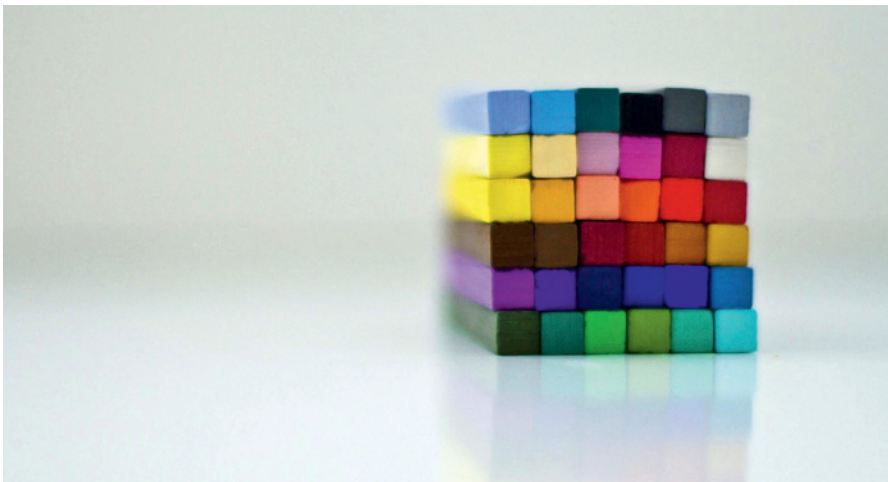
A foreign arbitral award should be recognized as binding and enforced upon a party filing an appropriate motion with the competent Ukrainian court, unless the opposing party proves the existence of any of the grounds established by the 1958 New York Convention or the applicable Ukrainian legislation for the denial of recognition and enforcement of the foreign arbitral award.

### Grounds for denying recognition and enforcement of a foreign arbitral award

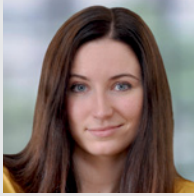


- (1) the agreement to arbitrate is invalid under the chosen law;
- (2) one of the parties, while entering into the arbitration agreement, was legally incapable;
- (3) the losing party was not duly notified of the appointment of the arbitrator or the conduct of the arbitration proceedings;
- (4) the losing party could not submit its explanations for valid reasons;
- (5) the arbitration award was rendered on an issue outside the scope of the arbitration agreement;
- (6) the arbitral tribunal or procedure did not comply with the arbitration agreement;
- (7) the arbitral award did not enter into force, or was annulled or its execution was suspended by the court of the country, according to the laws governing such arbitral award

Similarly, a foreign or local arbitral award may be unenforceable in Ukraine if a Ukrainian court determines that the subject-matter 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.





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## 12. FINANCIAL SERVICES

### 12.1 Ukrainian Financial Services Sector

The Ukrainian financial (non-banking/non-securities) services sector is a significant part of the services sector in Ukraine.

Financial institutions act in accordance with:

- the Constitution of Ukraine
- the Civil Code of Ukraine
- the Commercial Code of Ukraine and the Law of Ukraine On Financial Services and the State Regulation of Financial Services Markets (the "Financial Services Law") dated 12 July 2001
- Ukrainian legislation on joint stock companies and other business entities
- regulations of the National Commission Carrying out State Regulation of the Financial Services Markets (the "Financial Services Commission")

In 2015, the Financial Services Commission, together with the National Bank of Ukraine and the National Securities and Stock Market Commission, adopted a comprehensive program of reforming financial services markets until 2020, which envisages, among many other issues:

- reorganization of the regulation of the financial services market
- reorganization of the Financial Services Commission into the other two regulators

### 12.2 Role of the Financial Services Commission

The Financial Services Commission is the specialized state agency responsible for the regulation and control of (non-banking/non-securities) financial institutions in Ukraine.

The Financial Services Commission is authorized to:

- register financial institutions
- issue licenses to insurance companies, consumer finance and other financial companies

- 
- adopt regulations
  - hold on-site inspections and remote documentary examinations of financial institutions
  - set out mandatory capital adequacy and liquidity ratios
  - impose administrative sanctions
  - bring a civil or a commercial court action regarding regulatory breaches
  - issue a mandatory warning to a financial institution or a self-regulated organization on rectifying breaches of applicable law
  - initiate criminal or anti-trust proceedings

On 4 December 2015, the National Reform Council supported an initiative of the President of Ukraine to abolish the Financial Services Commission and allocate its authority between the National Bank of Ukraine and the National Securities and Stock Market Commission. There was an attempt to adopt the relevant legislation to replace the Financial Services Commission with the National Bank of Ukraine and/or the National Securities and Stock Market Commission in the relevant areas. However, as of now, the respective legislation has not been adopted and the reform is on hold.

### 12.3 Financial Institutions

Pursuant to applicable Ukrainian legislation, **financial services are provided exclusively by financial institutions** (except in certain instances explicitly provided for by law).

Any services are considered to be financial when such services are rendered:

- for the benefit of a third party (regardless of whether the costs are borne by a service provider or allocated to a client)
- to obtain income or to preserve the value of financial assets

The Financial Services Law defines a “financial institution” as a legal entity that:

- provides one or more financial services and other services associated with the provision of financial services
- is included in the relevant register pursuant to the procedure prescribed by law

Pursuant to the Financial Services Law, the following entities are considered to be financial institutions:

- banks
- mutual funds
- pawn brokers
- leasing companies



- insurance companies
- trusts
- pension
- investment funds that exclusively pursue financial services activities

A legal entity that intends to provide financial services must:

- comply with the relevant legislative requirements and regulations
- apply either to the Financial Services Commission or to the National Securities and Stock Market Commission for entry into:
  - the State Register of Financial Institutions
  - the State Register of Financial Institutions rendering Financial Services on the Stock Market
- in the case of an entity aiming to render banking services, apply to the National Bank of Ukraine to be included in the Register of Ukrainian banks

A financial institution may be established in any organizational and legal form, unless otherwise provided for in laws governing certain financial services.

Depending on the type of financial institution, the requirements for the minimal charter capital will vary.

#### **12.4 Types of Financial Services**

On 10 October 2013, the Ukrainian Parliament adopted amendments to the Financial Services Law, which became effective on 9 February 2014 and are aimed at limiting the number of financial services which may be rendered in Ukraine.

More specifically, prior to the adoption of the above amendments, any service which satisfied the core characteristics of a “financial service” could be regarded as such. As a result, theoretically, an entity could render such service, provided that it has registered as a financial institution and obtained a license from the Financial Services Commission (if applicable).

According to the amendments, a market participant is permitted to render only those financial services which are expressly listed in the Financial Services Law. The responsible regulator may also treat an unlisted service as falling within the scope of one of the listed services. However, in the absence of such treatment, a market participant will only be permitted to legitimately render the relevant service if it is added to the relevant list in the Financial Services Law.

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## 12.5 Licensing

In the financial sector certain types of professional activity may only be carried out by a financial institution which has obtained the relevant license from, as applicable:

- the Financial Services Commission
- the National Bank of Ukraine
- the National Securities and Stock Market Commission

The Financial Services Commission issues licenses to financial institutions for:

- insurance activities
- administering private pension funds
- extending financial loans using solicited deposits
- rendering any financial services, the provider of which intends to directly or indirectly solicit financial assets from individuals

## 12.6 Financial Institutions with Foreign Participation

Foreign persons are generally permitted to be participants in Ukrainian financial institutions, for which purpose a foreign person may:

- set up a new financial institution and obtain an appropriate license for it (if necessary)
- buy an existing financial institution

In both cases, it would need to comply with:

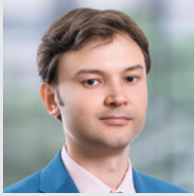
- the legislation applicable to foreign investments
- the applicable competition legislation

The prior written approval of the Financial Services Commission is required for a Ukrainian or foreign person to directly or indirectly own, hold, or control:

- 10% or more
- 25% or more
- 50% or more
- 75% or more

of shares/participatory interest in the charter capital of a financial institution or voting rights in its governing body.

A new approval of the Financial Services Commission is required once any of the above thresholds is reached, regardless of whether or not the applicant has obtained the approval for the respective prior threshold.

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## 13. CAPITAL MARKETS

### 13.1 General

The debt and equity securities markets in Ukraine are regulated by several laws, as well as regulations and resolutions issued by the National Commission on Securities and Stock Markets of Ukraine (the "Securities Commission"), including the following:

- 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 the Depository System of Ukraine, dated 6 July 2012
- 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 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
- the Law of Ukraine On Mortgage-Backed Bonds, dated 22 December 2005

### 13.2 Types and Forms of Securities

Ukrainian legislation recognizes the following categories of securities:

- equity securities such as:
  - shares of capital stock;
  - investment certificates; and
  - certificates of funds for operations with real estate (*certyficaty fondiv operatsiy z neruhomistyu*)

- 
- 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; and
    - mortgage receipts (*zastavni*)
  - privatization securities
  - derivative securities
  - 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
- order form

Ukrainian securities may exist in:

- documentary (certificated) form
- 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 documentary form securities are evidenced by the certificates of such securities.

The transfer of ownership rights to both bearer and registered securities in documentary form, if such securities have been immobilized, as well as to registered securities originally issued in non-documentary form, is effected



from the moment of crediting such securities to the new owner's securities account maintained with a depository institution. Ownership rights to such securities are evidenced by an extract from the securities account issued by the depository institution.

### 13.3 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
  - carry out state regulation and monitoring of the issuance and circulation of securities and derivatives in the territory of Ukraine
- is subordinate to the President of Ukraine
- is accountable to the Verkhovna Rada
- 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; and
  - registration, licensing, compliance monitoring and enforcement in the stock market.

### 13.4 Depository System

The Law of Ukraine On the Depository System of Ukraine dated 6 July 2012 (the "Depository System Law") provides for the formation of the depository system in Ukraine, which consists of the following participants:

- the Central Depository, which is a public joint stock company, with the state of Ukraine together with the NBU being its majority shareholders, which is authorized to:
  - maintain accounts in securities of all Ukrainian depository institutions, ie, institutions carrying out depository activities, the NBU and clearing institutions;
  - carry out custody of securities; and
  - carry out certain regulatory functions with respect to the Ukrainian stock market
- depository institutions, ie, legal entities holding a Securities Commission license to carry out depository activities, which includes holding records of rights to securities in book-entry form (these rights constitute proprietary rights under Ukrainian law); and
- the Settlement Center, ie, a licensed Ukrainian bank which ensures monetary settlements for the stock market and over-the-counter securities transactions that are settled on a delivery-versus-payment basis.

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### 13.5 Securities Traders

Licenses to act 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 and banks.

Securities traders may be licensed by the Securities Commission to perform any or all of the following activities with securities:

- brokerage activities (transacting with securities in its own name or in the name of a client and 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 a 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 can carry out the relevant activities in the stock market if its charter capital (paid in monetary funds) is not less than:

- in the case of dealer activities, UAH 500,000;
- in the case of broker activities, UAH 1 million; and
- in the case of underwriting or securities management activities, UAH 7 million.

A securities trader is not permitted to hold a share in another securities trader that exceeds 10%.

In line with the above requirement, the Securities Commission is entitled to refuse to issue a securities trading license to both:

- a company that is more than 10% owned by a securities trader; and
- a company holding more than a 10% share in a securities trader.

### 13.6 Stock Exchanges

Securities are traded in Ukraine on several stock exchanges and on an over-the-counter basis.

At present, most of the securities trading activity takes place on:

- the Perspectyva Stock Exchange; and
- the PFTS Stock Exchange.



The trading activity is basically limited to trading in domestic treasury bonds. There is also a small fraction of trading incorporate bonds, shares, investment certificates and derivatives.

### 13.7 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 only in a non-documentary form with domestic state bonds being evidenced by book entries at the NBU
- can be either in registered or bearer form
- can be denominated and offered for sale in Ukrainian or foreign currency in the case of domestic state bonds.

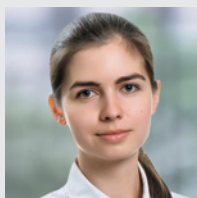
Foreign entities and individuals are permitted to invest in domestic state bonds through Ukrainian depository institutions that are clients of the NBU as the depository of state securities.

Since 2000, Ukraine has carried out a number of issuances of its foreign state bonds (known as Eurobonds, denominated in euro and US dollars) in the international capital markets. Most of Ukraine's debt was subject to restructuring, agreed to in 2015. Ukraine raised new funds in autumn 2017 in its first sovereign bond issue since this restructuring.





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## 14. EMPLOYMENT

### 14.1 Legislation

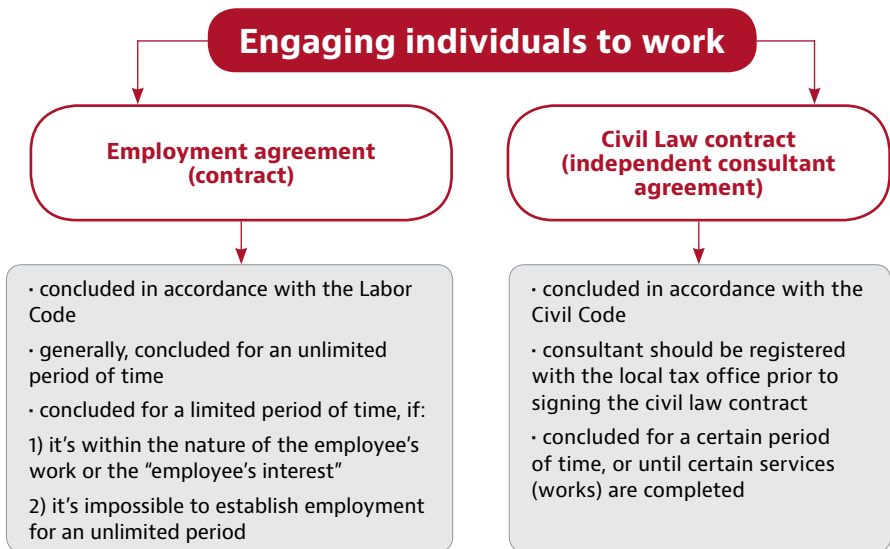
The Code of Laws on Labor of Ukraine (the "Labor Code") dated 10 December 1971, as amended, applies to all Ukrainian and foreign enterprises, institutions and organizations, irrespective of their ownership form, type or area of activity, and to all individuals employing labor in Ukraine.

Employment relationships between enterprises with foreign investment (as well as representative offices of foreign legal entities) and their employees

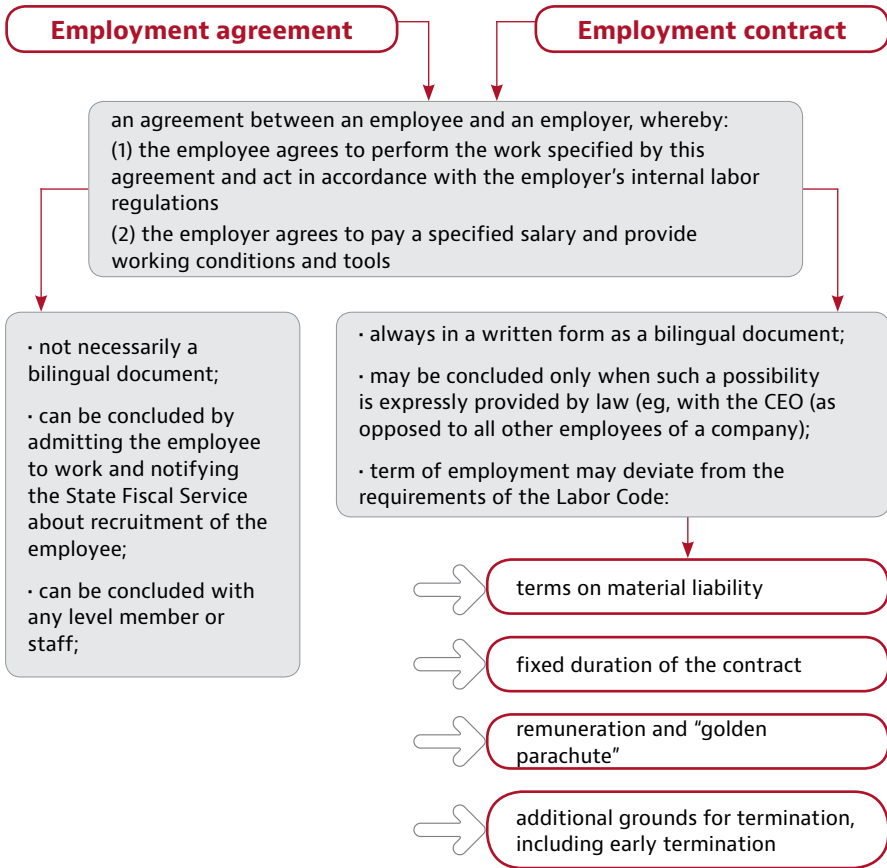
on the territory of Ukraine are governed by the applicable Ukrainian legislation and the bylaws of such enterprises. Thus, all employers (both foreign and Ukrainian) must comply with the provisions of the Labor Code, which apply regardless of whether the employee is a foreign or Ukrainian national. The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

#### 14.2 Employment Agreements (Contracts) and Other Employment-Related Documents

Both local and foreign legal entities may engage individuals in Ukraine pursuant to either employment agreements (or employment contracts, where appropriate) concluded in accordance with the Labor Code, or so-called “civil law contracts” concluded in accordance with the Civil Code (eg, an independent consultant agreement).



Ukrainian law distinguishes between an “employment agreement” and an “employment contract.”



The principal advantage of an employment contract (compared to an employment agreement) is the discretion which its parties may exercise in the terms and conditions of employment and the termination grounds. However, unlike an employment agreement, it may be concluded only if it is expressly allowed by law.

In addition, employers must record employment in the labor book of every employee (and individuals engaged as interns) who has worked for more than five days. A labor book contains information about the employee's past and current employment, including the job title and the reason for termination. The labor book is vital for establishing the right of an employee to the state pension and other benefits; for that reason, each employer must properly make necessary records therein.



### 14.3 Equal Job Opportunities

The Labor Code as well as other laws of Ukraine establish the requirement for equal job opportunities.

#### Article 2-1 of the Labor Code

prohibition of any discrimination in the workplace, including violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of employees depending on certain criteria (eg, race, color, political, religious and other beliefs, sex, gender identity, sexual orientation, disability or suspected presence of HIV/AIDS, etc.)

#### Article 22 of the Labor Code

prohibition of any unjustified denial of employment; any direct or indirect restriction of rights or granting of any direct or indirect advantages during employment on the specified grounds

#### Article 25 of the Labor Code

prohibition against demanding any information about political or national affiliation, origin, place of residence of a prospective employee or any additional documents not specified by law

#### Article 17 of the Law of Ukraine "On Equal Rights and Opportunities for Females and Males"

- females and males must be provided with equal rights and opportunities, promotion at work, further training and professional retraining
- obligation of an employer (1) to create conditions that would allow females and males to work on an equal basis, (2) to ensure that females and males can combine work with their family responsibilities, (3) to provide equal pay for females and males with the same qualifications and working conditions, (4) to create safe and healthy working conditions, and (5) to take measures to prevent sexual harassment at work
- prohibition against advertising job vacancies exclusively to females or males (unless the nature of the work justifies it) or to require any data regarding the employee's private or family life

Moreover, the Law of Ukraine "On Employment" (the "Employment Law"), dated 5 July 2012, as amended, introduced a new focus on equal job opportunities, substantiating the above statutory rules and providing a mechanism for their enforcement. In particular, a new mandatory quota for employment of certain categories of employees has been established, in addition to the already-existing quota for employment of individuals with a disability.

## 14.4 Probationary Period

An employer has the right to establish a probationary period for a newly hired employee.

### Establishment of a probation period

#### Period

- 3 months for a newly-hired employee
- 1 month for the non-managerial workers

#### Establishment

Must be specifically provided for in the employment agreement (contract) and the order on hiring

#### Dismissal during the probationary period

- dismissal at any time after a prior three day's written notice
- restrictions on the dismissal of certain categories of women, which effectively makes probation for these employees meaningless

#### Prohibition to establish the probation period

- persons under 18
- young workers who have just finished their education
- disabled persons who were referred for this position on the basis of a recommendation of a medical and social commission
- young professionals who have just finished their higher education
- seasonal and temporary employees
- persons elected to office
- persons discharged from military or alternative (non-military) service
- persons who have completed internship before the hiring
- winners of a competition for vacant positions
- pregnant women
- single mothers with a child for under 15 years old or a disabled child under 18 years old

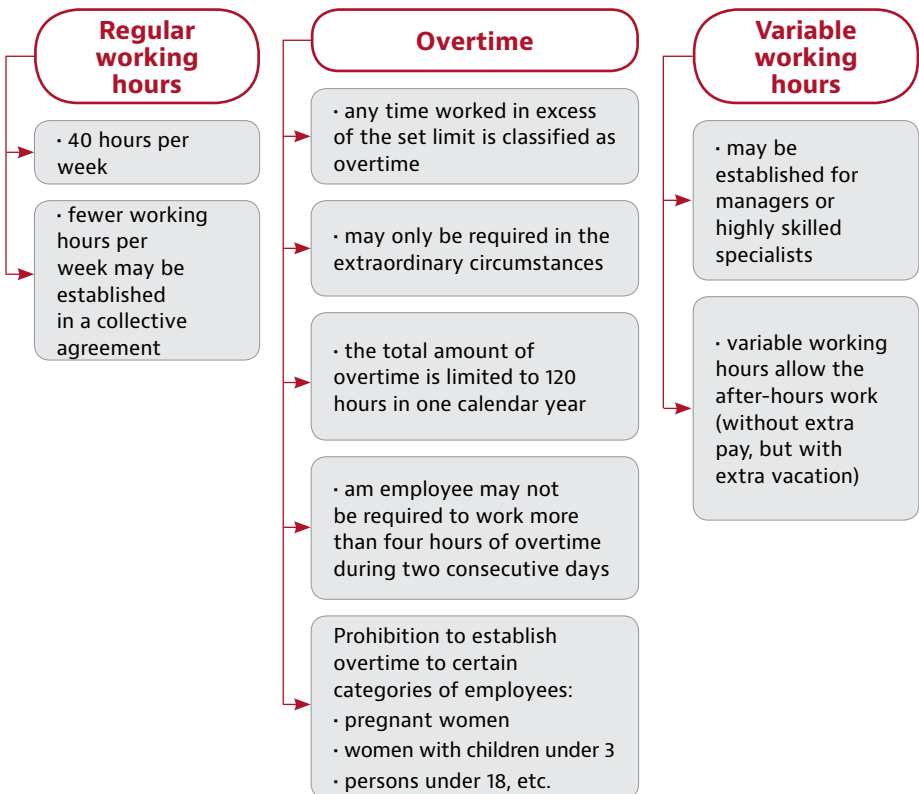
### 14.5 Minimum Salary

Generally, the amount of the monthly salary accrued to the employee may not be lower than the minimum monthly salary established by law. The minimum monthly salary is subject to frequent indexation. As of 1 January 2018, the minimum monthly salary is equal to UAH 3,723 (approximately USD 131). The officially established minimum monthly salary is periodically adjusted by the Ukrainian parliament to reflect increases in the cost of living.

### 14.6 Working Week

The regular working week in Ukraine is a maximum of 40 hours. However, in certain limited situations, employees may be required to work overtime. Moreover, for certain categories of exempt employees, the employer may establish variable working hours (without obligation to pay overtime).

#### Working time



## 14.7 Holidays and Vacations

According to Article 73 of the Labor Code, there are 11 official holidays in Ukraine. Employees may be required to work on an official holiday only in extraordinary circumstances, except for certain types of businesses. Employees in Ukraine are entitled to an annual paid vacation of at least 24 calendar days (to include weekends but excluding official holidays during the vacation period). The duration, terms and procedures for granting additional paid annual vacation are envisaged in various laws, but may also be indicated in the collective agreement.

### OFFICIAL HOLIDAYS



**1 January** – New Year's Day  
**7 January and 25 December** – Christmas  
**8 March** – International Women's Day  
**1 May** – Labor Day  
**9 May** – Victory Day  
**28 June** – Ukraine Constitution Day  
**24 August** – Ukraine Independence Day  
**14 October** – Ukraine Defenders' Day  
**One day** (*the following Monday*) – Easter  
**One day** (*the following Monday*) – Trinity

### VACATION



Annual paid vacation should be at least 24 calendar days

Annual paid vacation includes weekends during the vacation period but excludes official holidays

Persons under 18 must be granted at least 31 calendar days of paid annual vacation

Certain categories of employees are entitled to additional paid vacation, eg, employees:  
(i) in hazardous or difficult working conditions;  
(ii) engaged in special types of production;  
(iii) in other cases envisaged by law





#### **14.8 Sick Leave**

The system of sick leave in Ukraine requires an employee to submit a medical certificate only after his/her recovery, ie, on the first working day after an employee's recovery. Sick leave compensation is covered by the Ukrainian State Social Security Fund, which is funded by an employer's contributions made as a percentage of its employees' aggregate salaries, except for the first five days of each period of an employee's sickness, which is paid for by the employer.

#### **14.9 Maternity Leave**

Paid maternity leave is provided 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 or delivery complications) after the birth. An employee may take additional unpaid leave until the child reaches three years of age. During the entire period of paid and unpaid leave, an employee retains the right to return to her job, with the full leave period included when calculating an employee's length of service.

#### **14.10 Termination of Employment and Job Protection**

The procedure for terminating employment is governed by Articles 36 to 49 of the Labor Code.

An employer may initiate termination only on a limited number of grounds, primarily those listed in Article 40 of the Labor Code, including:

- staff redundancy
- an employee's systematic failure to fulfil his/her job duties
- an employee's insufficient qualifications (or deteriorating health)
- an employee's unjustified absence from the workplace for more than three consecutive hours during one working day
- in certain other cases

Additional grounds for termination may be specified in the employment contract (but not in the employment agreement).

Ukrainian law prohibits employers from initiating dismissal of pregnant women, women who have children under three (or, in special circumstances supported by medical evidence, under six) and single mothers who have disabled children or children under 14. This rule does not apply in the event of the employer's entity dissolution or if the woman was on a fixed-term agreement which expired. However, in such case, an employer is obliged to find alternative employment. The same guarantees apply with regard to fathers bringing up children without a mother (including cases when the mother is receiving medical treatment for a long period of time), guardians (custodians), one of the foster parents and tutor parents of such children.

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The dismissal of an employee who is a trade union member requires the prior consent of his/her trade union under certain circumstances.

#### **14.11 Collective Agreements**

The Law of Ukraine on "Collective Agreements and Arrangements" dated 1 July 1993 requires legal entities operating in Ukraine and employing large numbers of employees to negotiate on the conclusion of collective agreements with the relevant trade unions or, if there are no such trade union bodies, with the elected representatives of employees who have been authorized by their fellow employees to sign and negotiate such a collective agreement with an employer.



A collective agreement, if concluded, is mandatory for the employer and all its employees



A collective agreement has an evergreen agreement status, ie, it is effective until the parties conclude a new agreement or reconsider the current one (unless otherwise provided by the collective agreement)



Provisions that deprive employees of the rights and benefits guaranteed by law cannot be included into collective agreements; otherwise, such provisions will be deemed null and void

#### **14.12 Remuneration**

Generally, all employers in Ukraine, both residents and non-residents, are required to pay salaries to their Ukrainian employees exclusively in Ukrainian currency to a bank account in Ukraine.



At the same time, according to the Resolution of the National Bank of Ukraine "On Approval of the Procedure for the Use of Foreign Currency in Ukraine and Amendment of Certain Normative Acts of the National Bank of Ukraine" dated 30 May 2007, employers may pay their non-Ukrainian employees in foreign currency in certain cases. Therefore, while non-residents employed in Ukraine may be remunerated in foreign currency, residents of Ukraine must be paid exclusively in Ukrainian currency.

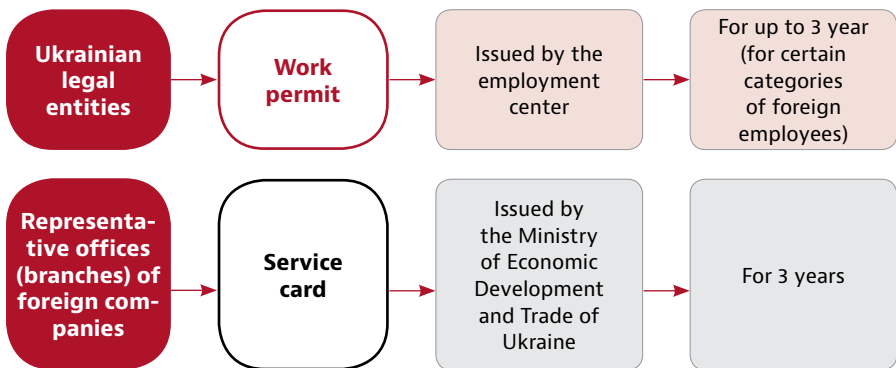
### 14.13 Foreign nationals Working in Ukraine

Foreign nationals who lawfully reside in Ukraine enjoy the same rights and opportunities (including employment) as Ukrainian citizens.

As a general rule, the employment relationships of foreign nationals and stateless persons (the "Foreign National") working in Ukraine are governed by the laws of Ukraine, except if:

- such Foreign Nationals work with a diplomatic mission or representative office of an international organization
- the employment agreement which provides for the performance of works in Ukraine was concluded outside Ukraine (with a non-Ukrainian employer).

If a Foreign National does not have a Ukrainian permanent residence permit, the hosting Ukrainian company may employ such Foreign National only subject to obtaining a work permit issued by the relevant employment center. The Foreign National employed by representative offices of foreign entities must obtain a service card from the Ministry of Economic Development and Trade of Ukraine.



The Employment Law, as amended, provides for a number of novelties in the procedure of employment of the Foreign Nationals, effective as of 27 September 2017:

### **Minimum Monthly Salary**

#### **Employers must pay foreign employees a minimum salary:**

- not less than five times the minimum monthly salary established by law — for foreign employees of civic associations, charitable organizations and certain educational institutions
- not less than 10 times the minimum monthly salary — for other categories of foreign employees, except for the special categories of foreign employees

### **Special categories of foreign employees**

#### **Special categories of foreign employees include:**

- highly paid foreign professionals
- founders (as well as participants and/or beneficiaries) of a legal entity established in Ukraine
- graduates of certain universities, foreign artists and IT professionals

**An employer may obtain a work permit for these employees for up to three years**

### **Secondary employment v. position overlap**

**Option to obtain an additional work permit for a foreign national holding more than one office (secondary employment option) or whose job duties overlap several positions**

**Any foreign employee may carry out the job duties of a temporarily absent employee for up to 60 calendar days per year without a separate work permit**

A work permit application is considered within seven business days by the relevant Ukrainian employment center. The state fee for the work permit depends on the term for which the work permit is obtained, and is equal to two to six times the subsistence level established for a working person as of 1 January of the calendar year in which the employer applies for the work permit. The employer must pay the state fee only after a decision to issue the relevant work permit has been issued.



After obtaining the work permit, the employer is obliged to conclude an employment agreement (contract) with the Foreign National within 90 calendar days from the day the work permit is issued and submit a copy thereof to the relevant employment center within 10 calendar days after its conclusion. Otherwise, the employment center might cancel the already-issued work permit.

The Employment Law sets an exhaustive list of grounds for refusing to issue a work permit, to prolong its term or to annul a work permit.

#### Grounds for refusing a WP

- employer's failure to bring the work permit application in compliance
- employer's failure to file the application to prolong the work permit in a timely manner, etc.

#### Grounds for annulling a WP

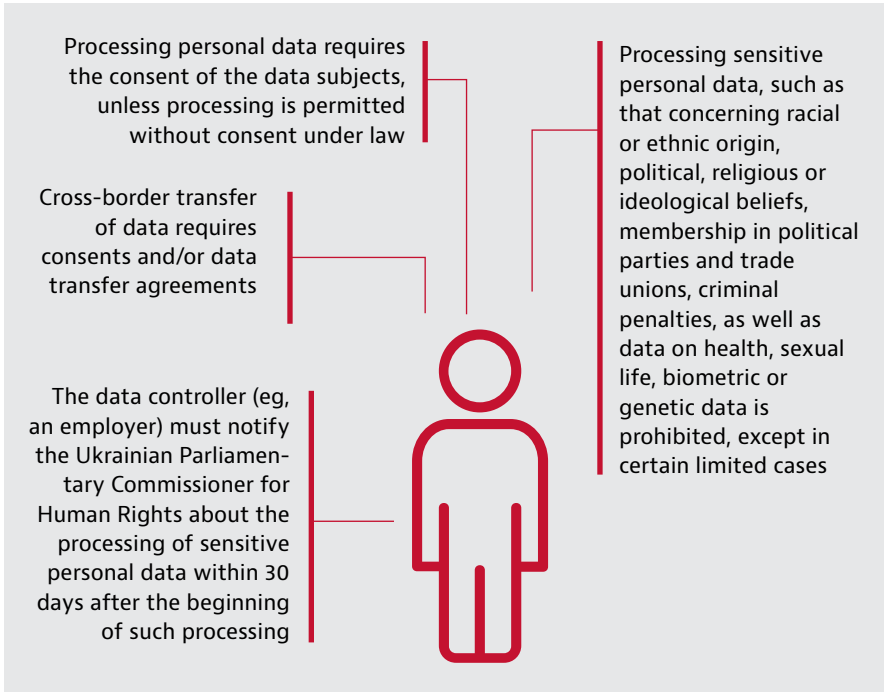
- early termination of employment agreement (contract) with the Foreign National
- the Migration Authority's decision to expel the relevant Foreign National
- if the actual work performed by the Foreign National does not correspond to that provided for in the work permit
- employer's failure to pay for the work permit in a timely manner
- employer's failure to file a copy of the employment agreement (contract) in a timely manner
- decision of the court, whereby the Foreign National is convicted for a crime, etc.

Allowing a Foreign National to commence his/her work in Ukraine prior to obtaining a work permit will trigger imposition of a fine of 20 times the minimum monthly salary for each Foreign National for whom the employer has failed to obtain a work permit.

After the work permit has been obtained, the Foreign National must apply for a long-term visa D (unless exempt under an applicable international agreement of Ukraine) and then comply with some other migration law formalities (ie, apply for a temporary residence permit and register his/her place of residence in Ukraine).

#### 14.14 Personal Data

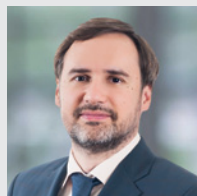
The Law of Ukraine “On Personal Data Protection” dated 1 June 2010 (the “Data Protection Law”) establishes requirements for the processing of personal data and the relevant obligations of the data controllers and processors. The general rules on personal data processing are as follows:



Liability for failing to follow the above requirements may result in the imposition of an administrative fine of up to UAH 34,000 (approximately USD 1,201). In addition, certain other statutes, including the Civil Code, the Labor Code and the Criminal Code, contain separate provisions on the protection of privacy, which apply to the workplace. For that reason, background checks and internal investigations should always be preceded by obtaining the relevant advice of a Ukrainian lawyer knowledgeable in this field.

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## 15. INTELLECTUAL PROPERTY

### 15.1 General

Ukrainian intellectual property legislation affords protection, *inter alia*, to:

- copyright and related rights
- trademarks and service marks
- trade names
- inventions
- utility models
- industrial designs
- trade secrets
- plant and animal varieties
- appellations of origin
- layouts of integrated circuits
- technical improvements

The above-mentioned intellectual property rights are, *inter alia*, regulated by the following Ukrainian laws:

- The Civil Code of Ukraine (the "Civil Code")
- The Criminal Code of Ukraine (the "Criminal Code")
- The Customs Code of Ukraine (the "Customs Code")
- The Civil Procedural Code of Ukraine (the "Civil Procedural Code")
- The Commercial Procedural Code of Ukraine (the "Commercial Procedural Code")
- The Administrative Infringements Code of Ukraine (the "Administrative Infringements Code")
- The Law of Ukraine On Copyright and Related Rights (the "Copyright Law") dated 23 December 1993
- The Law of Ukraine On the Protection of Rights in Trademarks and Service Marks (the "Trademark Law") dated 15 December 1993
- The Law of Ukraine On the Protection of Rights in Inventions and Utility Models (the "Inventions Law") dated 15 December 1993

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- The Law of Ukraine On the Protection of Rights in Industrial Designs (the "Industrial Designs Law") dated 15 December 1993
  - The Law of Ukraine On the Protection of Rights in Appellations of Origin dated 17 June 1999
  - The Law of Ukraine On the Protection of Plant Varieties dated 21 April 1993
  - The Law of Ukraine On the Protection of Rights in the Layouts of Integrated Circuits dated 5 November 1997
  - The Law of Ukraine On the State Regulation of Activities in the Sphere of Transfer of Technology dated 14 September 2006
  - The Law of Ukraine On Information dated 2 October 1992
  - The Law of Ukraine On Protection Against Unfair Competition dated 7 June 1996

Ukraine has yet to implement specific legislation on the protection of the rights of performers or recording and broadcasting organizations, or on matters such as the registration and maintenance of Internet domain names, company (commercial) names or the protection of computer programs. On the other hand, under the Treaty on Partnership and Cooperation concluded between the European Union and Ukraine, Ukraine has agreed to implement certain EU directives in the area of intellectual property rights and to accede to a number of international agreements.

### **15.2 Intellectual Property authority**

This year the functions of the Ukrainian Patent and Trademark Office were transferred from the State Intellectual Property Service of Ukraine to the Ministry of Economic Development and Trade of Ukraine ("MEDT"). It is anticipated that later MEDT will transfer its functions to the National Agency for Intellectual Property, which is yet to be created. Such functions should have been transferred in the third quarter of 2017. However, the reform of the State Intellectual Property Service did not follow the outlined plan, and its functions are now with MEDT. MEDT is currently responsible for the overall control of carrying out examinations of intellectual property applications; maintaining a system for the search and examination of intellectual property applications; and granting patents and certificates on trademarks and other intellectual property, as well as copyright certificates.

### **15.3 International Conventions**

Ukraine is a party to the following treaties in the field of intellectual property:

- The 1883 Paris Convention for the Protection of Industrial Property (the "Paris Convention")
- The 1886 Berne Convention for the Protection of Literary and Artistic Works
- The 1891 Madrid Agreement Concerning the International Registration of Marks (the "Madrid Agreement")





- The 1952 Universal Convention on Copyright
- The 1957 Nice Agreement Concerning the International Classification of Goods and Services
- The 1961 International Convention for the Protection of New Varieties of Plants
- The 1967 Convention Establishing the World Intellectual Property Organization (WIPO)
- The 1970 Patent Cooperation Treaty
- The 1977 Budapest Treaty on the International Recognition of Deposits of Microorganisms for the Purposes of Patent Protection
- The 1989 Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the "Madrid Protocol")
- 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. Moreover, Ukraine became the 152nd member of the World Trade Organization (WTO) on 16 May 2008. Thus, Ukraine is now subject to the requirements of the Agreement of the World Trade Organization on Trade Related Aspects of Intellectual Property Rights (the "TRIPS Agreement").

#### **15.4 Registration of Intellectual Property Rights**

Ukraine is a "first-to-file" rather than a "first-to-use" jurisdiction. As a result, in order to protect those intellectual property rights that are subject to mandatory registration in Ukraine, it is important to file a formal application with the State Enterprise "Ukrpatent" of MEDT for the registration of the relevant intellectual property.

#### **15.5 Trademark Protection**

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

- Marks registered with MEDT pursuant to the Trademark Law; and
- Trademarks and trade names which are not registered with MEDT, but which enjoy protection pursuant to international agreements to which Ukraine is a party.

Trademarks pending registration enjoy temporary protection until the relevant registration certificates are granted. MEDT issues trademark registration certificates for a term of 10 years from the filing date. At the request of the trademark owner, and upon payment of the required renewal fee, trademark registrations may be renewed an indefinite number of times for additional 10-year periods.

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

The Law of Ukraine “On the Introduction of Changes and Amendments to Legislative Acts of Ukraine on the Legal Protection of Intellectual Property” (the “2003 IP Law”), dated 22 May 2003, introduced a number of important changes to Ukrainian intellectual property legislation. Among them is the inclusion of provisions on the protection of “well-known trademarks.” Under the revised law, well-known trademarks are protected in Ukraine under the provisions of Article 6 of the Paris Convention and the amended Trademark Law, based on the recognition of a trademark as being “well-known” by the Chamber of Appeal of MEDT or a court. A well-known trademark must be treated as if the application for its registration in Ukraine had been made on the date on which the Chamber of Appeal of MEDT or the court made the decision that it was “well-known.”

It should be noted that, in accordance with the Civil Code, a trademark assignment agreement is subject to obligatory registration with MEDT, while registration of a trademark license or a sub-license agreement is at the discretion of the parties to such agreement. Registration of a commercial concession agreement (the definition of which may cover franchising agreements) is not subject to obligatory state registration.

The 2003 IP Law also brought significant changes to the opposition and cancelation procedures, set more severe sanctions for the violation of intellectual property rights, and extended the authority of the courts by applying measures directed at removing infringing products from all trade channels.

Under the 2003 IP Law, any third person may file an opposition against a pending application with the examining authority if the trademark to be registered does not meet the requirements of registrability. Such opposition can be filed until the examining authority makes a final decision on the application. The results of the examination of the opposition must be reflected in MEDT’s decision on the relevant trademark application.

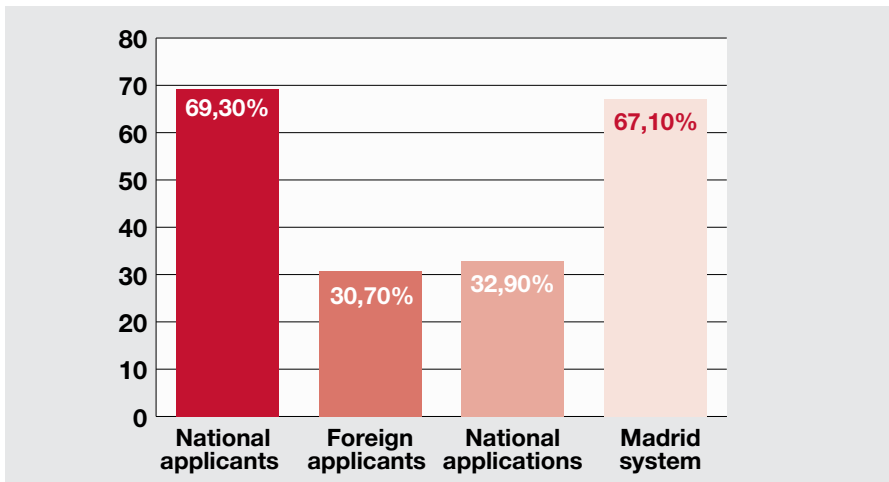
As a result of such revisions of the opposition procedure, an applicant has the opportunity to file an opposition against a conflicting application, whereas, under the previous law, the applicant could only oppose a decision of the examining authority on the applicant’s own application. However, the applicant now has less time to file an opposition against the examining authority’s decision on the applicant’s own application – within two months after the date of receipt of the decision. Furthermore, the Chamber of Appeal



of MEDT will consider oppositions within two months instead of four months, as was previously the case. This term may be extended at the applicant's request, but by no longer than two months. The term for opposing a decision of the Chamber of Appeal of MEDT in court has also been reduced to two months instead of six months, as was previously the case.

Ukrainian intellectual property legislation and the 2003 IP Law in particular extend the scope of infringement of a trademark owner's rights to include the storage of goods bearing a registered trademark for the purpose of sale or offering for sale, and/or the importation and exportation of goods bearing this mark. Thus, trademark owners have the necessary tools to sue distributors and importers or exporters who violate their rights.

### **The ratio of trademark applications from national and foreign applicants and under national and Madrid trademark systems**



From the report of the Ministry of Economic Development and Trade of Ukraine and the Ukrainian Institute of Intellectual Property "Industrial property in numbers" /[http://www.uipv.org/i\\_upload/file/promvlasnist-9M2017.pdf](http://www.uipv.org/i_upload/file/promvlasnist-9M2017.pdf)

### **15.6 Patent Protection of Inventions and Utility Models**

Ukraine follows the principle of universal novelty in granting patents. This means that an invention must be completely original worldwide within the relevant area of science and technology. Inventions are required to meet each of the following requirements in order to be granted patent protection:

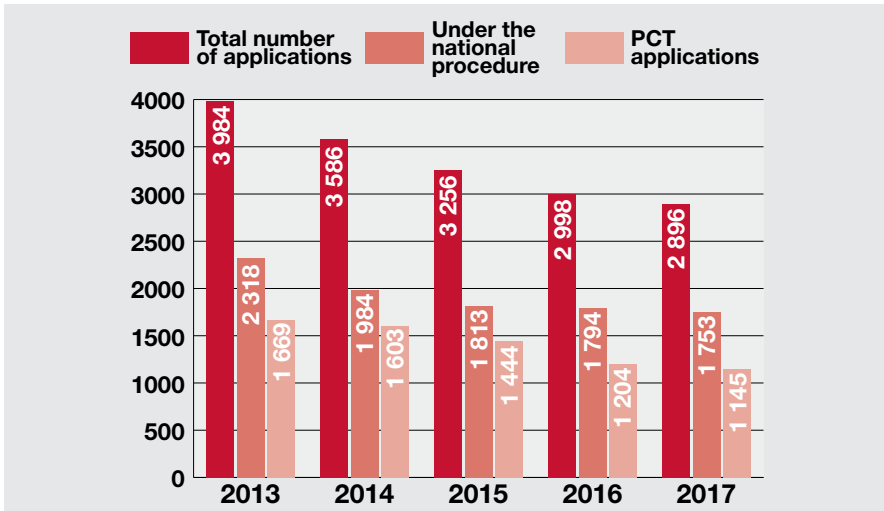
- novelty
- non-obviousness
- utility

The Inventions Law provides for a 12-month grace period for any public disclosure of information concerning an invention either by the inventor or by any third person who directly or indirectly obtains 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 the rights of authorship for his/her invention indefinitely. An invention made by an employee during his/her employment and in relation to his/her working functions should be patented in the name of the employer, to the extent that such invention is made within the scope of the employee's working functions, pursuant to the direct instructions of the employer, or with the use of the expertise, knowhow, trade secrets and/or equipment of the employer. Employers and employees are authorized to provide different conditions for the patenting of inventions under the employment agreements concluded between them.

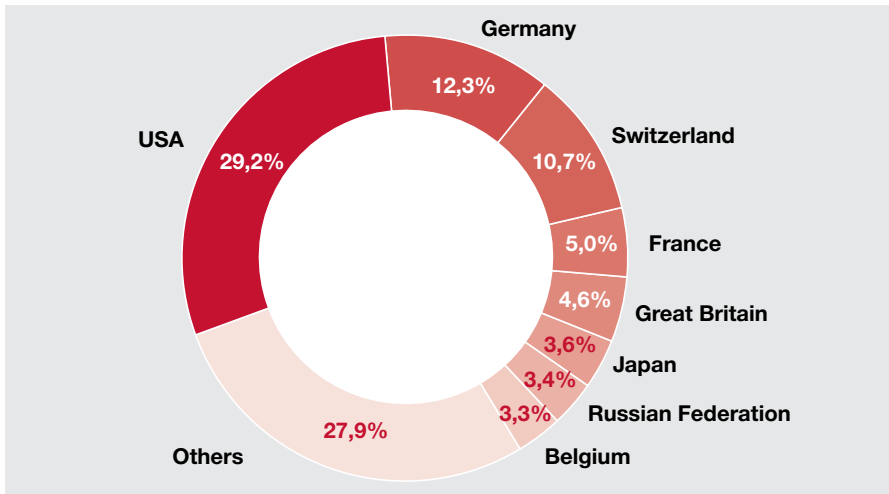
Patents are granted to inventions for 20 years from the priority date. Patents for inventions in the area of medicine, pharmaceuticals, agrochemistry and related areas may be further extended for a maximum period of five years. The term of patent validity is conditional upon the payment of annual maintenance fees.

### Applications for inventions for the nine months of 2013-2017 in Ukraine



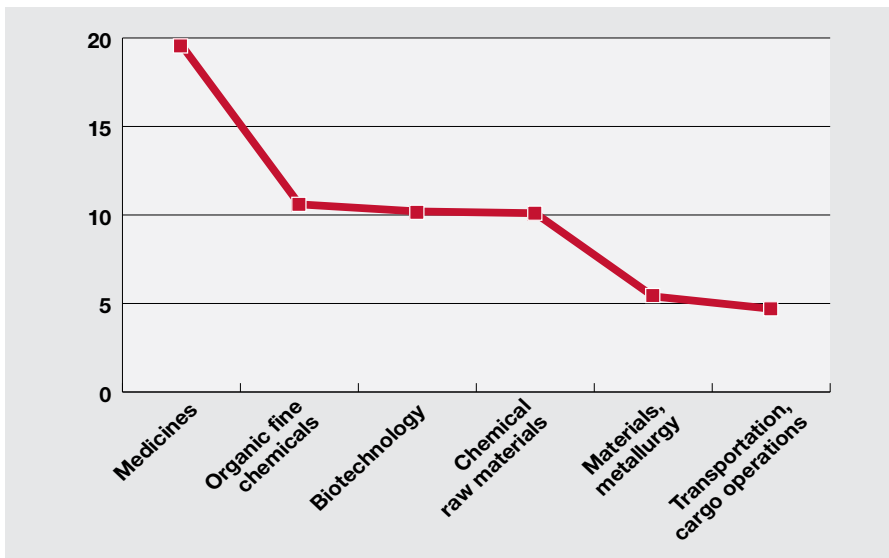
From the report of the Ministry of Economic Development and Trade of Ukraine and the Ukrainian Institute of Intellectual Property "Industrial property in numbers" /[http://www.uipv.org/i\\_upload/file/promvlasnist-9M2017.pdf](http://www.uipv.org/i_upload/file/promvlasnist-9M2017.pdf)

## Distribution of applications for inventions from foreign applicants by country



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## Priority directions of inventive activity under patent applications of foreign applicants for the 9 months of 2013-2017



From the report of the Ministry of Economic Development and Trade of Ukraine and the Ukrainian Institute of Intellectual Property "Industrial property in numbers" /[http://www.uipv.org/i\\_upload/file/promvlasnist-9M2017.pdf](http://www.uipv.org/i_upload/file/promvlasnist-9M2017.pdf)

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## **15.7 Copyright**

The Copyright Law 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 volume, purpose or genre, as well as their scientific, literary or artistic value.

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, a protected work may exist in oral and/or written form.

The Copyright Law protects works of science, literature and arts (copyright), and grants protection to rights of performers, phonogram producers and broadcasting organizations (related rights). Copyright protection arises by virtue of the creation of a work of art without any registration requirements.

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 proprietary and the non-proprietary rights of the author. The non-proprietary rights in copyright are protected indefinitely. The proprietary rights in copyright are granted for the author's lifetime, plus for an additional 70-year period following his/her death.

## **15.8 Enforcement of Intellectual Property Rights**

### ***15.8.1 Criminal Liability***

Under Ukrainian law, any action under the Criminal Code, as amended on 12 February 2006 by the Law "On the Introduction of Changes to the Criminal Code with Regard to the Protection of Intellectual Property" (the "2006 IP Criminal Amendments"), may only be initiated against an individual before the common courts. Under the Criminal Code, intellectual property infringement is criminally punishable if it has caused substantial, extensive or very extensive damage to the rights owner.



Criminal sanctions are based on the non-taxable minimum monthly income (currently UAH 17). However, the extent of damage is calculated based on the tax social privilege, which currently amounts to UAH 800.

According to the footnote to Article 176 of the Criminal Code, which stipulates criminal liability for infringements of copyright and related rights, the damage is:

- substantial if it amounts to more than 20 times the tax social privilege
- extensive if it amounts to more than 200 times the tax social privilege
- very extensive if it amounts to more than 1,000 times the tax social privilege

The same gradation applies to individuation devices, ie, trademarks, trade names and appellations of origin (Article 229 of the Criminal Code).

Under the Criminal Code as amended by the 2006 IP Criminal Amendments, if a trademark infringement causes **substantial damage**, then the following sanctions apply:

- A fine of 1,000 to 2,000 times the non-taxable minimum monthly income (currently UAH 17,000-34,000). The criminal(s) may be prohibited from occupying certain positions or engaging in certain activities at the discretion of the court.

If the above acts are committed repeatedly, by a group of people, are premeditated or cause **extensive damage**, the sanctions are as follows:

- A fine of 3,000 to 10,000 times the non-taxable minimum monthly income (currently UAH 51,000-UAH 170,000)

If the above acts are committed by an official abusing his/her position or by an organized group, or if the acts cause **particularly extensive damage**, the sanctions are as follows:

- A fine of 10,000 to 15,000 times the non-taxable minimum monthly income (currently UAH 170,000-UAH 255,000). The criminal(s) may be prohibited from occupying certain positions or engaging in certain activities at the discretion of the court.

### **15.8.2 Customs Control**

Further to the relevant provisions of the Customs Code, Ukraine's Ministry of Finance has developed a procedure under which the owner of intellectual property rights can register goods containing intellectual property with the appropriate customs authorities in accordance with Resolution No. 648 "On Approval of the Procedure for Registration of Intellectual Property Rights that are Protected by Law in the Customs Register," dated 30 May 2012.

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In practice, in order to prevent the import or export of goods infringing its intellectual property rights, the owner of such rights (or its representative) is entitled to file a petition with Ukraine's State Fiscal Service on registration of the intellectual property rights in the Customs Register and seek the introduction of customs controls. This can be either a petition in relation to a particular shipment of goods, or a more general request for customs to be alert to goods infringing the specified intellectual property rights, and to stop all such infringing goods from crossing Ukraine's customs border.

Customs officers are now also authorized to block goods ex officio if they have grounds to believe that the goods may violate the intellectual property rights of an entity or an individual. The owner of the intellectual property rights must then file a petition with the customs. If the rights owner files the petition in time the goods cannot be cleared through customs until a court resolves the issue. If the rights owner fails to file the petition in time, the goods are cleared through customs and admitted to the territory of Ukraine.

### ***15.8.3 Intellectual Property Inspectors***

Intellectual property inspectors were intended to be an important tool for protecting the interests of rights owners. Their existence was stipulated by Resolution of the Cabinet of Ministers of Ukraine No. 674 dated 17 May 2002 "On State Inspectors in the Sphere of Intellectual Property." However, in practice, the functions of the state inspectors were limited to controlling sales of pirated CDs and DVDs.

Resolution of the Cabinet of Ministers of Ukraine No. 711 dated 24 May 2006 is aimed at improving the situation. It broadened the powers of the inspectors and introduced a number of new methods of control:

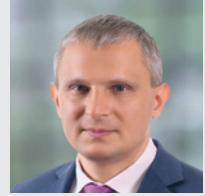
- An inspector is now entitled to control not only the legitimacy of the production and distribution of IP objects, but also the legitimacy of use of such objects.
- An inspector may now conduct scheduled and unscheduled inspections, during which he/she is entitled to seize objects of intellectual property or any material data which contain these objects for a term of up to 30 days.

An inspector has a right to access every original document confirming the legitimacy of use of the intellectual property object as well as the right to access the premises where documents are placed or stored.



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## 16. BANKRUPTCY ISSUES

### 16.1 General

Ukraine's first law "On Bankruptcy" was adopted on 14 May 1992 and entered into force on 1 July 1992. On 30 June 1999, the law was significantly amended and restated, and now exists as the law "On Re-Establishing Solvency of Debtors or Recognition of Debtors' Bankruptcy" (the "Bankruptcy Law"). On 19 January 2013, a new edition of the Bankruptcy Law came into force, which significantly amended the rules for bankruptcy proceedings in Ukraine.

### 16.2 Debtors Exempt from Bankruptcy

The Bankruptcy Law and certain other Ukrainian legislation establish a number of fundamental principles that must be borne in mind when making deals with potential Ukrainian debtors.

#### Debtors Exempt from Bankruptcy

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

- State enterprises, which fall under the category of "*kazenne pidpryyemstvo*"
- Mining companies with a state share of at least 25% that have been privatized within one year from commencement of the relevant privatization plan, except for those companies liquidated by the decisions of their owners
- Public joint-stock companies providing railway transport for general use established under the law "On Establishment of the Public Joint-Stock Company of Railway Transport for General Use"

### 16.3 Pre-trial Rehabilitation of Debtor

A debtor or a creditor is entitled to initiate the procedure for a debtor's financial rehabilitation prior to commencement of the debtor's bankruptcy in court. The rehabilitation procedure can be stipulated in an agreement between the debtor and the creditor.

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Pre-trial rehabilitation may be commenced upon:

- obtaining written consent from the debtor's owner (or the debtor's supervising authority)
- obtaining written consent from creditors whose aggregate amount of claims exceeds 50% of the debtor's debts according to the debtor's financial statements
- approval of the solvency rehabilitation plan by all secured creditors and the general meeting of creditors

The general meeting of creditors is called upon a written notice of the debtor sent to the creditors in accordance with the debtor's accounting information.

The debtor or a representative of the creditors may file an application for approval of the debtor's rehabilitation plan with the court at the location of the debtor within five calendar days from the date of its approval by the creditors.

Upon approval of the debtor's rehabilitation plan by the court, the court imposes a moratorium prohibiting satisfaction of creditors' claims during the rehabilitation procedure, which cannot last longer than 12 months. During the pre-trial rehabilitation of the debtor, the debtor's bankruptcy cannot be commenced in court.

#### **16.4 Specifics of Bankruptcy Proceedings for Certain Categories of Debtors**

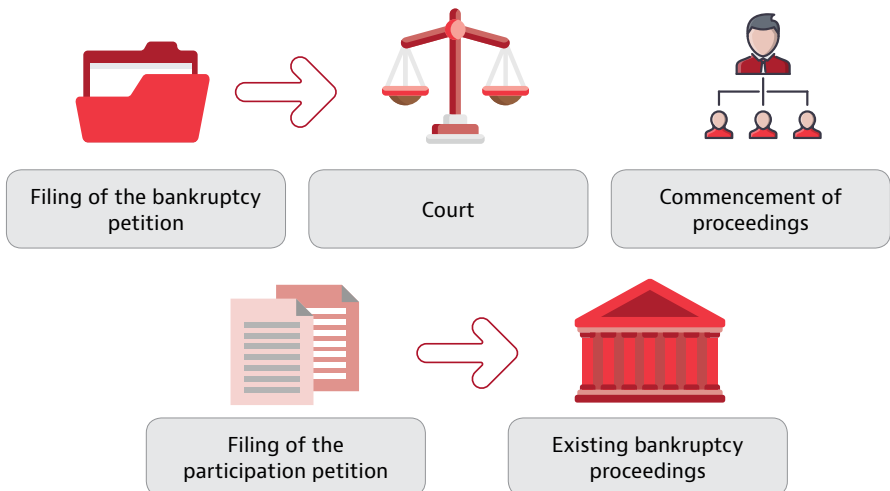
Bankruptcy proceedings for certain categories of debtors have important specific features compared to the generally applicable bankruptcy regime. Such categories of debtors include companies of special social importance or companies having special status, banks, insurance companies, securities traders and joint investment institutions, issuers or managing companies of mortgage certificates, managers of utility (construction financing) funds, managers of real property operation funds, enterprises with a state holding of over 50% in the charter capital, agricultural producers, farms, private (individual) entrepreneurs, and debtors liquidated by their owners. The specific features of the bankruptcy proceedings for such enterprises include unique terms and conditions of the bankruptcy proceedings, participation of competent state authorities, provision of guarantees, 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.

## 16.5 Initiation of Bankruptcy Proceedings

A bankruptcy petition may be brought in a Ukrainian commercial court ("*hospodarsky sud*") at the location of the debtor by any creditor (other than a fully secured creditor), the debtor itself, the State Tax Administration and certain other state agencies acting as creditors. A creditor (an individual or a business entity) that holds an incontestable claim against the debtor may initiate bankruptcy proceedings against the debtor if the amount of the claim is not less than 300 times the minimum monthly salary and such claim remains unsatisfied by the debtor three months after it is due. In 2016, the minimum monthly salary in Ukraine starting from 1 December 2016 is UAH 1,600. The amount of minimum monthly salary for 2017 will be established by the Law of Ukraine "On the State Budget of Ukraine for 2017," which has not yet been adopted.

Where a claim is denominated in foreign currency (eg, US dollars, euros, etc.), the creditor must apply the official exchange rate established by the National Bank of Ukraine (<https://bank.gov.ua/control/en/curmetal/detail/currency?period=daily>) as of the day of filing the application for commencement of the bankruptcy proceedings with the competent court, in order to determine the claim's amount in Ukrainian hryvnias and prove that it meets the minimum requirement established by the Bankruptcy Law for the commencement of bankruptcy proceedings.

### Ways to participate in bankruptcy proceedings

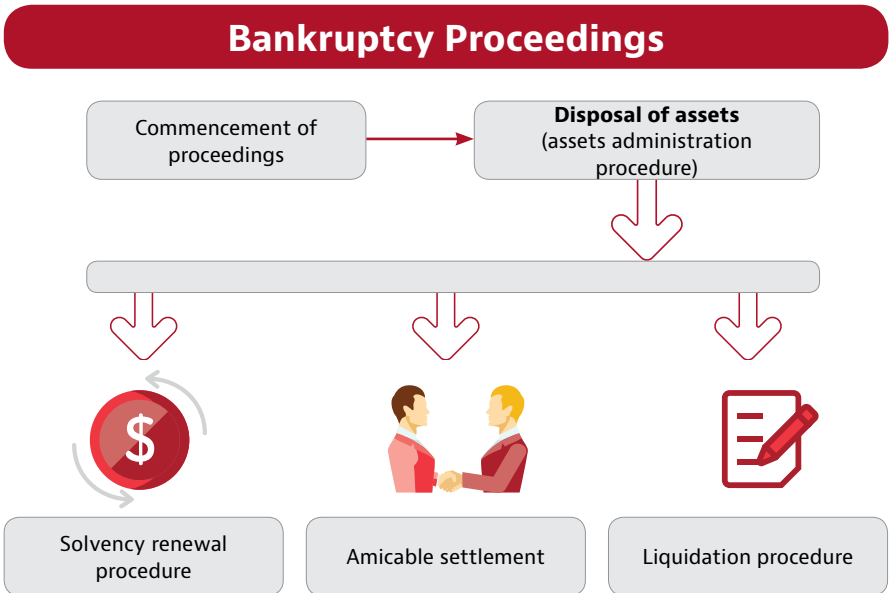


Once the bankruptcy proceedings have been triggered, any creditor (except a fully secured creditor) may submit a participation petition substantiating its claims against the debtor within 30 days of the formal publication on the commencement of the bankruptcy proceedings on the official website of the Supreme Commercial Court of Ukraine (<http://vgsu.arbitr.gov.ua/pages/157>). Creditors whose claims matured prior to commencement of the bankruptcy proceedings and were submitted after the expiry of the previously mentioned 30-day period will not have the right to participate and to vote in the creditors' committee, and their claims will be satisfied in the sixth (ie, the last) order of priority.

A creditor whose claims are fully secured by collateral is deemed to be a secured creditor and, as a matter of law, such creditor may not initiate bankruptcy proceedings. If a secured creditor considers that its claims are not fully secured, or if the collateral has been lost or is absent, it can initiate bankruptcy proceedings or participate as a creditor with respect to the unsecured part of its claims or all its claims.

**16.6 Stages of Bankruptcy Proceedings**

Judicial bankruptcy proceedings in Ukraine may include the following stages:





Under the assets administration proceedings, the Ukrainian commercial court appoints a bankruptcy administrator ("*rozporядnyk mayna*"), who will supervise and approve the disposal of the debtor's assets. The court may impose a moratorium on the discharge of claims of the debtor's creditors that arose before the bankruptcy proceedings.

A bankruptcy administrator is an individual who is registered as a private entrepreneur and is licensed to act as the administrator of a debtor's assets, the solvency renewal administrator or the liquidator at the relevant stage of the bankruptcy proceedings.

In the assets administration proceedings, the bankruptcy administrator identifies the creditors; prepares the register of the creditors and the amounts claimed from the debtor for further approval by the court; and organizes the general meeting of the debtor's creditors, which in turn appoints the creditors' committee (the "committee").

Once elected, the committee is entitled to initiate solvency renewal proceedings or liquidation proceedings against the debtor; to agree the terms and conditions of the solvency renewal plan and to apply to the court for its approval; to provide the court with candidates for appointment as the solvency renewal administrator and liquidator, as well as to apply for their replacement; to agree on the terms and conditions of an amicable agreement and to apply to the court for its approval; and to decide on other practical issues during the bankruptcy proceedings.

The creditors participating in the general meeting of creditors or in the meetings of the committee are allocated a number of votes determined pro rata to their claims, and they take decisions by a majority of votes.

Asset administration proceedings may last 115 calendar days and may be further extended by the court for two months at the request of either the bankruptcy administrator, the committee or the debtor.

Solvency renewal proceedings may be introduced by the court as the next stage of bankruptcy proceedings for a period of six months, and may be additionally extended for another 12 months at the request of the committee or the solvency renewal administrator.

Upon the ruling on the introduction of solvency renewal proceedings, the court appoints a solvency renewal administrator, who acts as the head of the debtor. For the period of the solvency renewal proceedings, other

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managing bodies of the debtor are not able to exercise their statutory powers.

The solvency renewal administrator must submit a solvency renewal plan to the court for approval within three months from the day of the court ruling on appointment of the solvency renewal administrator. If the debtor is a state-owned company in which the state owns not less than 50%, the solvency renewal plan is subject to approval by the state authority supervising the disposal of the property.

The solvency renewal plan may include corporate restructuring of the debtor, sale of its assets, recovery of receivables, debt restructuring, asset restructuring, sale or cancellation of debt and other means of renewal of the debtor's solvency. The solvency renewal plan may also provide for "replacement of assets," a procedure under which a part of the debtor's assets and obligations can be alienated to a newly established entity created by the debtor. Shares in such a newly created entity can be included in the debtor's assets and sold at auction.

If the solvency renewal administrator fails to provide the solvency renewal plan to the court for approval within six months from the day of commencement of the solvency renewal proceedings, the court may recognize the debtor as bankrupt and commence liquidation proceedings (ie, the final stage of bankruptcy proceedings).

The court may also introduce liquidation proceedings with the relevant ruling at the request of the committee if the debtor has failed to restore its solvency in accordance with the solvency renewal plan.

It should be noted that the committee may ask the court to commence liquidation proceedings after the asset administration proceedings omitting the solvency renewal proceedings. Upon the introduction of liquidation proceedings, the court appoints a liquidator, who acts as the head of the debtor. For the period of the liquidation proceedings, other managing bodies of the debtor are not able to exercise their statutory powers.

In the liquidation proceedings, the liquidator must determine the liquidation value of the debtor's assets, sell these assets and pay off the debt to the creditors in accordance with the order of priority for satisfaction of the creditors' claims as established by law.



Upon completion of the liquidation proceedings, the liquidator prepares a report, as well as the liquidation balance sheet of the debtor, and provides them to the court for consideration and approval. Based on the results of the liquidation proceedings, the court may approve the report and the liquidation balance sheet of the debtor, dissolve the debtor and terminate the bankruptcy proceedings.

According to the Bankruptcy Law, the term of liquidation proceedings is 12 months from the day of commencement.

At any stage of the bankruptcy proceedings, the creditors and the debtor may enter into an amicable agreement with a view to restructuring and/or cancelling the debt. However, first priority debt cannot be cancelled or restructured and the debt arising from mandatory pension and social security contributions cannot be cancelled by an amicable agreement.

The parties to the amicable agreement may agree on the transfer of the debt to third parties or the transfer of the debtor's assets or the corporate rights of the debtor to its creditors in exchange for the cancellation of the debt.

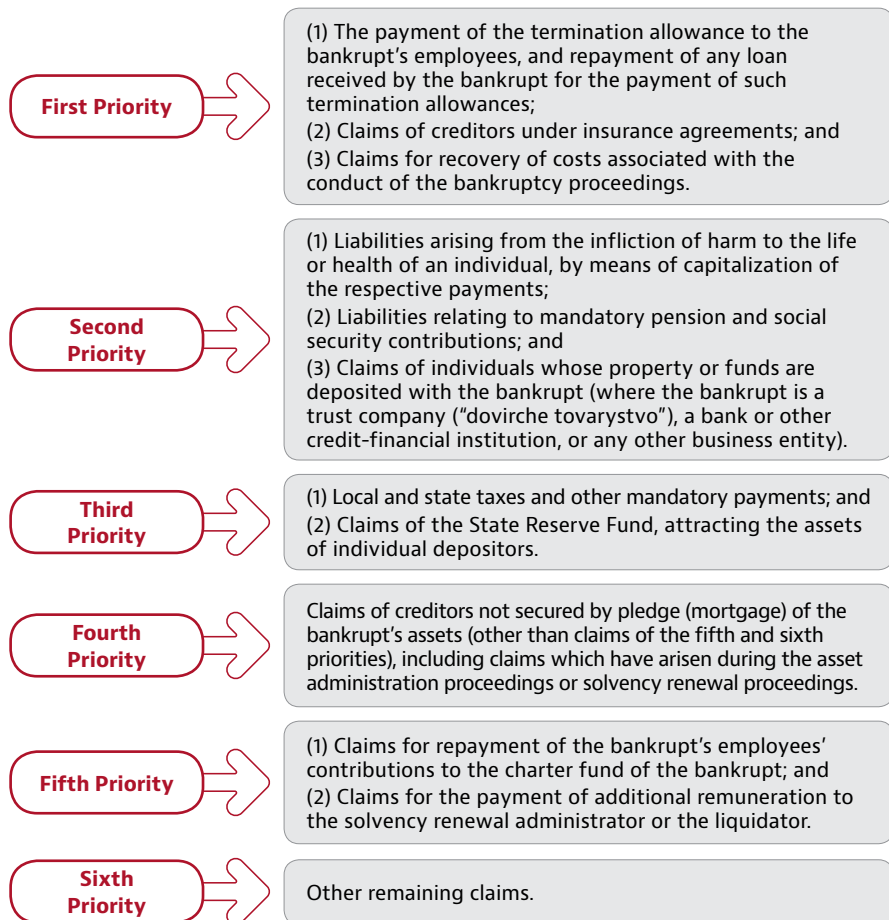
The amicable agreement is subject to approval by the committee, all secured creditors and the court and becomes effective from the day of a court ruling on approval of the amicable agreement. Upon approval of the amicable agreement, the court terminates the bankruptcy proceedings.

It should be noted that the amicable agreement may be invalidated by the court on the legal grounds provided by the Civil Code of Ukraine. Where the amicable agreement is invalidated, the court may reinstate the bankruptcy proceedings against the debtor.

The creditors may apply to the court for the termination of the amicable agreement in the event of non-performance of the agreement by the debtor with regard to not less than one-third of the total amount of debt. The termination of the amicable agreement for a specific creditor or creditors will not terminate the agreement for the rest of the creditors.

### **16.7 Priority of Claims**

Amounts received from the sale of the bankrupt's assets are used to pay the claims of its creditors in the following order:



Higher priority claims 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 claims with equal priority, they must be satisfied pro rata. Claims not paid due to the insufficiency of funds in the liquidation proceedings are deemed extinguished. Any assets remaining after the satisfaction of the claims of the creditors are to be returned to the "owners" of the debtor (ie, its shareholders or holders of its participatory interests) if the court decides to dissolve the debtor. The court is not able to dissolve the debtor if the remaining assets of the debtor exceed the amount of assets required by law for operation of the relevant legal entity.

Note that Ukrainian legislation establishes a special order of priority of satisfaction of creditors' claims for certain categories of debtors (including banks).





## 16.8 Clawback

There are a number of grounds on which transactions entered into by a Ukrainian debtor before or after the commencement of the bankruptcy may be challenged.

A challenge can be made in the bankruptcy proceedings by the bankruptcy administrator or by any of the competitive creditors. Such challenges can be made where:

- the debtor alienated its assets, assumed obligations or declined its claims without compensation
- the debtor fulfilled its obligations before the due date
- prior to commencement of the bankruptcy proceedings, the debtor entered into an agreement that led to its insolvency
- the debtor paid a creditor or accepted any property/assets as a set-off of payment obligations of its contractor, and as a result of such payment or set-off the amount of the debtor's assets became insufficient to satisfy creditors' claims
- the debtor alienated or acquired property at a price which was lower or higher than the market price, provided that the debtor's assets were insufficient for the satisfaction of creditors' claims at that time
- the debtor pledged its property to secure the fulfillment of pecuniary claims

## 16.9 Criminal Liability

Under the Criminal Code of Ukraine, "allowing bankruptcy" is defined as intentional activity, with mercantile or personal motives or in the interest of third parties, of an individual shareholder (participant) or a corporate official of an enterprise that caused the financial incapability of such enterprise and substantial material damage (ie, for 2017 — USD 14,599) to the state or a creditor, which is punishable with a monetary penalty of 2000 to 3000 times the monthly non-taxable salary (ie, from USD 1,240 to USD 1,861) with a prohibition on occupying certain positions or conducting certain activities for up to three years.

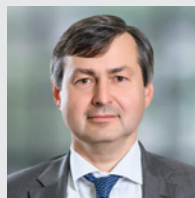
The Criminal Code of Ukraine as amended on 16 July 2015 provides for criminal liability for the falsification of information regarding contracts, obligations or property which is provided by a financial institution in its records or accounting documents and for the disclosure of such information if such actions are aimed at concealing bankruptcy or persistent financial insolvency. The Criminal Code of Ukraine provides for punishment for such actions in the form of a monetary penalty of 800 to 1,000 times the monthly non-taxable salary (ie, from USD 496 to USD 620) or imprisonment for up to four years with a prohibition on occupying certain positions or conducting certain activities for up to 10 years.

## EXPERT



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## 17. CONSUMER PROTECTION AND PRODUCT LIABILITY

### 17.1 General

The principal legislative act in Ukraine in the area of consumer protection and product liability is the Law of Ukraine on Protection of Consumer Rights (the “Consumer Rights Law”), dated 12 May 1991, as amended. The core principles of the Consumer Rights Law have been further affirmed by the new Civil Code of Ukraine (the “Civil Code”) and Commercial Code of Ukraine (the “Commercial Code”).

Under the Consumer Rights Law, producers of goods, providers of services, and merchants have the obligation to furnish consumers with goods and/or services that comply with the established quality standards, the terms of the agreement with the consumer, and the information about the goods/services provided by the producer/provider/merchant. In particular, the documents accompanying a product (if subject to mandatory certification in Ukraine) must indicate the number of the state certificate that confirms compliance of the product with the state certification requirements.

Pursuant to the Consumer Rights Law, producers of goods must ensure that goods are safe to use for the duration of their service life 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 that a producer of goods must ensure the availability of maintenance services and of spare parts for their products for the duration of production of the product. After cessation of production, spare parts should be available for the service life of the product or, if this has not been established by the manufacturer, for a period of 10 years. It also sets forth the obligations of producers (merchants) toward consumers with respect to the replacement of defective goods and warranty repairs.



Moreover, the consumer has the right to exchange non-food goods of appropriate quality for the same goods within 14 days if such goods do not satisfy him/her in shape, size, style, color, or for other reasons, or cannot be used for the intended purpose so long as these goods are not included in the list of goods that cannot be exchanged approved by the Cabinet of Ministers of Ukraine.

In addition, in December 2010, the Law on General Safety of Non-Foodstuffs (the "Law") was adopted. The Law provides a framework for releasing goods to market and for ensuring the safety of any product that is not a foodstuff, whether imported or manufactured domestically. The safety of products is presumed as long as they conform to the Ukrainian state technical standards, which are being harmonized with the relevant EU regulations. If a national standard is non-existent, certain other documents, including foreign standards, will be taken into account. The Law also establishes labeling requirements and user manual/safety instructions for non-foodstuff products, and requires the withdrawal of such products from the market if other safety measures have failed.

To complement the Law, the Law on State Market Supervision and Control of Non-Foodstuffs was adopted concurrently. It establishes, among other things, the procedure and criteria for quality testing of products and the conditions for the use of the National Sign of Quality. In addition, it describes in detail the powers of the relevant authorities in relation to safeguarding the safety of non-foodstuff products. The list of the products with respect to which the state market supervision is to be performed has been approved by the Cabinet of Ministers Resolution No. 1069, dated 28 December 2016. This Resolution also indicates which state authority shall supervise which types of products.

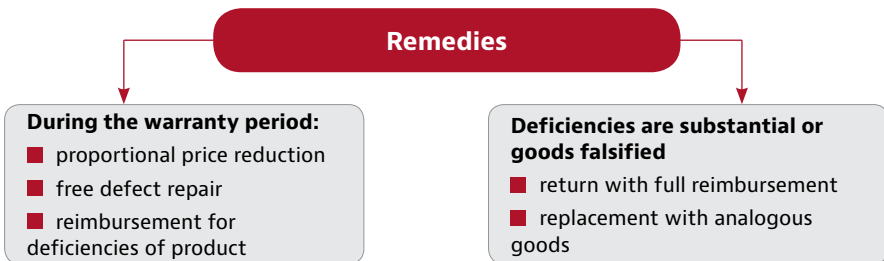
A number of technical regulations governing the quality of various groups of products (and harmonized with EU legislation) have been adopted since 2011.

The Law On Production and Circulation of Organic Agricultural Products and Raw Materials establishes the criteria for organic products (including imported) and production processes, including the requirement for a producer to be certified as an organic producer and included in the State Registry of Organic Producers. Such producers must undergo an annual certification of compliance with the requirements of the law and have the exclusive right to apply to their products labels that include the words "organic," "biodynamic," "biological," "ecological," "organic," "natural" and any derivative words that include the prefixes "bio" and "eco."

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## 17.2 Liability for Damage Caused by Defective Goods (Services)

Under the applicable Ukrainian legislation, in particular the Law on Liability for Damage Caused by Defect in Product (the “Defective Product Law”), the Consumer Rights Law, the Civil Code, damage suffered by a consumer with regard to his/her life, health, or property caused by a producer’s (provider’s) goods (services) must be indemnified in full by the person who inflicted the damage. The Defective Product Law introduced a concept of “defective goods” into Ukrainian legislation. It defines “defective goods” as goods that do not meet the level of security that the consumer or user may expect taking into account all the circumstances, including those related to the development, production, transportation, storage, installation, maintenance, consumption, use, destruction (recycling) of these goods, as well as the warnings and other information related to such goods.

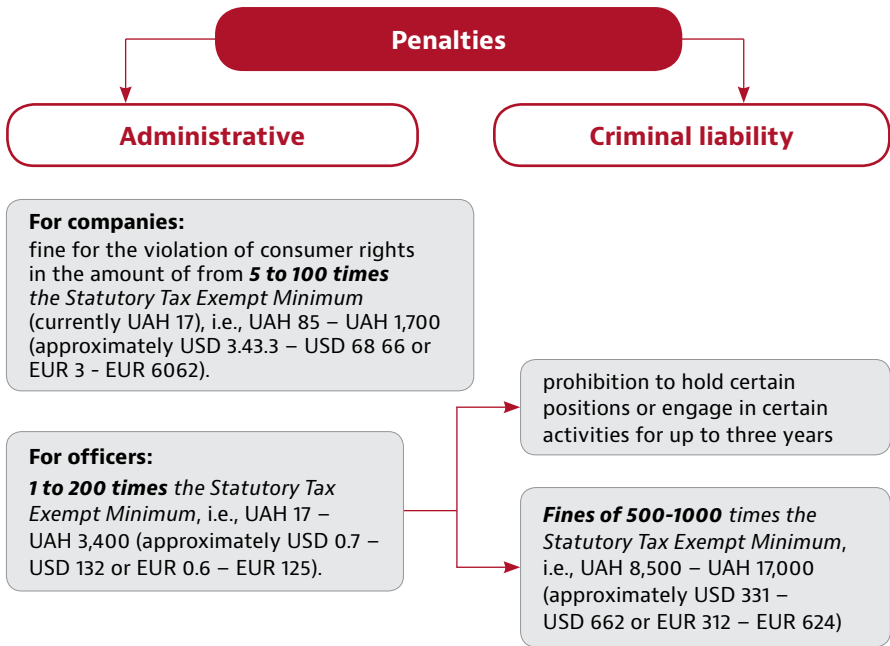


The right to claim damages, including “moral damages,” a concept similar to “emotional pain and suffering” in Western jurisdictions, is vested in every affected consumer, regardless of whether such consumer had concluded a contract with the producer (provider/merchant). This right is deemed valid for 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 (production of the works, rendering of services). The only exceptions to the above rule are cases where damage was inflicted due to the fault of the consumer or caused by force majeure.

## 17.3 Liability for Violation of Consumer Rights and Enforcement

The applicable Ukrainian legislation provides for civil, administrative and criminal liability for the violation of consumer rights.

The scope of penalties envisaged by the Consumer Rights Law for the company for violation of consumer rights ranges from 1% to 500% of the cost of the relevant defective goods manufactured or sold, or the services rendered. Administrative fines and criminal liability is also possible.



#### 17.4 Enforcement

The State Service of Ukraine on Food Safety and Consumer Protection was formed in September 2015 and is subordinated to the Cabinet of Ministers of Ukraine. The Service is responsible for the implementation of state policy in the areas of the state control of foodstuff safety; veterinary, sanitary and phytosanitary safety; state control of metrology; consumer rights protection related advertising; and state control of compliance with applicable regulations and technical standards. Its headquarters are in Kyiv and there are local branches in regions of Ukraine. Its officers are authorized to carry out planned and ad hoc inspections of the quality of products or services (including in response to customer complaints), to impose administrative fines and to issue mandatory orders or suspend operations of a production or trading facility if any violations of consumer rights (eg, poor quality of products or services) are detected.

#### 17.5 Control Over the Quality of Food Products

The Law of Ukraine on Quality and Safety of Food Products (the "Quality Food Law") sets requirements for producers, suppliers and sellers of food products for the development, production, import, supply, storage, transportation, sale, usage, consumption and utilization of these products. The Quality Food Law does not apply to tobacco or tobacco products, or to

food products manufactured for personal consumption. The Quality Food Law was significantly amended in 2017 in connection with adoption of the Law on State Control of Compliance with the Legislation on Foodstuffs, Feed, Byproducts of Animal Origin, Health and Wellbeing of Animals. In particular, those provisions of the Quality Food Law that apply to laboratory testing, powers and qualification of inspectors, conduct of inspections, etc. will be deleted from April 2018, when the Law on State Control of Compliance with the Legislation on Foodstuffs, Feed, Byproducts of Animal Origin, and Health and Wellbeing of Animals will take effect.



On 6 January 2015, the Chief Inspector of Veterinary Medicine of Ukraine enacted an order approving the list of products of high and low risk for human and animal health (the "Inspection Order"). Under the Inspection Order, products posing a high risk to human and animal health are in category I (fresh and frozen meat and fish, eggs, etc.) and category II (poultry, milk and dairy products, honey and bee products, etc.). Low risk products such as milk and milk products (for processing, not for consumption as is), frogs' legs and snails, bone and bone products, etc. are in category III.

All products that are imported into Ukraine are subject to standard veterinary and sanitary control by way of examination of documents and visual inspection of the goods. If contradictions are revealed or there are suspicions about the safety of the products, laboratory examinations must be conducted. In some cases extended control is obligatory, including if: (i) the shipment is chosen for it in accordance with the program of selective veterinary and sanitary control; (ii) certain goods in at least one of the last five shipments from certain production facilities were recognized as



dangerous, unfit for consumption, incorrectly labeled, or otherwise did not comply with the relevant technical regulations and sanitary measures; (iii) obvious violations of the relevant sanitary requirements were revealed during the visual inspection; (iv) the goods of this manufacturer or supplier are being imported into the customs territory of Ukraine for the first time.

#### *17.5.1 Food for Children*

On 2 December 2010, changes to the Law on Food for Children (the “Children’s Food Law”) tightened the requirements for the raw materials, permissible additives and the manufacturing of foodstuffs for children of various ages. In particular, raw materials can be used only if they were produced in a specially certified area and comply with the minimal safety and quality requirements established by the Ministry of Health. Certain raw materials may not be used for the production of food for children (eg, hydrated soybean protein, certain oils, fish and meat). The manufacturing facilities must have a special certificate issued pursuant to the procedure established by the Cabinet of Ministers. Moreover, in the production of food for children, use of artificial substances is prohibited: flavors (except vanilla, vanilla extract and ethyl vanilla); dyes; sweeteners (except special-purpose food for children); food additives, stabilizers; and aromas.

#### *17.5.2 Food Quality Assurance*

Under the Quality Food Law, all food products produced in Ukraine must be safe and suitable for consumption, properly labeled and meet sanitary standards and technical regulations.

Under the Quality Food Law, food products (except food products produced for personal consumption, tobacco or tobacco products) intended for human consumption may not be produced in or imported into Ukraine, or supplied for sale, sold, or otherwise used before their quality and safety have been proven by means of the appropriate documents. Among these documents are:

- declaration of conformity issued by the producer of agricultural products, other products intended for human consumption, food additives, flavorings or related materials for processing that shall be issued before the relevant products are released to market. This declaration certifies the compliance of food, food additives, flavorings or related materials for processing if the requirements set by the producer are further observed by this producer;
- certificate of compliance issued by the relevant chief state sanitary or veterinary doctor after an examination that certifies that food products are fit for human consumption;
- expert (veterinary) conclusion issued by the state veterinary laboratory that certifies the suitability or unsuitability for human consumption of

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- food products subject to veterinary control, or their subsequent processing or other use, as well as an analysis of the processing technology that should be employed by the producer and supplier to ensure food safety;
- international veterinary (sanitary) certificate issued by the relevant state veterinary doctor in the state of export that stipulates special requirements pursuant to the instructions of the relevant international organization and certifies the state of health of animals and/or other requirements related to human health protection that every food product must comply with;
  - veterinary documents for food products for human consumption; and
  - operational permit issued by the relevant chief public health doctor to the producer that is issued for each of the food production units used for the production, processing and sale of food products.

In November 2010, the Ministry of Health of Ukraine enacted an order prescribing the list of food ingredients that must be tested for the presence of genetically modified organisms (the "Order"), ie, any organisms in which the genetic material has been altered using artificial gene transfer techniques that do not occur under natural conditions. The food ingredients that must be tested include soya, corn, potatoes, tomatoes, wheat, rice, sugar beet, melons, cotton and many other similar products and their derivatives. Among the products that must be tested are products for children and the raw materials used for their production, special dietary foods, special-purpose foods, dietary supplements, nutritional supplements that are produced with the use of ingredients specified in the Order.

### *17.5.3 State Product Examination*

Under the Law of Ukraine on Ensuring the Sanitary and Epidemiological Well-Being of the Population, dated 24 February 1994, as amended (the "Sanitary Law"), particular food products are subject to state sanitary and epidemiological expert examination on food safety carried out by the state sanitary and epidemiological service in order to prevent, reduce and eliminate possible harmful effects on human health.

According to the Quality Food Law, all new food products, food products used for special diets, special-purpose food products, dietary supplements, food additives, flavorings and related materials, aids and materials for production, and food imported to Ukraine for the first time (if the supplier does not have a valid conclusion of the state sanitary and epidemiological expert examination or a producer's declaration) are subject to mandatory sanitary and epidemiological expert examination. The procedure for state expert examination, except for new food products, may be completed within 30 working days following the receipt of a complete application for





such examination. The state expert examination of new food products may be completed within 90 working days.

In addition, all food products of animal origin, projects for facilities that produce and circulate food products, production facilities that produce and circulate food products, facilities that produce and circulate food products with the purpose of obtaining or renewing an operational permit, facilities that produce and circulate food products for import and export, systems that ensure quality and safety at the facilities that produce and circulate food products are subject to sanitary and veterinary expert examinations.

Besides, all producers of food products must obtain an operational permit for each food production unit. As of April 2018, this permit will be issued to legal entities producing food products by the relevant veterinary inspection officer.

Moreover, under the Sanitary Law, economic activities that are related to potential hazards to human health are subject to obligatory licensing. Under the Law on Licensing Types of Economic Activities, dated 2 July 2015, among such activities are the production and sale of ethyl, cognac and fruit spirits, alcoholic beverages and tobacco.

#### *17.5.4 State Registration of Food Products*

Under the Quality Food Law, food additives and flavorings, as well as natural mineral drinking water, enzymes and some other products (eg, materials that come into contact with foodstuffs) that can be used in food production and released into the Ukrainian market are subject to mandatory state registration. The Ministry of Health is in charge of the state registration of such food additives, mineral drinking water and flavorings. After state registration is carried out, the registered food additives and flavorings are included in a special register. For the majority of products, registration should be completed within 30 working days. Registration of food additives may take up to 120 working days and registration of novelty foodstuffs may take up to 180 days. The Quality Food Law provides for the expedited registration of food additives if these particular food additives are approved for use by the relevant international organizations.

Under the Children's Food Law, all food products for children either produced in Ukraine or imported into Ukraine are subject to obligatory state registration.

Food products for special diets, special-purpose food products and dietary supplements are no longer subject to state registration, except for novel (non-traditional) food products, which must be registered.

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### *17.5.5 State Certification of Products*

Only tobacco products are currently subject to mandatory state certification. Since 2015, all food products have been exempt from such certification.

### *17.5.6 Labeling Requirements*

The Quality Food Law establishes labeling requirements for food products. Such labeling must be in Ukrainian and convey the required information in a manner intelligible for consumers. The labeling should indicate: (i) the name of the food product; (ii) the name and full address/telephone number of the food production unit (the name and full address/telephone number of the importer); (iii) the net quantity of food in the established units; (iv) the food ingredients in order of significance, including food additives and flavorings used during production; (v) the amount of calories and nutritional value (indicating the protein, carbohydrates and fats); (vi) the final consumption date, or date of production and expiry date; (vii) the lot number of the goods; (viii) the conditions of storage and use; (ix) the warning that the consumption of certain food products may be harmful for certain groups of consumers (such as children, pregnant women, sportsmen, etc.); and (x) the presence or absence in food of genetically modified organisms (the product should be labeled "contains GMO" or "GMO free" respectively).

The Quality Food Law provides that the description of special symbols used in the labeling and marking of food products with a bar code must be carried out in the manner provided by the Cabinet of Ministers. The text for labeling food products for special dietary needs, special-purpose food products and food additives is subject to obligatory confirmation by the Ministry of Health of Ukraine. In February 2011, in furtherance of the provisions of the Quality Food Law, a detailed technical regulation for labeling foodstuffs was introduced by the State Committee on Technical Regulation and Consumer Policy. In particular, under this technical regulation, the labeling of food products shall: (i) contain no information that can mislead the consumer; and (ii) include information that particular food products can contribute to the prevention, healing and treatment of any disease, or refer to such properties (except for natural mineral waters and foodstuffs for special dietary needs, special-purpose food products and dietary supplements).

Food products must convey the information about the presence or absence of genetically modified objects (GMOs) in the food product in a manner which is intelligible for consumers. This is achieved by placing the words "Contains GMO" or "GMO free," as the case may be, on the label of the product. Labeling food products that do not contain genetically modified organisms or whose content is less than 0.1% with the words "GMO free"



is voluntary. Food products that contain more than 0.9% of genetically modified organisms, or which have been produced from agricultural products in which the amount of genetically modified organisms exceeded 0.9% must have these facts stated on the label, or the producer (seller) must withdraw such products from the market.

#### *17.5.7 Hazard Analysis and Critical Control Point System*

Under the Quality Food Law, subjects of entrepreneurial activity (defined as individuals and legal entities which engage in economic activities) connected with the production of food products, food additives, flavorings, dietary supplements and other related materials shall apply the international system of food products quality assurance "Hazard Analysis and Critical Control Point" ("HACCP") at their enterprises and/or other systems to ensure the safety and quality of the production and release of food products onto the market.

#### *17.5.8 Prohibition on Non-Milk Ingredients in Traditional Dairy Products*

In May 2013, amendments to the Law on Milk and Dairy Products expressly prohibited the use of any non-milk derived proteins or fats, as well as any stabilizers and preservatives, in traditional dairy products. These include butter, cheese, and various types of fermented milk products (yoghurts). Imported dairy products are subject to control in this respect prior to customs clearance. Any product that contains replacers of milk or of its components (including vegetable oils) must be marked as "milk containing products/drinks," "cheese products," etc.

#### *17.5.9 The Quality Food Law harmonized with EU law*

A new version of the Quality Food Law is in effect from 20 September 2015. It aims to: (i) harmonize the legislation of Ukraine with the EU legislation in the field of safety and food quality; (ii) ensure a high level of protection of human health and consumer interests; (iii) create transparent conditions for business; and (iv) improve the competitiveness of domestic foods and reduce their prices. It clarifies terminology, types of offenses and penalties, cancels some permits and procedures pursuant to the EU legislation.

- (i) An operating permit is needed only by production facilities for the production and/or storage of food products of animal origin (ie, milk, meat, fish and shellfish, including fresh, chilled or frozen, eggs, honey, derivatives and other products made from animal parts, their organs and/or tissues intended for human consumption).
- (ii) If it is not necessary to obtain an operating permit; the production facilities can be registered at any stage of the production and/or circulation of food products.
- (iii) The list of products subject to state registration has been extended. In particular, new food products, nutritional supplements, flavorings,

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enzymes, processing aids and materials in contact with food that are released onto the Ukrainian market for the first time; drinking water that is classified as “natural mineral water.”

- (iv) The application of HACCP is obligatory. For a breach regarding the implementation of HACCP, legal entities will pay a fine of from 30 to 75 times the minimum monthly salary, ie, UAH 111,690 — UAH 279,225<sup>1</sup> (approximately USD 4,175 — USD 9,972<sup>2</sup>). For the same violations, individual entrepreneurs will pay a fine of from 3 to 15 times the minimum monthly salary, ie, UAH 11,169 — UAH 55,845<sup>3</sup> (approximately USD 398 — USD 1,994<sup>4</sup>). However, this requirement does not apply to primary production and related activities (transportation, storage, etc.).

## **17.6 New Law on Standardization**

The USSR standards (GOSTs), the standards of the Ukrainian Soviet Socialist Republic (PST USSR), codes of practice and technical standards, as well as the industry standards (OST) and other similar regulations of the former USSR, and the industry standards (GSTU) shall be applied until they are replaced by national standards or codes of practices, or cancelled, which must take place by 1 January 2019 at the latest. Currently, the application of many industry standards is voluntary, unless expressly required by the relevant legislative acts.

The current Law of Ukraine on Standardization (the “Standardization Law”) came into effect on 3 January 2015. Under the Standardization Law, among the objects that are subject to standardization are the following: (i) materials, components, equipment, systems, their compatibility; (ii) rules, procedures, functions, methods, activities or their results, including products, control systems; (iii) requirements for terminology, symbols, packaging, marking, labeling, etc. It does not apply to sanitary measures regarding food safety; veterinary, sanitary and phytosanitary measures; construction standards; pharmaceuticals; health care standards; accounting; assessment of property, education and other social standards.

The Standardization Law provides for the establishment of a national standardization body (the “Standardization Body”) that is in charge of the realization of state policy in the field of standardization. This role has been assigned to the state enterprise “Ukrainian Scientific Research and Training Center for Issues of Standardization, Certification and Quality.” The

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<sup>1</sup>Minimum Monthly Salary as of 23 November 2016.

<sup>2</sup>Exchange rate as of 23 November 2016.

<sup>3</sup>Minimum Monthly Salary as of 23 November 2016.

<sup>4</sup>Exchange rate as of 23 November 2016.



powers of the Standardization Body include organization and coordination in the field of standardization, approval of the schedule of standardization, adoption and cancellation of national standards, including the establishment and termination of technical committees on standardization, and the representation of Ukraine in international regional organizations. The Standardization Body has been adopting existing EU standards as Ukrainian state standards, including the production of their translations into Ukrainian.

The Standardization Law envisages two levels of standardization: (i) national standards that are adopted by the Standardization Body (application is voluntary, unless otherwise expressly provided for in the relevant legislative acts); and (ii) standards and technical standards that are adopted by enterprises (application is voluntary). For example, Ukrainian companies wishing to sell their products in foreign markets may follow the standards required in such market(s).

#### *17.6.1 Technical Regulations and Conformity Assessment Law*

On 15 January 2015, the Verkhovna Rada of Ukraine enacted a new Law of Ukraine on Technical Regulations and Conformity Assessment (the "Technical Regulations Law") pursuant to the obligations of Ukraine under the Agreement on Technical Barriers to Trade of 1994. The Technical Regulations Law is a consolidation of the Law of Ukraine on Conformity Assessment and Law of Ukraine on Standards, Technical Regulations and Conformity Assessment Procedures. Overall the Technical Regulations Law will come into effect a year following the day when it is published (publication pending as of 20 January 2015), except certain provisions that will come into effect during 2015. It establishes unified legal and organizational principles for the development, adoption and application of technical regulations and conformity assessment procedures. The Technical Regulations Law is applicable to all products, except artwork and unique items of folk art and crafts; collectibles and antiques. However, it is not applicable to sanitary and phytosanitary measures; conformity assessment of the quality of grain and grain products, seeds and planting material; conformity assessment of wheeled vehicles and their parts; mandatory conformity assessment of services, etc.

The Technical Regulations Law extended the concept of "technical regulation." It is defined as a legal act that stipulates the characteristics of products or related processes and production methods, including the relevant administrative provisions the observance of which is mandatory. It may also include requirements for terminology, symbols, packaging, marking or labeling, in so far as they apply to a product, process or production method. In the previous Technical Regulations Law, technical regulation was

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limited only to the laws of Ukraine and legal acts adopted by the Cabinet of Ministers of Ukraine.

The purpose of technical regulations is to protect the life and health of people, animals and plants, the environment and natural resources, energy efficiency, property, national security and prevent business practice that defrauds consumers. However, the legislation may specify other purposes of the adoption of technical regulations.

Technical regulations can be developed on the basis of both: (i) international standards (except when such international standards or their relevant parts are ineffective, or use improper means to achieve the purposes of the relevant technical regulations); and (ii) regional standards, national standards of Ukraine and other states, legislative acts of the EU and other economic groups, or other states, or the relevant parts of such standards and legislation. At the same time, the Technical Regulations Law expressly stipulates that all technical regulations in Ukraine shall be developed, adopted and applied on the basis of the principles established by the WTO Agreement on Technical Barriers to Trade of 1994.

Moreover, when technical regulations are developed on the basis of an EU legislative act, their content, form and structure should fully and accurately reflect the content, form and structure of the EU legislative act on the basis of which it is developed. All products must comply with the requirements stipulated in the relevant technical regulations, unless otherwise specified in the relevant technical regulation or the legal act that enacted this technical regulation.

The Technical Regulations Law also sets out the requirements for the conformity assessment procedure, the application of which is provided for by the relevant technical regulations. Such conformity assessment procedures shall be developed, adopted and applied on the basis of the principles established by the WTO Agreement on Technical Barriers to Trade of 1994. The conformity assessment procedures can be developed on the basis of: (i) the guidelines or recommendations of international standardization organizations, except when they are inconsistent with the protection of life or health of humans, animals or plants, the environment or natural resources, energy efficiency, the protection of property, national security, the prevention of business practices that defraud consumers; and (ii) the guidelines or recommendations of regional standardization organizations, legislative acts of the EU and other economic groups, or other relevant states.

The assessment of conformity with the requirements of the technical regulations is carried out in the cases and through the use of the conformity assessment



procedures defined in the relevant technical regulations. These procedures are performed by either the producers or the importers or distributors (when this obligation is imposed on them by the relevant technical regulations).

In addition, the technical regulations may provide for:

- (i) A declaration of conformity with the technical regulations. In this case, the producer or its authorized representative shall issue a declaration of conformity claiming that the requirements applicable to the products defined in the relevant technical regulation have been met. If several technical regulations are applied with regard to one product and they provide for the issuance of a declaration of conformity, the producer or its authorized representatives shall issue one declaration to cover the conformity of the products with all the technical regulations. The producer, by virtue of issuance of the declaration of conformity, undertakes responsibility for the conformity of the products with the requirements laid down in the relevant technical regulations.
- (ii) The labeling of products with a mark confirming their conformity with the technical regulations. The terms and conditions of the labeling are established in the technical regulations. When such terms are not established, the Cabinet of Ministers of Ukraine shall adopt the relevant labeling terms.

#### *17.6.2 Limitation on Consumption of Alcohol and Tobacco*

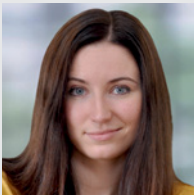
In January 2010, the Verkhovna Rada of Ukraine adopted restrictions on consumption of alcohol and tobacco, including special labeling requirements, zoning and other rules for sales of these products. Under this law, low-alcohol beverages have the legal status of alcohol. Moreover, all restrictions regarding alcohol consumption and sales are currently applied with regard to low-alcohol beverages. Also, amendments to the Administrative Violations Code have been made whereby specific liability for violation of the abovementioned restrictions has been established.

#### **17.7 Developments in Legislation to Come into Effect in 2018**

In 2017, the Law on State Control of Compliance with the Legislation on Foodstuffs, Feed, Byproducts of Animal Origin, and Health and Wellbeing of Animals was adopted. It will apply to supervision of market operators' compliance with the legislation applicable to foodstuffs, feed, animal byproducts, and health and wellbeing of animals in the course of their import into Ukraine. The law will take effect mostly in 2018, with very few provisions taking effect in 2020 or 2021. In particular, the laboratories that do not fully meet the requirements of the law will, nevertheless, be permitted to continue to perform testing of biological samples upon receipt of specific permission from the State Veterinary Service.

# 18. INDUSTRY REGULATION

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## 18.1 Banking

### 18.1.1 Ukrainian Banking Sector

The Ukrainian banking sector has a two-tier structure comprising:

- the National Bank of Ukraine (the "NBU"); and
- commercial banks of various types and forms of ownership.

Ukrainian banks act in accordance with:

- the Constitution of Ukraine;
- the Civil Code of Ukraine;
- the Commercial Code of Ukraine;
- the Law of Ukraine On the National Bank of Ukraine dated 20 May 1999 (the "National Bank Law");
- the Law of Ukraine On Banks and Banking Activity dated 7 December 2000 (the "Banking Law");
- the Law of Ukraine On Financial Services and State Regulation of the Financial Services Markets dated 12 July 2001 (as far as non-banking financial services are concerned); and
- the Ukrainian legislation on joint stock companies and other business entities, as well as the NBU regulations and their respective constituent documents.

In 2015, the NBU, together with the Financial Services Commission and the National Securities and Stock Market Commission, adopted a comprehensive





program of reforming the financial services markets by 2020, which includes significant reforms to the regulation of the Ukrainian banking sector.

### **18.1.2 Role of the National Bank of Ukraine and Monetary Policy**

The NBU:

- was established in 1991 and is governed by the Constitution of Ukraine and the National Bank Law;
- is the central bank of Ukraine with the principal objective of ensuring the external and internal stability of the national currency; and
- possesses broad regulatory and supervisory functions in the banking sector, including the power to:
  - develop and conduct monetary policy;
  - organize banking settlements and the foreign exchange system;
  - ensure stability of the monetary, financial and banking systems of Ukraine;
  - regulate and oversee the activity of payment systems; and
  - protect the interests of commercial bank depositors.

The principal governing bodies of the NBU are:

- the Council; and
- the Board.

The Council:

- is the highest governing body of the NBU;
- consists of nine members:
  - four members are appointed for a seven-year term by the Parliament;
  - another four members are appointed for a seven-year term by the President; and
- is charged, in particular, with developing the principles of Ukraine's monetary policy pursuant to the recommendations of the Board.

The chairperson of the Council is elected among the other members of the Council for a three-year term.

The chairperson of the NBU:

- is nominated by the president and appointed by parliament;
- acts ex officio as the ninth member of the Council during his/her term of office; and
- cannot be elected as the chairperson of the Council.

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### The Board:

- comprises the chairperson, and his or her deputies; and
- is responsible for:
  - implementing Ukraine's monetary and other policies in the banking sector; and
  - generally managing the activity of the NBU.

The NBU, which is charged with implementing monetary policy, currently implements such policy through instruments such as:

- mandatory reserve requirements for banks;
- interest rates;
- refinancing of commercial banks;
- deposit operations; and
- reverse repo operations.

The main channel for the release of funds into circulation is the foreign currency market.

With signs of the economy beginning to stabilize after the financial crisis in 1998 and the ensuing economic instability in the region, the NBU reduced the discount rate from 45% at the beginning of 2000 to 12.5% by the end of 2001, and 7% in December 2002. Since then, the discount rate has been increased and decreased numerous times, with the latest reconsideration taking place on 26 January 2018 when the discount rate of the NBU was fixed at 16% per annum.

The NBU also used to separately determine interest rates for overnight unsecured loans and overnight loans secured by state securities and set separate interest rates for deposits from banks placed with the NBU for various terms. However, starting from 2007, the NBU first ceased to set interest rates for overnight loans secured by state securities. Then, starting from 12 June 2013, it further ceased to set interest rates for overnight unsecured loans. Instead, the NBU started determining interest rates for depositary certificates. Now the NBU has yet again restarted setting interest rates for overnight loans secured with state securities.

The main goal of the NBU's monetary policy for the years 2016 to 2020, as declared by the NBU, is to achieve and maintain price stability in Ukraine. The main contribution for achieving stable economic growth would be the low stable growth of inflation, which will be shown by the consumer price index being within 5% per year. To achieve this goal, the NBU will take inflation targeting measures, which is considered one of the most effective monetary regimes to provide low and stable inflation.



### 18.1.3 Commercial Banks

Current Ukrainian legislation distinguishes between:

- “universal” (general) commercial banks; and
- “specialized” commercial banks, with the latter including savings and asset management banks.

The regulatory capital (ie, the sum of principal (core) capital and additional capital) of the bank cannot be less than the minimum statutory capital requirement and the minimum regulatory capital requirements established by the NBU.

On 18 December 2014, new amendments to the Banking Regulation Instruction came into effect whereby the minimum regulatory capital of a bank that obtained a banking license after 11 July 2014 cannot be less than UAH 500 million.

The minimum regulatory capital of a bank that obtained a banking license before 11 July 2014 should be as follows:

- UAH 200 million – starting from 11 July 2017;
- UAH 300 million – starting from 11 July 2020;
- UAH 400 million – starting from 11 July 2022; and
- UAH 500 million – starting from 11 July 2024.

On 29 April 2017, the Law of Ukraine “On Facilitation of Banks’ Reorganization and Capitalization Procedures” (the “Bank Reorganization and Capitalization Law”) came into force which. The Bank Reorganization and Capitalization Law will be effective until 1 August 2020 and provides for diverse instruments to reorganize or/and capitalize the banks within simplified procedures. In addition, those banks which are not able to fulfil all regulatory requirements will be able to exit the banking market and continue their activities as a financial institution.

On 8 March 2015, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding Liability of Bankers” dated 2 March 2015 (the “Liability Law”) came into force.

The purpose of the Liability Law was:

- to strengthen the liability of bank-related persons, ie, primarily bank managers and beneficial owners of the banks who make decisions that affect the financial positions of banks (“bankers”);
- improve banking supervision; and
- protect the interests of depositors and creditors.

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The Liability Law requires an individual who owns a qualifying holding in a bank:

- to notify the NBU within one month upon entry into force of the Liability Law about such holding; and
- to disclose to the NBU all related documents within three months of the Liability Law entering into force.

Banks are also required to disclose to the NBU their updated ownership structures within two months of the Liability Law entering into force. On 21 May 2015, the NBU adopted the procedure for disclosing such structures.

In addition, banks will have to submit the following to the NBU:

- information regarding persons related to the banks;
- reports on transactions with bankers; and
- a calculation of credit risk ratios for transactions with bankers.

In addition, the Liability Law:

- expands the list of persons related to a bank and requires that an agreement with such persons must be entered into based on the current market conditions and indicates which transactions are to be regarded as not compatible with current market conditions; and
- envisages that a person related to a bank, whose actions or omissions result in damage to a bank, will be liable for such actions or omissions with his/her property. If another such related person benefited directly or indirectly from the actions or omissions of a bank-related person, which caused damage to a bank, such persons are jointly and severally liable for the damage caused to the bank.

The Deposit Guarantee Fund is authorized to seek redress for such damage in court from such persons.

#### **18.1.4 Banks with Foreign Participation and Branches of Foreign Banks**

A foreign bank may establish a presence in Ukraine through:

- a representative office (without the right to conduct banking business); and/or
- a Ukrainian commercial subsidiary bank.

Foreign participation in a Ukrainian commercial bank is not limited (albeit previously Ukrainian legislation established a threshold of 35% of the charter capital).



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.

The permission of the NBU is required for a Ukrainian or foreign person to directly or indirectly own, hold, or control certain percentage of shares in a commercial bank's charter capital or voting rights in its governing body, namely:

- 10% or more
- 25% or more
- 50% or more
- 75% or more

Once a person reaches any of these thresholds, it must reapply for permission of the NBU.

In 2011, the three Ukrainian financial regulators<sup>1</sup> (the NBU, the NSEC and the FSMC) became endowed with new authority to supervise not only banks and non-banking financial institutions in Ukraine, but also their related parties and their ultimate beneficial owners ("UBOs"). The NBU, as the principal author of the foregoing amendments, publicly announced that these amendments were directed at ensuring financial stability and protection of the interests of banks' depositors and investors in financial institutions.

The financial regulators became vested with much wider powers to supervise the activities of banks and financial institutions, and also to restrict transactions of banking and non-banking financial groups in certain cases.

Consolidated control over banking and non-banking financial groups implies, among other things, the following:

1. from 19 December 2011, the NBU, the SSEC and the FSMC have the right to establish certain additional requirements, including restricting a banking or non-banking financial group or its participants from carrying out certain activities or transactions in Ukraine or in other countries if the relevant national regulator considers such activities or transactions to be too risky;
2. the UBOs of a financial group must appoint an entity from among the group's participants to be responsible for the group's fulfilment of the requirements established for the group on a consolidated basis, notifying the group's national regulator about the group's ownership structure

<sup>1</sup>The NBU, the National Securities and Stock Exchange Commission ("NSEC"), and the National Commission for Regulation of Financial Services Markets ("FSMC").

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- or business activities, including any changes, and for preparation of consolidated reporting information. This entity should be approved by the national regulator of the group (the NBU, the SSEC or the FSMC);
3. no participant of a banking group may hold corporate rights/shares in one of the group's non-financial institutions constituting more than 15% of the consolidated regulatory capital of the whole group, or in all such entities constituting more than 60% of the consolidated regulatory capital of the group;
  4. participants of a banking group may carry out transactions generating a credit risk (the list of such transactions is yet to be approved by the NBU) for their non-financial institutions in an amount not exceeding 20% of the consolidated charter capital of the whole group, or in an amount not exceeding 5% of the consolidated charter capital of a single entity of the group;
  5. banks are prohibited from creating branches, representative offices or subsidiary banks in countries in which banking supervision and control does not comply with the Basic Principles of Effective Banking Supervision of the Basel Committee on Banking Supervision. If a Ukrainian commercial bank has an operating branch, representative office or subsidiary bank in such a country, it will be obliged to decrease participation in the capital of the subsidiary bank or to close such branch, representative office or subsidiary bank; and
  6. the NBU is authorized to force a banking group to change its ownership structure if it is unclear to the NBU, or if the NBU is unable to control the transactions of the group.

Additional sanctions may be imposed on a banking group, such as prohibiting a bank from carrying out transactions with its related entities for a breach of the banking legislation, not only by the bank itself but also by any participant of the banking group.

In view of the foregoing legislative changes, any group of companies having in its composition two or more banks or non-banking financial institutions should determine whether its activity may be classified as principally banking or non-banking financial services and, therefore, whether the group should submit to banking and non-banking supervisory control by the relevant regulator. The ultimate responsibility for taking such a decision now rests with the UBOs.

### **18.1.5 Types of Banking Activities**

A commercial bank carries out its banking activities pursuant to a banking license issued by the NBU.



A banking license permits a bank to:

- attract funds (deposits) from legal entities and individuals;
- open, maintain and carry out transactions with current accounts of clients and correspondent banks; and
- place 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 except for certain banking operations which may be carried out by the Central Securities Depository based on the license of the NBU.

A duly licensed commercial bank may also render financial services to its clients (save for other commercial banks), including through its commercial agents based on agency agreements. The list of such services is set out by the NBU.

In addition a duly licensed commercial bank may also carry out the following additional activities:

- the issuance of its own securities
- the provision of safekeeping services (but not including the custody of securities)
- the rendering of consulting and information services related to banking and other financial services
- investments
- the organization of monetary lotteries
- the transportation of currency valuables and cash collection

A duly licensed commercial bank may also render banking and other financial services in foreign currencies, which constitute foreign currency operations, only on the basis of a general license for carrying out foreign currency operations issued by the NBU.

#### **18.1.6 Loan Provisioning**

Banks must meet mandatory provisioning requirements to cover net loan risks.

To build up appropriate provisioning banks must evaluate risks relating to the relevant borrowers.

Some loan products, such as funds transferred to the NBU (eg, under direct repo transactions), do not require any provisions.

Ukrainian legislation sets forth separate provisioning requirements for loans extended to legal entities, banks, budget institutions as well as for consumer loans.

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Loan provisioning requirements are determined by banks on the basis of the formulae set out in the applicable NBU regulation. The respective formulae take into account the degree of credit risk of any particular borrower, which is also determined in accordance with a formula applicable to a particular type of borrowers.

### **18.1.7 Competition**

As of 1 October 2017, commercial banks have been performing banking transactions under the licenses granted by the NBU. As of the same date, the total net assets of all commercial banks in Ukraine amounted to UAH 1.28 trillion (approximately USD 47.4 billion/EUR 38.57 billion). As of 1 October 2016, their credit portfolio (including interbank loans) amounted to UAH 1.04 trillion (approximately USD 38.4 billion/EUR 31.3 billion).

According to the NBU, during the nine months ending 30 September 2016, the statutory capital of Ukrainian banks performing banking operations increased by 26.62%, amounting to UAH 264.34 billion (approximately USD 10.32 billion/EUR 9.76 billion) as of 1 October 2016, compared to a 14.5% increase in statutory capital during the previous 12 months in 2015.

During the nine months ending 30 September 2016, the total assets and total liabilities of Ukrainian banks performing banking operations decreased by 1.2% and 4.7%, respectively (compared to an increase of 3.3% and a decrease of 1.5%, respectively, in 2015). The regulatory capital of Ukrainian banks increased by approximately 34.5% during the nine months ending 30 September 2016, amounting to UAH 140.97 billion (approximately USD 5.5 billion/EUR 5.2 billion).

In 2017, commercial banks operating in Ukraine were divided by the NBU into three groups depending on their asset size or shareholders. Specifically, as of 1 October 2017:

- seven banks with state participation in which the State directly or indirectly holds more than 75% of the banks' share capital
- 25 banks which belong to foreign banking groups in which the majority stakes are held by foreign banks or foreign financial and banking groups
- 115 private banks in which ultimate qualifying shareholders are one or several private investors that directly or indirectly hold at least 50% of the bank's share capital

As of 1 October 2017, two of the largest banks in Ukraine, namely, the Ukrainian Export-Import Bank (*Ukreximbank*) and the State Savings Bank of Ukraine (*Oschadsbank*), were state-owned and collectively have approximately 30%





of total assets of the Ukrainian banking sector. In addition, in 2017 PrivatBank, the largest commercial bank of Ukraine, having approximately 20.01% of total assets of the Ukrainian banking sector, was nationalized.

As of 1 December 2017, 38 banks in Ukraine had some foreign capital, 18 of which were fully foreign-owned. Banks with foreign capital comprised over 31% of the total statutory capital of banks in Ukraine.

#### **18.1.8 Consumer Protection**

Back in 2007, the NBU adopted regulations on mandatory disclosure to individual customers of the essential information relating to consumer loans by Ukrainian commercial banks.

According to the applicable legislation, all banks are required to disclose the effective rate of interest under loans granted to individual consumers in the text of the loan agreement.

Also, consumers are required to provide the banks with written confirmation that he/she has received all the information from the bank relating to the terms and conditions of the loan and, specifically, the costs of the loan to the consumer.

Banks are allowed to apply either fixed or floating interest rates in relation to a loan agreement.

Fixed interest should remain unchanged during the life of the loan and banks are not allowed to change it unilaterally. If the agreement contains a clause saying it can be changed unilaterally, then this clause is regarded as void ab initio.

Banks are prohibited from issuing consumer loans denominated in foreign currency.

In June 2017, the Law of Ukraine “On Consumer Crediting” introducing the new legal framework for extending consumer loans to individuals became effective. The new law is aimed at individuals’ protection and addresses all issues previously used to distort the terms and conditions of consumer crediting.

#### **18.1.9 Regulatory Requirements to Acquisition of Substantial Shareholding in Ukrainian Banks**

The NBU regulations in place require shareholders of Ukrainian banks which (who) intend to increase directly/indirectly their shareholding (ie, over 10,

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25, 50 or 75%) and/or potential shareholders which (who) intend to acquire substantial shareholding (ie, 10, 25, 50 or 75%) in Ukrainian banks to receive prior approval from the NBU. If an owner of a substantial interest in a bank intends to decrease its interest in the bank below any of the set thresholds (ie, 10, 25, 50 or 75%), this shareholder must inform the NBU within five days of taking such decision.

The applicable regulations provide for comprehensive lists of documents to be submitted to the NBU for the above purposes and set forth requirements for the business reputation and financial status of bank shareholders. The applicable regulations also fix indicators for the absence of an impeccable business reputation and adequate financial status of shareholders (for example, the shareholders'/controllers' losses for the last reporting period (year) or the absence of business reputation issues for senior managers of direct or indirect shareholders or ultimate beneficial owners if individuals) which might affect the NBU's approval.

The NBU is permanently working on updates and amendments to the current procedure of obtaining the NBU approval for acquisition of substantial interest in Ukrainian banks to make it more transparent and clear for potential shareholders and to the maximum possible extent informative for the NBU as a regulator.



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## 18.2 INSURANCE

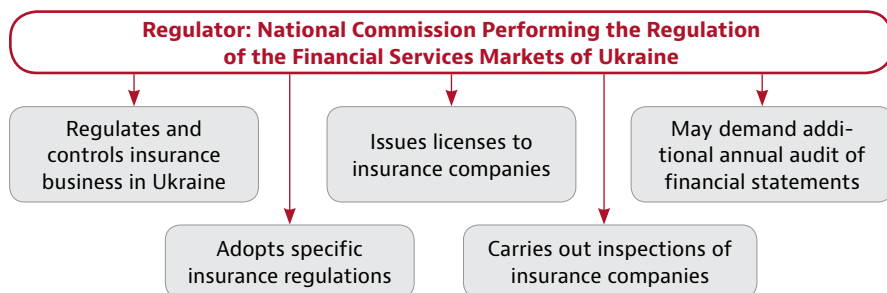
### 18.2.1 Regulatory Framework

Insurance services in Ukraine are governed by, among others:

- Law of Ukraine On Insurance, dated 7 March 1996, as restated on 4 October 2001 and further amended (the "Insurance Law")
- Order of the State Commission for the Regulation of the Financial Services Markets of Ukraine No. 41 "On the Approval of the Regulation on State Register of Financial Institutions" dated 28 August 2003
- Order of the State Commission for the Regulation of the Financial Services Markets of Ukraine No. 39 "On the Approval of the Procedure for Compiling Reporting Data of Insurers" dated 3 February 2004
- Regulation of the Cabinet of Ministers of Ukraine No. 913 "On the Approval of Licensing Conditions to conduct business activities on providing financial services (except professional activities on securities market)" dated 7 December 2016

- Order of the State Commission for the Regulation of the Financial Services Markets of Ukraine No. 8170 "On the Approval of the Procedure and Requirements for Conducting Intermediary Activities on the Territory of Ukraine on Concluding Insurance Agreements with Non-Resident Insurers" dated 25 October 2007
- Regulation of the Cabinet of Ministers of Ukraine No. 1523 "On the Procedure for the Activity of Insurance Intermediaries" dated 18 December 1996
- Regulation of the Cabinet of Ministers of Ukraine No. 124 "On the Approval of the Procedure and Requirements for Reinsurance with a Non-Resident Insurer (Reinsurer)" dated 4 February 2004
- Law of Ukraine No. 1702-VII On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime, Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction, dated 14 October 2014

### 18.2.2 Regulation of Activity of an Insurance Company



Insurance companies are obliged to submit quarterly and annual reports to the Regulator. In addition, insurance companies are obliged to prepare and publish their annual financial statements and consolidated reports. The accuracy of these reports must be confirmed by an independent auditor.

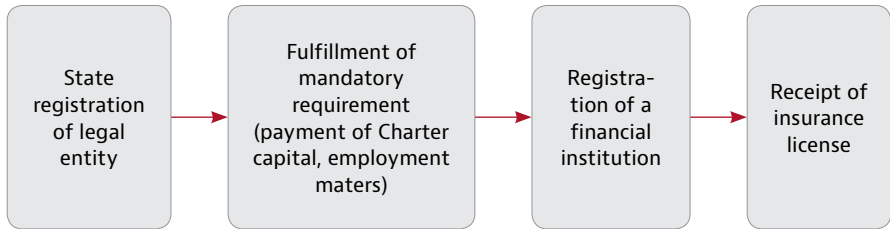
The Insurance Law also regulates reinsurance. When the cost of insuring a single object exceeds 10% of the sum of paid charter capital and formed free reserves and insurance reserves, the insurance company is obliged to conclude a reinsurance agreement, which is subject to the registration pursuant to the procedure established by the Regulator.

An insurance premium may only be paid in hryvnia. Upon agreement of the parties, the financial obligations of the life insurance agreement may

be determined in a foreign currency. Insurance benefits are to be paid in the currency stated in the insurance agreement, provided that it does not contradict the applicable law.

### 18.2.3 Registration of an Insurance Company

A Ukrainian legal entity must undergo the following procedures in order to be qualified to carry out insurance activity:

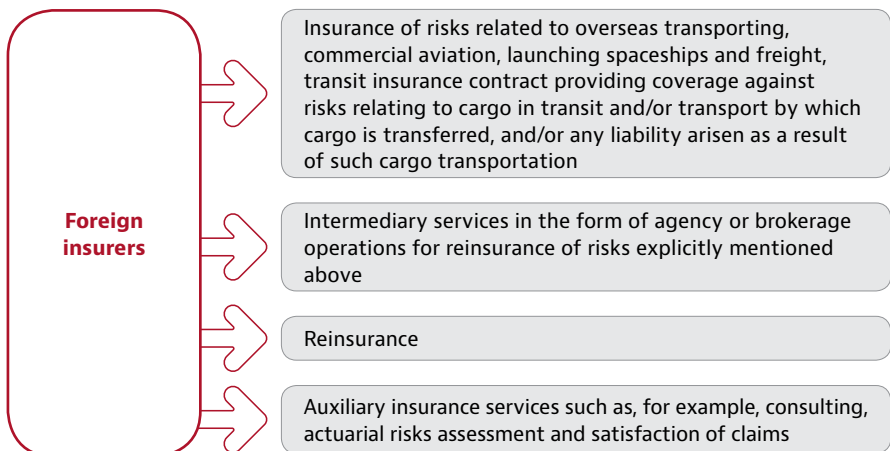


### 18.2.4 State Registration

Only a Ukrainian legal entity in the form of a joint-stock company, a general partnership, a limited partnership or an additional responsibility company may become an insurer in Ukraine.

The Insurance Law requires that an insurer must be established by, and must exist with, at least three shareholders (participants). Ukrainian and foreign legal entities and individuals may be shareholders of an insurance company.

Under the Insurance Law, foreign insurers are only allowed to conduct the following insurance activity in Ukraine:



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In addition, under the Insurance Law a foreign insurer may conduct the above insurance activity in Ukraine if the following requirements are met:

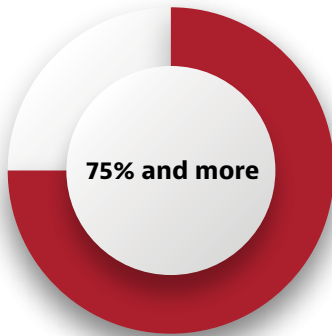
- the country where the foreign insurer is registered is a member of the World Trade Organization (WTO) and such country participates in the international cooperation aimed at the prevention of and counteraction to the legalization of money laundering and financing of terrorism and cooperates with the Financial Action Task Force (FATF). The requirement for membership of the WTO by the country where the foreign insurer is registered does not apply with respect to reinsurance
- there is a memorandum (agreement) on exchange of information signed between the Regulator and the relevant authority entitled to exercise control over insurance companies of the country where the foreign insurer is registered
- the country of the foreign insurer's registration exercises state control over the insurance business
- there is a treaty on the avoidance of double taxation and prevention of fiscal evasion signed between Ukraine and the country where the foreign insurer is registered
- the country where the foreign insurer is registered is not included by Ukraine into the list of tax heaven jurisdictions
- the foreign insurer has obtained an insurance license in the country of its registration
- the foreign insurer's financial reliability rating meets the requirements established by the Regulator

Insurance companies which provide life insurance are prohibited from providing any other types of insurance, except for:

- insurance and reinsurance of life insurance
- financial activities connected with the accumulation, investment and management of insurance reserves (asset management)
- crediting the insured individuals
- the performance of any operations aimed at satisfying its own business needs

The statutory minimum for the charter capital of an insurer must be equal to the UAH equivalent of EUR 1 million for an insurance company not issuing life insurance, and the UAH equivalent of EUR 10 million for a life insurer.

The charter capital of an insurer must satisfy the following requirements:



Cash



Insurance reserve funds  
Intangible assets  
Promissory note  
Borrowed funds  
Public funds



State securities at par value

The total amount paid by an insurance company to the charter capital of any other Ukrainian insurer must not exceed 30% of its own charter capital (fund), and 10% of the charter capital per a particular insurer. However, this requirement does not apply to an insurer that provides services different from life insurance and contributes to the charter capital of an insurer that provides life insurance services.

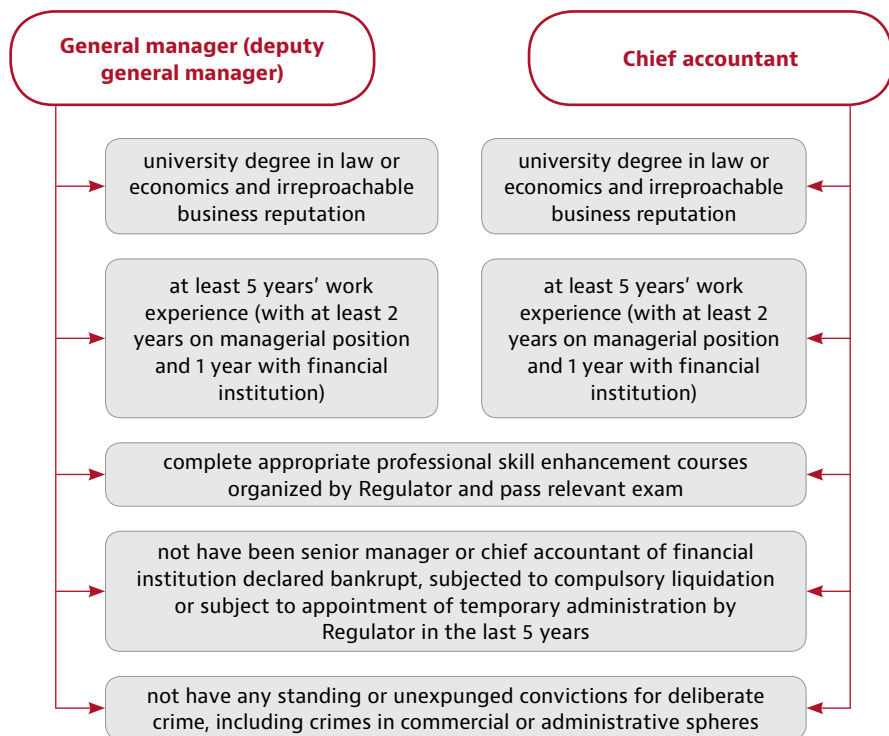
### 18.2.5 Registration as a Financial Institution

In order to obtain the status of financial institution, a company must file an application for registration in the State Register of Financial Institutions within 30 calendar days from the date of its state registration as a company. On the date of submitting an application and throughout its existence, the company must comply with, among other things, the following requirements:

- The company's paid-in charter capital must be equal to or exceed the UAH equivalent of EUR 1 million (calculated in accordance with the exchange rate of the NBU on the date of its application) for an insurance company, or the UAH equivalent of EUR 10 million for a life insurance company.
- The company is required to own or lease non-residential premises at its registered office address, which must be used exclusively by such company for the insurance activities.

- The company must have the required number of qualified insurance professionals, software, hardware and communication facilities installed in the premises owned or leased by the company.

The general manager and chief accountant of a company must have advanced professional skills, in particular:



As a general rule, the actuary of an insurance company must have: (i) a university degree; (ii) at least three years' actuarial work experience; (iii) a special qualification certificate issued by the Regulator; and (iv) a document proving successful completion of the professional exams according to the American or British examinations systems. Other specific qualification requirements may apply to the actuary of a life insurer.

### 18.2.6 Insurance License

Only legal entities with an insurance license may use the words "insurer," "insurance company" and "insurance organization" in their name. In order to obtain and maintain an insurance license, a financial institution must comply





with the following requirements in addition to the requirements discussed above.

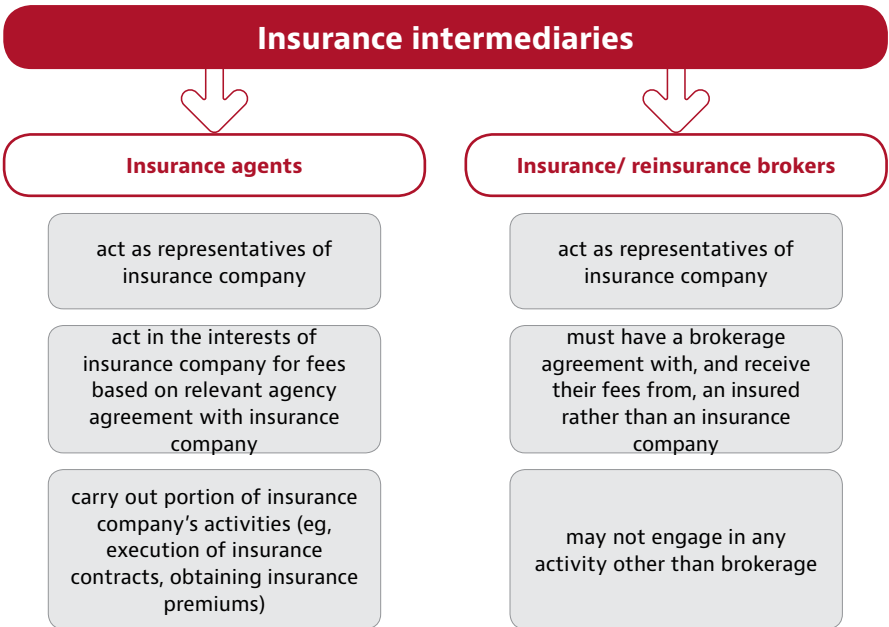
A financial institution must adopt and register its insurance conditions (containing a description of all of its insurance products) and any amendments thereto with the Regulator.

In order to obtain a license, an insurance company must submit the following documents to the Regulator:

- an application
- questionnaire of the general manager/chief accountant of a company (submitted separately)
- description of the documents submitted for obtaining a license (in two copies)
- certified copies of statutory documents
- a bank or auditor certificate confirming the amount of paid charter capital
- a certificate on the financial condition of the founders (participants) of the insurance company certified by an auditor, where the insurance company is created as a general partnership, limited partnership or an additional liability company
- insurance conditions (rules)
- a study of the feasibility of the planned insurance or reinsurance activity
- information regarding the participants of the insurance company, the head of the executive body and its deputies; a copy of the diploma in economics or law of the head of the executive body of the insurance company or its first deputy and a copy of the diploma in economics of the chief accountant plus information on respective certificates in the cases provided by the Regulator. All documents must be certified by the insurance company
- copies of education documents, including documents confirming the completion of professional skill enhancement courses by the general manager and chief accountant of the non-resident insurer's branch (for a branch of non-resident insurer)

The Regulator is obliged to decide upon the application of the insurance company within 30 days after obtaining all the necessary documents. In the event that changes are made to the documents submitted to the Regulator, the insurance company must inform the Regulator of such changes within 10 days.

## 18.2.7 Insurance Agents and Brokers



According to Ukrainian law, sale of the insurance products of one company must not constitute more than 35% of a broker's activity within one year. In other words, a broker must sell the insurance products of at least three insurance companies. In practice, this restriction limits the ability of an insurance broker to sell a significant amount of an insurance company's products in Ukraine.

In Ukraine, non-resident insurance and reinsurance brokers may provide their services related to concluding insurance agreements with non-resident insurance companies either independently or through their permanent representative offices in Ukraine.

A non-resident insurance or reinsurance broker which provides its services without a permanent representative office in Ukraine must notify the Regulator in writing about its intention to conduct business in Ukraine, and the Regulator will then publish such information on its official website and in printed mass media.

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## 18.3 COMMUNICATIONS

### 18.3.1 Regulatory Framework

Significant changes have been introduced into the regulatory framework of the Ukrainian telecommunications sector following independence in 1991. These changes have greatly facilitated the process of adjusting domestic legislation to fundamental principles adopted by the European Union. As a result, the Ukrainian regulatory framework now provides for the separation of the regulatory and operational activities of the Ukrainian telecommunications administration.

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As a first step toward its transformation into a traditional regulatory body, the former Ministry of Communications of Ukraine (now the Ministry of Infrastructure of Ukraine (the "MIU")) created several umbrella organizations to take over its previous operational functions. Consequently, all organizations involved in the planning, building and operation of public telecommunications networks in Ukraine were merged into the Open Joint Stock Company "Ukrtelecom" ("Ukrtelecom"). In 2011, the State Property Fund of Ukraine sold Ukrtelecom at the privatization auction. In October 2013, Ukrtelecom was acquired by System Capital Management, a leading Ukrainian financial-industrial group.

The Law of Ukraine On Communications (the Communications Law) dated 16 May 1995 was adopted by the Verkhovna Rada to provide the legal, economic and organizational frameworks for enterprises, associations and governmental authorities, which were part of the telecommunications and/or postal communications networks in Ukraine. The Law of Ukraine On Telecommunications (the Telecommunications Law) dated 18 November 2003 repealed the Communications Law.

The Telecommunications Law establishes the competence of the Ukrainian state authorities in regulating telecommunications activities, and determines the legal status of telecommunications operators, providers and consumers of telecommunications services. The Telecommunications Law also regulates various issues, including: access to the telecommunications market; the interconnection of the telecommunications networks; right of way; privacy of subscribers and telecommunications; authorizations; pricing policy; and methods of settlement. In particular, under the Telecommunications Law, exclusively entities registered in Ukraine may render telecommunications services in Ukraine. The scope of application of the Telecommunications Law extends to fixed-line and mobile telephone communications; the maintenance and exploitation of on-air and cable broadcasting and television networks; and the leasing of electronic communications channels and communications services based on the Internet protocol (IP-telephony). The regulatory regime of the Telecommunications Law does not apply to those telecommunications networks which do not interact with the Public Switched Telecommunications Networks (PSTN), except for the use of such networks in a state of emergency or war.

Notably, the Telecommunications Law does not require abolishing charges for incoming calls for all kinds of telephone communications as was previously prescribed by the Communications Law. However, after its



adoption, Ukrainian telecommunications operators have continued to abstain from levying charges for incoming calls on subscribers.

The adoption of the Law On Principal Basis of Information Society Development in Ukraine for 2007-2015 (the "Information Society Development Law"), dated 9 January 2007, became the next significant step toward improvement of the telecommunications sector. According to the Information Society Development Law, Ukraine determined expansion, development and accessibility of telecommunication services to be among the most privileged and crucial issues for the promotion of Information Society.

In light of the Information Society Development Law, the Verkhovna Rada regularly updates the Telecommunications Law. For instance, following the amendments, dated 1 July 2010, consumers are entitled to keep their existing mobile numbers when they change their mobile service provider. Besides, mobile operators are obliged to render national roaming services in Ukraine provided that they have entered into the relevant agreements. The amendments to the Telecommunications Law, dated 5 July 2011, facilitated access to the market by further limiting activities which are subject to licensing.

In February 2015, a tender for 3G communications frequencies was conducted and each of the three major Ukrainian mobile operators obtained a 3G-frequencies license. On 21 December 2017, the National Commission for the State Regulation of Communications and Information, the NCCIR, adopted a decision to hold a tender for 4G-frequencies licenses, which is scheduled to be held in February 2018.

### **18.3.2 National Regulatory Authority**

Under the Telecommunications Law, the NCCIR, which acts under the Presidential Decree, dated 23 November 2011, No 1067/2011, as amended, has assumed responsibility for: maintaining the Register of operators and providers of telecommunications and licensing issues; the allocation of radio frequencies and numbering resources; tariff regulation; the regulation of interconnection agreements; controlling quality of telecommunication services; and the resolution of disputes in relation to the interconnection agreements.

Within its authorities under the Telecommunications Law, on 15 April 2010, the NCCIR adopted the Regulations on Quality of Telecommunication Services in which the procedure for informing the public about quality of the telecommunication services in Ukraine and verifying the levels of quality of such services was specified.

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### **18.3.3 Radio Frequency Resource**

On 1 June 2000, the Verkhovna Rada adopted the Law of Ukraine On the Radio Frequency Resource of Ukraine (the "Radio Frequencies Law"). The Radio Frequencies Law provides comprehensive rules for the allocation, assignment, interrelation and use of radio frequencies in Ukraine, as well as the licensing of users of radio frequencies and other related issues. In addition, Decision of the NCCIR No. 625 "On Approval of the Procedure for Auctions and Tenders for Obtaining the Licenses for the Use of Radio Frequency Resource of Ukraine and Declaring Invalid the Decision of the National Commission on Regulation of Communications, dated 6 September 2011, No. 911," dated 24 September 2013, sets forth a detailed procedure of auctions and tenders for the issuance of radio frequencies licenses.

The Telecommunications Law and Radio Frequencies Law prescribe obtaining a license for the use of radio frequencies in order to conduct telecommunication activities, which require the use of radio frequencies. For this purpose, the prospective licensee must file an application with the NCCIR, submit a set of documents, and, following the decision of the NCCIR to grant the license, it must pay the fee for issuance of the license. In addition, starting from the date of issuance of the license and regardless of whether the radio frequencies are actually used or not by the licensee, the monthly fee in the amount established in the Tax Code of Ukraine is to be paid for the use of radio frequencies. Failure to pay the monthly fee for six months leads to revocation of the respective license without any compensation.

### **18.3.4 Numbering Resource**

Until 1 January 2005, the allocation of numbering resources was provided free of charge to telecommunications operators. Currently, according to Resolution No. 1147 of the Cabinet of Ministers of Ukraine "On the Approval of the Amount of Payment for the Allocation of Numbering Resources and the Payment Procedure," dated 27 December 2008, Ukrainian telecommunications operators have to pay state fees for the allocation of telephone numbering resources, depending on the types of services to be provided and the coverage area.

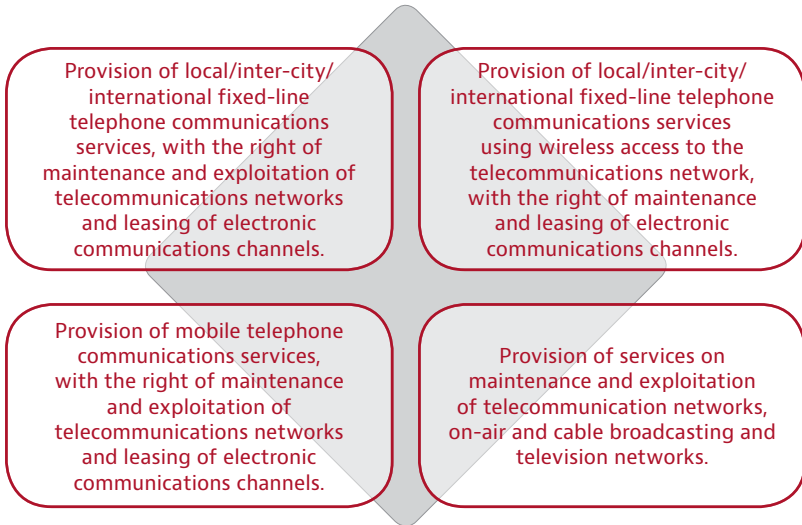
Telecommunications operators are required to pay the established fee for the allocation of the numbering resources within 30 days after receiving a decision on such allocation. Failure to pay the fee may result in the revocation of the relevant decision to allocate a share of the numbering resources.



The allocation of short telephone numbers for emergency services and for not-for-profit social services remains free of charge.

### 18.3.5 Licensing System

The Telecommunications Law provides for the licensing of the following types of telecommunications activities:



In order to obtain the telecommunications license, the statutory documents of the prospective licensee must foresee the possibility of engaging in the respective telecommunications activities.

In the event that it is decided to limit the number of telecommunication licenses, licenses are to be granted on a competitive basis. The number, terms and conditions for obtaining such licenses are to be established and published in the mass media. Thereafter, licenses will be registered and lists of licenses granted will be published.

In addition to obtaining a license (if required), entities providing telecommunication activities in Ukraine have to be registered in the Register of operators and providers of telecommunications.

### 18.3.6 Import and trading in Radio-Electronic and Emitting Devices

Under Ukrainian law, the import, trading-in and operation of radio-electronic and radio signal emitting devices in the territory of Ukraine may

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be performed provided that such devices are not included in the Register of Radio-Electronic and Radio Signal Emitting Devices Prohibited for Use and Import into Ukraine. The import of special-purpose radio-electronic and emitting devices can be performed only after obtaining the relevant permit from the General Staff of the Ukrainian Armed Forces in the procedure approved by the Cabinet of Ministers of Ukraine. Special-purpose devices are devices for special users (eg, the Ministry of Defense, Ministry of the Interior, State Security Service).

### **18.3.7 Networks Interconnection and Settlements Between the Telecommunications Operators**

According to the Telecommunications Law, interconnection of the telecommunications networks is conducted under the interconnection agreements concluded between the operators, and the binding conditions for such agreements are set out by the NCCIR.

The procedure for telecommunication networks interconnection (with respect to PSTN only) as well as the binding conditions for interconnection agreements were determined by Decision of the NCCIR No. 155 "On the Adoption of the Rules of Public Telecommunication Networks Interconnection," dated 8 December 2005 and restated on 31 March 2015.

The main conditions of settlement between operators which have entered into an interconnection agreement were adopted by Decision of the NCCIR No. 1586 "On the Adoption of the Procedure for the Settlements Between the Telecommunications Operators for Services of the Access to the Public Telecommunications Networks," dated 9 July 2009, as amended.

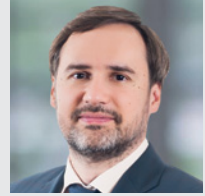
### **18.3.8 ISP Services**

At present, Internet service provider (ISP) services are not subject to any licensing regime in Ukraine. However, an interested party wishing to provide internet services has to be included in the Register of operators and providers of telecommunications mentioned above. The applicant has to submit the respective application to the NCCIR at least one calendar month prior to beginning to provide such services.



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## 18.4 ELECTRONIC COMMERCE AND INFORMATION TECHNOLOGIES

### 18.4.1 The Law of Ukraine “On Electronic Commerce”

On 3 September 2015, the Ukrainian Parliament adopted the Law of Ukraine “On Electronic Commerce” (the “E-Commerce Law”). The purpose of the E-Commerce Law is primarily to set the rules for preparing contracts in electronic form for online transactions and to confirm the application of Ukrainian consumer protection regulations to such transactions.

The E-Commerce Law stipulates the following:

1. A contract may be prepared in electronic form by exchanging electronic messages with an offer (setting out the required material terms of the contract) and its acceptance, which may be delivered by (i) electronic message, (ii) designated electronic form, or (iii) carrying out certain actions which are regarded as acceptance.
2. An offer to enter into an electronic contract may be made by (i) delivery of an electronic message regarded as commercial, or (ii) placement of such an offer on the internet or other informational or telecommunication networks. Such commercial electronic messages must be delivered to the addressee only with his/her express consent, unless the addressee unsubscribes from receiving such messages.
3. A contract in electronic form may contain certain provisions in addition to those envisaged by the Civil Code of Ukraine, in particular: (i) the procedure for exchanging electronic messages, (ii) the procedure for amending a mistakenly sent message with acceptance of an offer, and (iii) the procedure for making amendments and other terms.
4. To enter into a contract in the electronic system of the offering counterparty, the accepting counterparty must log into such system. The relevant system must allow the accepting counterparty to change the provided information prior to accepting the offer.

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5. A contract in electronic form may be concluded by: (i) electronic signature or electronic digital signature, (ii) electronic identification signature (by exchanging randomly generated codes), and (iii) application of the analog of a personal signature (signature stamp). An electronic contract based on one of the above methods is regarded as a contract executed in writing.
  6. Settlements may be carried out using various payment instruments, electronic money, transfer of funds, provision of cash and by other means.
  7. Sellers of goods and providers of services must provide consumers (via their websites or by other technological means) with their full name, address, email and/or website, EDRPOU code (state identification code for legal entities), taxpayer registration code for individuals, VAT tax registration certificate, information about any licenses and other information which is subject to mandatory disclosure.
  8. Buyers making a purchase by virtue of an electronic contract must provide the information necessary to conclude a contract. The list of information to be provided is defined by the applicable laws or agreed upon by the parties to the transaction.
  9. Internet service providers, domain name registrars, hosting providers and operators of payment infrastructure services ("ISPs"), when involved in "mere conduit" activities, are immune from liability for all third-party infringements subject to the following conditions: (i) the ISP does not initiate the transmission, (ii) the ISP does not select the recipient of the information, (iii) the ISP does not modify the information contained in the transmission, and (iv) the ISP promptly disables access to the content in question upon becoming aware that the information in the primary source of transmission has been removed from the network or access to it was disabled, or there is a court ruling to remove or disable access to this content.
  10. ISPs involved in hosting content are immune from liability for all third-party infringements if (i) ISPs are not aware of any illegal activity or facts or circumstances that indicate that the activity has signs of illegality or in relation to claims for compensation for such unlawful activities, and (ii) ISPs, upon becoming aware of such circumstances, promptly disable access to the content in question, including in accordance with the requirements of the copyright law.

To sum up the above, the E-Commerce Law was adopted to establish a consistent legal framework for preparing commercial contracts in electronic form. Its purposes include (i) addressing existing legislative uncertainties concerning formation and enforceability of electronic contracts and (ii)



bringing Ukrainian legislation in line with EC Directive 2000/31 on electronic commerce. It is expected that the E-Commerce Law will boost the electronic commerce industry by bringing more certainty into this segment of the economy.

#### **18.4.2 Electronic Digital Signatures and Trusted Services**

The law "On Electronic Trusted Services" No. 4685 dated 5 October 2017 (the "Law on the trusted services") was signed by the president on 6 November 2017. It has been adopted to replace the current Law of Ukraine "On Electronic Digital Signature," which was designed to harmonize the Ukrainian legislation with the Directive 1999/93 / EC of the European Parliament and of the Council of 13 December 1999. Since the EU has adopted a new Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, Ukraine has to follow with the adoption of the Law on the trusted services to integrate all mandatory norms and provisions of the above regulation into national legislation.

Overall, the Law on the trusted services is reforming the national regulatory framework in the field of electronic digital signatures. It will likely contribute to the development of a single system of electronic trusted services, mutually recognize Ukrainian and foreign certificates of public keys, electronic signatures and seals, and enhance Ukraine's integration into the EU's digital single market, securing cross-border transactions and e-commerce both locally and with the EU member states.

The Law on the trusted services stipulates the following:

1. Electronic interaction of individuals and legal entities requiring the sending, receipt, use and permanent storage of electronic data by third parties (which do not require a handwritten signature), as well as authentication in the information systems, may be carried out using electronic trusted services, subject to prior agreement between the parties.
2. Electronic interaction of individuals and legal entities requiring the sending, receipt, use and permanent storage of electronic data by third parties (which do not require a handwritten signature), as well as authentication in the information systems, with state bodies, bodies of local self-government, enterprises, institutions and organizations owned by the state must be carried out using qualified electronic trust services.

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3. The requirements for electronic trust services, and the procedure for the use of electronic trust services in state authorities, local self-government bodies, enterprises, institutions and organizations of state ownership are established by the Cabinet of Ministers of Ukraine.

The law will enter into force on 7 November 2018.

#### **18.4.3 The Internet and Domain Names**

Thus far, Ukrainian legislation has seen little intervention by the Ukrainian Parliament in issues governing the internet in Ukraine. Internet activities in Ukraine (including various internet-based industries) have been developing on the basis of Ukraine's general laws and regulations governing "offline" or real-world life and business. However, numerous changes have taken place in this area, particularly following the entry into force of the Law On Telecommunications (the "Telecommunications Law") on 23 December 2003 and the Civil Code on 1 January 2004.

The Telecommunications Law defines a "domain" as a part of a hierarchic system of names incorporated in internet addresses — a unique identifying name, which is served by a group of server domain names and administered centrally.

##### ***18.4.3.1 Protection of Intellectual Property Rights in Domain Names***

On 10 April 2008, the Ukrainian Parliament adopted the Law of Ukraine On the Introduction of Amendments to Certain Laws of Ukraine on Intellectual Property Issues in Order to Fulfill Requirements on Accession of Ukraine to the WTO (the "Amendments Law"). The Amendments Law purports to enhance the applicability of some provisions of existing intellectual property laws to the internet. Most importantly, the Amendments Law amends the Law of Ukraine On the Protection of Rights in Trademarks and Service Marks (the "Trademark Law") in order to address the issue of protecting the rights of trademark owners in connection with the use of trademarks in domain names.

The Trademark Law defines a "domain name" as the name which is used for addressing computers and resources over the internet. The exclusive rights of a registered trademark owner now include the use of its trademark over the internet and, under amendments introduced by the Amendments Law, the use of a trademark in a domain name without the permission of the trademark owner shall constitute a violation of the trademark owner's rights.



It should also be noted that an administrative procedure for protection of trademark owners is reflected in the "Policy on the.UA Domain," which is currently used for administering the Ukrainian country code top-level domain name or.UA Domain. In order to obtain a second-level domain name (eg, www.companyname.ua), it is necessary to present a trademark registration certificate or a trademark license agreement for the exact name. However, this requirement does not extend to third-level domain names (such as www.companyname.com.ua or www.companyname.kiev.ua, etc.), which remain susceptible to abusive registration.

#### ***18.4.3.2 Administration of the Ukrainian ccTLD System***

A number of organizational and legislative developments indicate the Ukrainian Government's increased awareness of issues related to the internet in Ukraine. In particular, on 13 November 2002, the State Committee for Communications and Informatization of Ukraine (the "Committee") announced the establishment of the Ukrainian Net Information Center ("UANIC"). The purpose of UANIC is to administer and to service the Ukrainian ccTLD system, as well as to adopt rules for the designation of the .UA Domain. While this organization was founded by the Committee and various associations of internet service providers, the officials of the State Security Service of Ukraine (Ukraine's intelligence and counterintelligence agency) also participated in the decision to establish UANIC. On 22 July 2003, the Cabinet of Ministers issued Order No. 447-p "On the Administration of the.UA Domain," which officially recognized UANIC's powers to administer Ukrainian ccTLDs.

The Ukrainian ccTLD ".UA" is administered by a Ukrainian limited liability company, "Hostmaster." Since the ccTLD ".UA" began functioning in January 1993, all matters concerning the registration and maintenance of domain names have been largely self-regulated by various public associations and internet service providers.

In addition, from 19 October 2010, the registration of Cyrillic domain names became available in the domain zones com.ua and kiev.ua (компания.com.ua and имя.kiev.ua) in Ukraine and, in 2013, a top-level Cyrillic domain name.укр was launched.

#### ***18.4.3.3 Domain Name Dispute Resolution***

The Internet Association of Ukraine has also established the Court of Arbitration for the resolution of various internet-related disputes, including those related to domain names.

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The Court of Arbitration, which is a typical third-party arbitration court, ie, not a state court, is presently the only specialized institution in this area in Ukraine. Domain name disputes may be referred to the Court of Arbitration by the mutual consent of the parties. The Court of Arbitration aims to help the parties reach amicable agreements, and keeps the subject matter of disputes confidential. Pursuant to the applicable Ukrainian legislation, decisions rendered by the Court of Arbitration are binding on the parties. Domain name-related disputes are also regularly heard by courts of general jurisdiction in Ukraine. In this case, no previous consent of the parties is required to send the case to a specific court (unlike the Court of Arbitration), and any interested party that believes that its rights are violated can turn to a court of general jurisdiction, provided the jurisdictional issues are complied with. The grounds for such domain name-related disputes are usually trademark infringement and incompliance with the "Policy of the.UA Domain."

#### ***18.4.3.4 Protection of Information in Information and Telecommunication Systems***

The protection of information in automated databases is subject to the Law of Ukraine On the Protection of Information in Information and Telecommunication Systems (the "IT Systems Law"), 5 July 1994, with amendments. The IT System Law establishes the principles for the regulation of relations between the parties involved in the processing of information in information and telecommunication systems (the IT systems) 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 information and telecommunication systems.

The IT Systems Law defines "information and telecommunication systems" as the set of technical and program means, functioning as a single whole, designed for the processing and exchange of data. Information in IT systems and data processing software is subject to protection regardless of the information's means of expression.

The IT Systems Law requires that access to the information in the information and telecommunications systems be subject to rules established by the owner of the processed information.

#### ***18.4.3.5 Cybersecurity Regulations***

On 5 October 2018, the president signed the law of Ukraine "On basic principles of ensuring cybersecurity of Ukraine" (the "Law on Cybersecurity"). The Law on Cybersecurity is an attempt to patch and fix the



outdated legislation in the sphere of cybersecurity of Ukraine and to create a framework for resolving a cross-industry problem that has significant ramifications for state security. This law is, in a way, a regulatory response to a number of cyber-attacks that Ukraine has suffered during 2017, believed to be originating from a neighboring state. The Law on Cybersecurity contains a number of definitions and general statements broadly defining the cybersecurity, critical infrastructure, duties of government and public companies in defending critical infrastructure against cyber-attacks. It lays down the basics of the future cooperation between government bodies, the private sector, integrating the cybersecurity in a general state security framework. However, the law contains very little practical norms that could be applied directly. Therefore, we expect that, in 2018, the government of Ukraine would adopt a number of norms and regulations that would clarify roles of the government agencies and business in implementation of the desired cybersecurity regime.

The law will enter into force on 9 May 2018.

#### ***18.4.3.6 Additional Protection for IT Companies during Police Searches***

On 16 November 2017, the Law of Ukraine "On Amendments to Certain Legislative Acts on Enforcement of the Rights of Participants in Criminal Proceedings and Other Persons by Law Enforcement Bodies during the Pre-trial Investigation" (the "Law against confiscation of computer equipment") entered into force in Ukraine.

Ukrainian IT companies have suffered from numerous investigations and subsequent seizures of computer equipment by law enforcement bodies.

The Law against confiscation of computer equipment addressed the problem of groundless confiscations of computer equipment by law enforcement authorities for the purposes of disrupting regular business activities of IT companies in Ukraine. Adoption of this law will increase transparency and accountability for police actions through mandatory video fixation of police searches. It also prohibits seizures of telecom equipment (servers) and computers unless this is necessary for forensic examination.

#### ***18.4.3.7 Ukraine Banned Popular Russian Online Services***

On 16 May 2017, the president signed Presidential Decree No. 133/2017, which introduces sanctions against 1,228 individuals and 468 legal entities.

The decree has received unprecedented public attention because it establishes restrictive measures (sanctions) against Russian IT companies

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and their Ukrainian subsidiaries. Such companies/subsidiaries are popular among Ukrainians and provide services such as social networks, a search engine, a navigation service, accounting software, antivirus solutions, and more.

The sanctions are based on Article 4 of the Law of Ukraine “On sanctions” and include measures such as freezing assets; restricting trade operations, foreign transfers of funds, use of telecommunication networks and services, participation in state procurement procedures and transfers and assignment of IP rights; and prohibiting Ukrainian internet service providers (ISPs) from providing access to the websites and online services of the sanctioned parties.

Although the Ukrainian Government has introduced other types of sanctions before, restrictions that prohibit Ukrainian ISPs from providing internet access to certain online services and websites are the first of their kind, and have come as a surprise for Ukrainian ISPs.

The authority responsible for supervising ISPs has already issued an official notice to ISPs explaining that compliance with the decree is mandatory and ISPs must disable access to the online resources indicated in the decree. Otherwise, the management of ISPs could be subject to administrative liability.

As of this moment, most of the major ISPs and mobile operators comply with the sanctions and block access to the list of URLs indicated in the decree.

#### **18.4.4 Software Development and Protection**

##### ***18.4.4.1 Protection of Rights in Software***

In Ukraine, software is protected under the Law of Ukraine On Copyright and Related Rights (the “Copyright Law”), dated 23 December 1993, as a literary work of authorship. Copyright protection extends both to operating systems and applications expressed in source and/or object code.

For the 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, comprehensible by a computer.

Copying a computer program without charge is permitted if one copy is made by the lawful user of the computer program for archival purposes, or for serving as a replacement of a lawfully acquired copy in the case of loss or damage.





The free modification of a computer program is permitted for (i) attaining compatibility with the user's equipment and (ii) correction of appreciable errors, unless otherwise provided by the parties' agreement.

The free reverse engineering of a computer program is permitted with the intention of receiving the information necessary for attaining the compatibility of an independently-created computer program with other computer programs, provided that the following conditions are met:

- The act of reverse engineering is carried out by the lawful owner of a copy of the computer program.
- The information necessary for attaining such compatibility is not known to the person specified above from other sources prior to the act of reverse engineering.
- The reverse engineering is limited only to those elements of the computer program that are necessary for attaining compatibility.
- The information obtained in the process of the reverse engineering (i) is used only for attaining the compatibility of the program with other software; (ii) cannot be transferred to a third party, except for the purposes of attaining compatibility with other programs; (iii) cannot be used for the development of other software similar to the decompiled software; and (iv) cannot be used for committing any other infringement.

#### ***18.4.4.2 Protection of Rights in Databases***

Database rights are also protected under the Copyright Law. Pursuant to the Copyright Law, "databases" are defined as collections of works, data, or any other independent information, selected and arranged as a result of creative work, integral parts of which can be accessed by means of special search engines.

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

Illegal reproduction and/or distribution of databases and software may lead to civil, administrative and criminal liability under the applicable Ukrainian law.

#### ***18.4.4.3 Outsourcing of Software Development***

The outsourcing of software development has seen rapid development over the past decade in Ukraine.

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Having regard for certain legal constraints related to claiming copyright in developed software products under the applicable Ukrainian legislation (see above), outsourcing software development projects must be properly structured from a legal standpoint before being implemented in practice.

At the present time, the most widespread business model used by foreign companies for outsourcing software development to Ukraine is the establishment of a local Ukrainian subsidiary or a special-purpose company to retain local programmers (as either employees or independent contractors) and coordinate their work. Such local company is required to ensure that all intellectual property rights in the software products developed by such programmers are properly transferred to it from the individual programmers. Thereafter, the corresponding scope of the intellectual property rights must be further transferred from the local company to its foreign parent pursuant to a written assignment agreement between them.

Alternatively, foreign companies may enter into corresponding outsourcing agreements with independent Ukrainian companies or directly with individual programmers. These types of arrangements, however, must be crafted with precision in order to ensure full and effective transfer of intellectual property rights.

#### **18.4.4.4 Encryption Technology**

Currently, the Law of Ukraine On the Licensing Types of Entrepreneurial Activity adopted on 2 March 2015 as amended (the "Licensing Law"), provides that the provision of services in the sphere of cryptographic protection of information (except electronic signatures), and any trade in cryptosystems and encryption technologies are subject to licensing. Licenses are issued by the State Service for Special Communication and Information Protection of Ukraine (the "State Service") for five years. Licenses may be renewed upon their expiration.

Licenses are granted to "business entities," which are defined in the Licensing Law as duly registered legal entities engaged in business activities irrespective of their organizational forms or forms of ownership.

Qualification requirements for business entities engaging in encryption, as well as the kinds of activities that may be conducted in the area of encryption that is subject to licensing and the peculiarities of licensing in the area of encryption, are determined by regulations from the State Service. Under the applicable Ukrainian legislation, encryption technologies



may qualify as dual-purpose goods/technologies and certain restrictions may apply to their importation into or exportation from Ukraine.

In addition, the “Regulations on Approval of the List of Services for the Cryptographic Protection of Information (except Electronic Signatures) and the Cryptosystems and Crypto-technologies for Protection of Information the Commercial Activities Related to which Are Subject to Licensing” approved by Decree No. 543 of the Cabinet of Ministers of Ukraine of 25 May 2011, set the list of services, cryptosystems and crypto-technologies which cannot be provided commercially without a license. These regulations also establish a list of exceptions from mandatory licensing for cryptosystems and crypto-technologies that are available to the general public through the general retail system and in which the cryptographic functions cannot be changed by the end users themselves.

#### **18.4.5 Personal Data Protection**

The Law of Ukraine On Personal Data Protection adopted in 2010 (“PDP”) outlines the general requirements and obligations related to the collection, processing and use of Personal Data by private bodies and by the government of Ukraine.

The PDP applies to the processing of Personal Data, ie, any information about an individual who is identified or can be specifically identified (a “Data Subject”).

The Constitutional Court of Ukraine, in its decision N 2-rp/2012 dated 20 January 2012, held that “Personal Data” constitutes confidential personal information, access to which is limited by a person himself/herself. Such confidential personal information may include data about the individual’s nationality, education, marital status, religious beliefs, health, current address, date and place of birth, and property status. The list of confidential personal information is not exhaustive.

Under the PDP, the processing of Personal Data is not restricted under the following circumstances (i) individuals processing Personal Data for their own personal or domestic activities, and (ii) processing Personal Data solely for journalistic and artistic purposes, provided that the balance between the right to respect for private life and the right to freedom of expression are secured. In addition, the PDP does not apply to archived information from repressive totalitarian organizations within the territory of Ukraine from the period 1917-1991.

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In addition, the main sources of Personal Data Protection in Ukraine are: The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol ratified by Ukraine in 2010; a number of regulations approved by the Commissioner; and relevant provisions of the Code of Ukraine on Administrative Offenses and the Criminal Code establishing liability for Personal Data offenses.

In July 2013, the Ukrainian Government adopted a draft law that introduced amendments to the Personal Data Protection Law in Ukraine. As a result, all Personal Data Protection functions were transferred from the State Service of Personal Data Protection to the Ukrainian Parliament Commissioner for Human Rights (the “Commissioner”), effective 1 January 2014.

The Commissioner was tasked with developing all Personal Data Protection procedures, recommendations and enforcement practices that regulate matters related to Personal Data Protection. To date, the Commissioner has drafted and approved: Model Rules on Personal Data Processing; Rules on Exercising Control by the Ukrainian Parliament Commissioner for Human Rights over Compliance with the Laws on Personal Data Protection; Rules for Notification of the Ukrainian Parliament Commissioner for Human Rights on the Processing of Personal Data that Constitutes a Special Risk for the Rights and Freedoms of Data Subjects, On the Structural Department or Designated Individual Responsible for Work-Related Processing of Personal Data and the Publication of Such Information.

The transition has resulted in the absence of enforcement actions related to Personal Data regulations in Ukraine from approximately January 2014 up to August 2015. However, this trend may be beginning to change as most of the basic procedures and regulations necessary for enforcement have already been developed and approved by the Commissioner.

In addition, registration of databases containing Personal Data is no longer mandated. Instead, data controllers are required to notify the Commissioner of the processing of certain types of sensitive information.

Sensitive data includes Personal Data on: racial or ethnic origin, national origin, political, religious or philosophical beliefs, membership of political parties and/or organizations, trade unions, religious organizations or community organizations with an ideological orientation, health, sex life, biometric data, genetic data, location and or means of transportation, facts related to administrative or criminal liability, criminal investigation measures related to a preliminary investigation and the measures envisaged by the

Law of Ukraine "On investigation activity," and instances of violence against a person.

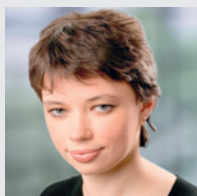
The PDP prohibits the processing of sensitive Personal Data unless certain conditions are met, including:

- a valid express consent obtained by the data collector from the Data Subject
- an employer-employee relationship between the data collector and Data Subject
- the data processing is necessary for protecting the life of the Data Subject or a third party when the Data Subject is physically or legally incapable of giving consent
- the data has evidently been made public by the Data Subject
- the data is necessary to assert, exercise or defend legal claims
- the data is processed by a religious organization, NGO, political party or trade union with respect to their members in the course of regular activities and such data will not be transferred to third parties
- the data processing is necessary to establish a medical diagnosis, or to provide healthcare services or medical treatment, under the condition that the data processed is protected by medical confidentiality rules.





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## 18.5 POWER AND RENEWABLE ENERGY SECTORS

### 18.5.1 Introduction

Prior to the reforms introduced to the Ukrainian power sector by the President of Ukraine in 1994-1995, the Ukrainian power sector was exclusively state-owned. It operated through integrated utility companies responsible for generation, transmission and distribution, and was administered accordingly.

Ukraine's power sector is structured along the lines of the following major business activities: generation, transmission, distribution and supply of electricity.

**NUCLEAR POWER PLANTS**

account for the largest share of electricity generation.

The operator of all Ukrainian NPPs is the state enterprise Energoatom, which is responsible for the production of the electricity at four nuclear power plants – Zaporizhzhya, Rivne, South-Ukraine and Khmelnytsky – that are situated in different regions of Ukraine. Energoatom is the largest electricity generator in Ukraine, generating more than 50% of the total volume of Ukraine's electricity. Energoatom is not subject to privatization. Energoatom is also responsible for the construction of two new 1,000 MW nuclear units at the Khmelnytskyi NPP site.

**THERMAL GENERATING COMPANIES**

Second largest electricity producers in Ukraine

TPPs are grouped into five large thermal generating companies:

1. Centrenerg
2. DTEK Donbasenergo
3. DTEK Dneproenergo
4. DTEK Zahidenergo
5. DTEK Shidenergo

At the moment, four thermal generating companies (DTEK Donbasenergo, DTEK Shidenergo, DTEK Zahidenergo and DTEK Dneproenergo) are privately controlled.

Centrenerg is the only state-owned thermal generating company.

**Power Generation****HYDRO POWER PLANTS**

Large Ukrainian HPPs are concentrated in the Dnipro Hydro Cascade and Dniester reservoir.

All HPPs of Dnipro Hydro Cascade and Dniester HPP-1, as well as Kyiv HPSP and Dniester HPSP, belong to public JSC Ukrhydroenergo, which is protected from privatization.

Ukrhydroenergo is a key player in the hydroelectric generation segment, providing around 95% of total hydroelectric generation.

**COMBINED HEAT AND POWER PLANTS ("CHPS")**

Some CHPs are operated by local power distribution companies and other institutions while others became separate enterprises.

In addition, small electricity producers (small hydroelectric and wind power plants) operate in Ukraine, but their share of total electricity production is insignificant.

**RENEWABLE ENERGY SOURCES ("RES") PRODUCER**

RES represent a rapidly rising share in Ukraine's power sector, mainly due to the recently introduced incentives for the stimulation and development of renewable energy sources, which are discussed in more detail in sub-section 19.5.4 ("Green Energy: Incentives for Stimulation and Development in Ukraine").



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## Transmission

The transmission of electricity via main and interstate electricity networks is unbundled from the generation, distribution and supply of electricity, and is performed by the national transmission system operator (the "TSO") which is also responsible for centralized dispatch management. The TSO's functions are performed exclusively by state enterprise NEC Ukrenergo.

## Distribution and Supply

Distribution is carried out via 27 regional distribution and supply companies ("Oblenergos").

Supply is conducted by Oblenergos (regulated tariff) and independent (non-regulated tariff) suppliers.

Electricity distribution networks are owned and operated by Oblenergos, which simultaneously hold two licenses issued by the National Energy and Utilities Regulatory Commission (the "NEURC") for:

- electricity distribution; and
- electricity supply at regulated tariffs.

Independent suppliers must enter into a contractual relationship with Oblenergos to use their networks for electricity distribution and pay for these services on a tariff basis approved by the NEURC.

## The Sector's Regulation and Management

Regulation of the sector is performed by the NEURC, which acts on the basis of Law of Ukraine No. 1540-VIII "On the National Energy and Utilities Regulatory Commission" adopted on 22 September 2016.







NEURC performs state regulation in the power sector by means of:		
Issuing licenses for:	Forming the tariff policy, including:	Exercising monitoring and control over the business activity of energy companies in the power sector.
<ul style="list-style-type: none"> <li>■ generation of electricity</li> <li>■ combined heat and electricity generation</li> <li>■ transmission, distribution and supply of electricity</li> <li>■ generation of thermal power</li> <li>■ transportation of thermal power by main and distribution thermal grids</li> <li>■ supply of thermal power</li> <li>■ heat generation by CHPs and units using alternative or renewable energy sources</li> <li>■ electricity trading</li> <li>■ fulfilling the functions of the market operator</li> <li>■ fulfilling the functions of the guaranteed buyer</li> </ul>	<ul style="list-style-type: none"> <li>■ electricity prices (tariffs)</li> <li>■ tariffs for generation of electricity</li> <li>■ tariffs for electricity transmission, distribution and supply</li> <li>■ tariffs for wholesale supply of electricity</li> <li>■ heat tariffs for CHPs, TPPs, NPPs and co-generation units and units using alternative or renewable energy sources</li> <li>■ green tariffs for generation of electricity by renewable energy sources</li> <li>■ tariffs for generation of thermal power</li> <li>■ tariffs for transportation of thermal power by main and distribution thermal grids</li> <li>■ gas price limits for entities generating heat for domestic needs</li> </ul>	

The Ministry of Energy and the Coal Industry (the “MECI”) is the principal management body of the Ukrainian power sector that is responsible for the implementation of state policy in the sector. The MECI currently acts on the basis of the Regulation of the Ministry of Energy and the Coal Industry of Ukraine approved by Presidential Decree No. 382/2011 on 6 April 2011. The MECI manages NEC Ukrenerg and Energoatom.

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.

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### 18.5.2 Wholesale Electricity Market

Currently, the model upon which the wholesale electricity market operates in Ukraine is the so-called “Single Buyer Model.” Under this model, a specialized legal entity (state enterprise “Energorynok”) purchases all bulk electricity generated by electricity-generating companies and simultaneously acts as the sole wholesaler of electricity to electricity supply companies. The sale and purchase of electricity in the wholesale electricity market is carried out in accordance with the Market Rules approved by the NEURC.

The legal and the institutional framework for functioning of the wholesale electricity market is laid down in the Wholesale Electricity Market Members Agreement (the “WEMMA”). The WEMMA provides for the mechanism based on which the wholesale electricity market operates, sets out the rights and obligations of the electricity market members and defines the rules for formation of wholesale prices for sale and purchase of electricity. Among other things, it also specifies the settlement procedure among the electricity market members.

The WEMMA is approved by the NEURC, the Ministry of Energy and Coal Industry of Ukraine and the Antimonopoly Committee of Ukraine.

The following entities are the parties to the WEMMA:

- electricity generating companies;
- a number of enterprises generating electricity from renewable energy sources the share of which is rapidly increasing due to the recently introduced incentives;
- the wholesale electricity supplier and market operator, Energorynok;
- the state-owned national transmission grid company, National Power Company “Ukrenergo”;
- Oblenergos (suppliers at regulated tariff); and
- independent (non-regulated tariff) suppliers.

Ukraine has undertaken to implement the *acquis communautaire* on energy to comply with its obligations under the Treaty Establishing the Energy Community and the Association Agreement between the European Union and its Member States, the European Atomic Energy Community and Ukraine.

Adopted by the Parliament of Ukraine on 13 April 2017, law of Ukraine No. 2019-VIII “On the Electricity Market” (the “Electricity Market Law”) aims to implement the Third Energy Package related to the creation of a single EU electricity market, namely, Directive 2009/72/EC of the European Parliament



and of the Council of 13 July 2009 concerning common rules for the internal market for electricity and repealing Directive 2003/54/EC, Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on the conditions for access to the network for cross-border exchanges of electricity and repealing Regulation (EC) No. 1228/2003, and Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard the security of electricity supply and infrastructure investment.

The Electricity Market Law calls for the full-scale liberalization of the wholesale electricity market of Ukraine by way of a gradual transition from the existing “Single Buyer” model to a market-based system consisting of the bilateral contracts, a “day ahead” and intra-day market, a balancing market which will regulate the imbalances caused by the trading of electricity by electricity market players, an ancillary services market and a retail market. It also introduces private traders to the electricity market, who will trade in and resell electricity without selling to retail customers.

The Electricity Market Law lays down the main rules for the organization and functioning of each of the above-mentioned segments of the electricity market. Further elaboration and development of the Electricity Market Law will be necessary for the market to become operational.

Although the Electricity Market Law became effective on 11 June 2017, some of its provisions related to market opening will only be gradually implemented as the legal and regulatory framework is developed. The full-scale liberalized electricity market is expected to become operational on 1 July 2019. During the transition period (from 2017 up to 2020), the electricity market will operate as the currently existing wholesale electricity market, retail market and ancillary services market.

Among the most important preparatory measures to develop the liberalized market are: (1) establishment and/or reorganization of the entities that will be in charge of developing and implementing mechanisms for market opening, such as a Market Operator, System Operator, Settlement Administrator and others; (2) legal and organizational unbundling (separation) of the Transmission System Operator and the Distribution System Operator; and (3) determination of a supplier that will be vested with the universal service obligation and “last resort” supplier.

Notwithstanding the phased approach established under the Electricity Market Law for the liberalization of the electricity market, there are a

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number of requirements to be met and measures and systems to be developed to enable the industry to adjust, and no assurance can be given that such measures and systems will be implemented in a timely fashion to ensure the successful launch of the liberalized electricity market.

### **18.5.3 Privatization**

The privatization of power companies in Ukraine began in 1995. Privatization covered both power generation companies (ie, thermal power generation companies) and power distribution companies.

In an attempt to reduce Ukraine's considerable external debt, privatization of power companies was initiated at the end of 1999. Decree of the President of Ukraine No. 944/99 "On Certain Issues Concerning the Privatization of Facilities in the Electricity Sector," dated 2 August 1999, provided for the sale of controlling stakes in power distribution companies and blocking stakes in power generation companies through tenders.

Further privatization in the electricity sector of Ukraine was promoted by Presidential Decree No. 1169/2001 "On Additional Measures for Reforming the Electricity Sector" of 3 December 2001. Accordingly, in 2002, controlling shareholding packages (ie, more than 50%) of 12 power distribution companies and blocking shareholding packages (ie, more than 25%) of seven power distribution companies were identified to be sold through open tenders.

The outstanding indebtedness of nine of these power distribution companies was one of the obstacles to be resolved prior to the privatization tenders. On 31 July 2002, the Cabinet of Ministers approved unified conditions for holding tenders on the sale of blocks of shares of these power distribution companies. These conditions stipulated a number of qualifying criteria (aimed at ensuring the stability of the power industry) to be met by potential bidders.

New steps in the privatization process were taken on 3 November 2010 when the Cabinet of Ministers of Ukraine adopted Resolution No. 999, by which the Ukrainian government reconsidered the list of objects in state ownership that are strategically important for the economy and security of Ukraine. Pursuant to these changes, all Oblenergos can now be privatized.

Moreover, according to Decree of the President of Ukraine No. 1118/2010 "On Decisions of the National Security Council," dated 22 October 2010, and "On the Status of Privatization of State Property," dated 10 December 2010,



the ban on the privatization of the largest producers of electric energy was lifted.

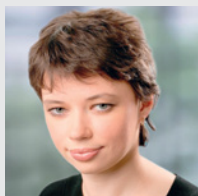
In April 2011, the Cabinet of Ministers of Ukraine adopted Decree No. 310-p "On Approving of List of Energy-Generating and Supply Companies, State Shares of which are Subject to Sale in 2011-2012," pursuant to which the shares of 13 Oblenergos were to be sold for private ownership. In 2012, this list was supplemented with three more companies.

During 2012, tenders for the sale of seven more Oblenergos were announced. However, only 75% of the shares of Volynoblenergo were sold in 2013. A large-scale sale of shares in Oblenergos was planned for 2014, however only 25% of the shares of Zakarpattiaoblenergo, Vinnytsiaoblenergo and Chernivtsioblenergo were sold in November 2014.

In the course of August-September 2017, the State Property Fund sold minority stakes (25%) in Dniproenergo, Dniprooblenergo, Kyivenergo, Zakhidenergo and Donetskoblenergo.

The State Property Fund of Ukraine announced its intention to privatize Khmelnytskoblenergo, Ternopiloblenergo, Mykolaivoblenergo, Kharkivoblenergo, Zaporizhzhyaoblenergo, Cherkasyoblenergo, Centrenergo, Turboatom and other energy companies in the course of 2018.

## EXPERT



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## HEAD OF PRACTICE

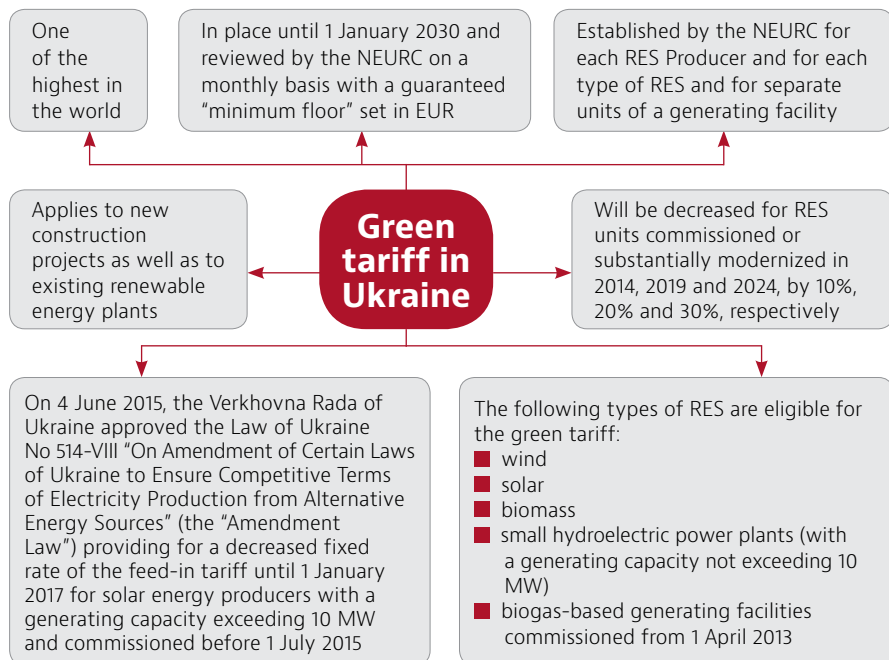


**Serhiy Chorny**  
Managing Partner

# 18.6 GREEN ENERGY: INCENTIVES FOR STIMULATION AND DEVELOPMENT IN UKRAINE

The new legal framework recently adopted in Ukraine establishes certain incentives for the operation and development of renewable energy sources in Ukraine.

One of the most important incentives for the development of renewables was the introduction in 2009 of the “green” tariff or feed-in tariff (as this term may be known in other jurisdictions).



Below is a table showing green tariff rates by types of RES and date of commissioning of RES

**Table: Green tariff rates by types of RES and date of commissioning of the RES**

Type of renewable energy source	Category / Installed capacity	Minimal green tariff rate (EUR cent per 1kWh) for the power plants commissioned		
		between 1 January 2017 and 31 December 2019	between 1 January 2020 and 31 December 2024	between 1 January 2025 and 31 December 2029
Solar installations Housetop	Ground	15.02	13.52	12.01
	Roof/housetops	16.37	14.76	13.09
Wind installations	Not exceeding 600 kW	5.82	5.82	4.52
	From 600 up to 2000 kW	6.79	6.79	5.28
	Exceeding 2000 kW	10.18	10.18	7.92
Micro, mini, small hydro installations	Micro hydro (less than 200 kW)	17.45	15.72	13.95
	Mini hydro (from 200 up to 1000 kW)	13.95	12.55	11.15
	Small hydro (more than 1000 kW)	10.45	9.05	8.35
Biomass/ biogas		12.39	11.15	9.91
Geothermal energy		15.03	13.52	12.01

### Local Content Incentive

To benefit from the green tariff, RES Producers are no longer required to use a certain amount of raw materials, equipment, work or services of Ukrainian origin. However, the use of equipment of Ukrainian origin by RES Producers is stimulated by the premium added to the green tariff, provided the respective RES units are commissioned between 1 July 2015 and 31 December 2024.

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The Ukrainian origin of equipment shall be confirmed by the appropriate certificate issued by the Ukrainian Chamber of Commerce. If equipment of Ukrainian origin is used at a level of at least 30%, the premium added to the green tariff will be 5%. If equipment of Ukrainian origin is used at a level of at least 50%, the premium will be 10%. The level of use of equipment of Ukrainian origin at RES units is defined as the sum of specific percentages of respective items of equipment. The list of equipment for each type of RES that qualifies for the green tariff premium and its specific percentages are prescribed by law, ie, for blades and towers such indicator is established at a rate of 30%, and at 20% for gondolas and main frames.<sup>1</sup> Thus, by using blades of Ukrainian origin the RES Producer can expect a premium added to the green tariff of 5%, as the specific percentage for blades is 30%. To calculate the level of use of equipment of Ukrainian origin, the RES producer should apply to the NEURC requesting it to confirm the calculated amount of the equipment of Ukrainian origin by the required amount for the relevant RES object. The NEURC considers the application within 30 calendar days of the date of submission of the required documents and takes a decision on adding a premium to the green tariff established for such RES producer.<sup>2</sup>

The premium added to the green tariff is effective for the same period as the green tariff provided that the RES Producer uses the Ukrainian original equipment at the levels specified above.

Private households generating wind and solar energy with a generating capacity not exceeding 30 kW are not eligible for a premium to the green tariff.

### **Guarantees Provided to RES Producers**

The state provides RES Producers with certain guarantees if they do not manage to sell the electricity produced from RES directly to customers or to electricity supply companies:

- the Wholesale Electricity Market Operator is obligated to purchase the electricity produced from RES at the green tariff rate established for the relevant RES Producer, including the premium added to the green tariff; and
- the Wholesale Electricity Market Operator is obligated to pay the full price for such electricity produced from RES when due.

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<sup>1</sup> Law of Ukraine No. 555-IV dated 20 February 2003 "On Alternative Energy Sources."

<sup>2</sup> NEURC Resolution No. 2932 dated 10 December 2015.





### **VAT/Customs Duties Exemption**

Importation of the following equipment into Ukraine is exempt from Ukrainian customs duties and VAT:

- equipment and materials that will be used for the production of electricity from RES;
- raw materials, equipment and components that will be used in the production of electricity from RES

Temporarily, until 1 January 2019, the following operations will not be subject to VAT:

- supply of RES equipment and facilities to the territory of Ukraine;
- importation of RES equipment and facilities into Ukraine to be used for the reconstruction of existing, and construction of new, facilities that will produce biofuels as well as for the production and reconstruction of technical and transportation means for biofuel consumption, provided that such products are not produced in Ukraine and there are no similar products, equipment or facilities in Ukraine.

### **Changes for RES Producers Introduced by the Electricity Market Law**

The Electricity Market Law imposes specific obligations on the guaranteed purchaser, universal suppliers and system operator aimed at increasing the share of renewables in the electricity market. Such obligations are effective until 1 January 2030 and relate to purchasing and dispatching of electricity generated from RES units on a priority basis.

The Electricity Market Law envisages that RES Producers are entitled to sell the electricity generated from the RES under bilateral agreements either on the day-ahead market, the intra-day market or the balancing market at the prices set on the respective market segments or at the green tariff.

RES Producers are also entitled to sell electricity to a guaranteed purchaser specifically designated by the Government of Ukraine. The guaranteed purchaser is obligated to purchase the electricity from the RES Producers who participate in a specially created balancing group at the green tariff established for such RES Producers plus the premium added to the green tariff as the case might be. For this purpose, the guaranteed purchaser and the RES Producer should conclude a PPA valid for the whole period of effectiveness of the green tariff, ie, until 1 January 2030. The guaranteed purchaser then resells the electricity generated from the RES on the day-ahead and intra-day markets.

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RES Producers can sign the PPA with the guaranteed purchaser even before the RES unit has been commissioned at the presence of land title documents for the RES project, a construction permit (or equivalent document) and a signed grid connection agreement with the system operator. If the RES unit is not commissioned within three years of obtaining a respective construction permit, the agreement with the guaranteed purchaser would be deemed terminated.

The guaranteed purchaser is entitled to compensation for the difference between the price paid to the RES Producers and the price of electricity resold on the day-ahead and intra-day markets as payment for its services for the increase of the share of electricity generated from the RES. The amount of such compensation is to be approved by the NEURC. The compensation to the guaranteed purchaser shall be made by nuclear power plants until 1 July 2020, following which, by the transmission system operator (currently National JSC Ukrenergo) until 1 January 2030.

The part of compensation to the guaranteed purchaser covered by RES Producers who participate in a specially created green tariff balancing group will increase by 10% annually reaching 100% in 2030.

Up to 31 December 2029, the industrial plants generating wind, solar and hydro electricity that are members of the specially created green tariff balancing group must compensate the guaranteed purchaser only in case if the hourly imbalances of the RES Producer (the difference between the actual and scheduled production) exceed 20% for wind energy units, 10% for solar energy units and 5% for hydroelectric energy units.

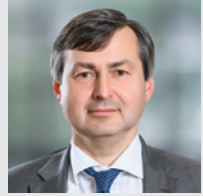
RES Producers commissioned prior to 11 June 2017 (the date the Law came into the effect) are released from paying any imbalances compensation to the guaranteed purchaser up until 31 December 2029.

Starting from 31 December of the year the output of electricity generated by all RES Producers reaches 5% or more of the annual energy balance of Ukraine, RES Producers must compensate the guaranteed purchaser if their hourly imbalances exceed 10% for wind energy units, 5% for solar energy units and 5% for hydroelectric energy.

The other rules for the application of the green tariff, including the guarantees applicable to RES producers as mentioned herein, remain the same.

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## 18.7 NATURAL RESOURCES, MINING, AND OIL AND GAS

### 18.7.1 General

The principal legislative acts governing mining and oil and gas exploration activities in Ukraine are the Code of Ukraine on the Subsurface (the "Subsurface Code"), and the Laws of Ukraine "On Oil and Gas," "On Production Sharing Agreements," "On Mining in Ukraine" and "On Gas (Methane) of Coal Fields." The Law of Ukraine "On the Natural Gas Market" regulates the midstream and downstream oil and gas operations.

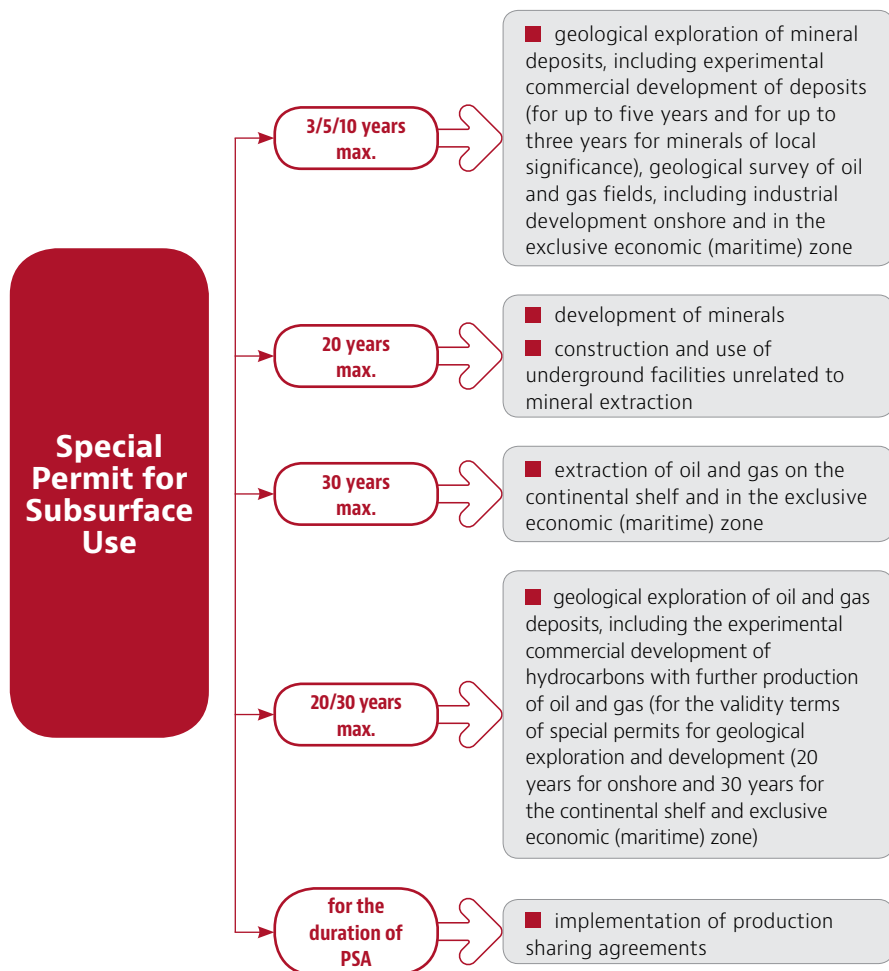
The Subsurface Code defines the subsurface as "a part of the earth's crust underlying the land surface and the bottom of bodies of water and stretching to the depths accessible for geological exploration and development." The subsurface is the exclusive property of the people of Ukraine and may be granted to Ukrainian and foreign legal entities and individuals for use only.

### 18.7.2 Permits

In most cases, business entities and/or individuals seeking to engage in the use of Ukrainian subsurface resources must follow the established procedure for obtaining the necessary permits and, where necessary, mining allotments.

#### 18.7.2.1 Permits

Under Resolution of the Cabinet of Ministers of Ukraine No. 615 "On Approval of the Procedure for Issuance of Special Permits for Subsurface Use" of 30 May 2011, subsurface use rights are granted in the form of a special permit for subsurface use, which can be issued for the following types of activities:



The applicable legislation provides that subsurface use rights are granted through auctions where the only criteria is the highest offered price.<sup>1</sup> However, special permits may also be granted without an auction procedure under specific grounds, some of which are listed below:

- Extraction of minerals (i) if the applicant, at its own expense, has conducted geological exploration of a subsurface area, evaluated the mineral reserves and this evaluation has been approved by the State

<sup>1</sup>The rights to conclude the production sharing agreements are granted, with limited exceptions, on tenders where the bids are evaluated using multiple criteria (investment commitment, scope of works, experience of similar petroleum operations, etc.).



Commission for Mineral Reserves of Ukraine (the “SCMR”), and applied for the special permit within three years after the SCMR’s approval, or (ii) if the applicant, using its own funds, obtained approbation of the mineral reserves from the SCMR in the event of further approval of the mineral reserves by the SCMR within a three-year period starting from the date of issuance of a special permit for subsurface use (in the case of subsurface use onshore and in the exclusive economic (maritime) zone – within a 10-year period).

- Expansion of the boundaries of an area previously provided for subsurface use with the aim of exploring it geologically or placing an underground storage facility by not more than 50% (or by not more than 50% of the reserves previously identified in a special permit in case of increase of extraction of minerals by expanding the boundaries of a subsurface plot), subject to the condition that the adjacent plot is not in use.
- Construction and operation of underground facilities not related to the extraction of minerals, including facilities for underground storage of oil, gas and other substances and materials, disposal of hazardous substances and industrial waste, and discharging of waste water.
- Geological survey and extraction of minerals of local significance.
- Implementation of production sharing agreements.

A subsurface user is not authorized to bestow, sell or otherwise transfer the rights granted by a permit. The transfer of such rights to the share capital of entities (even if created by such subsurface user) or their transfer into joint activity is also prohibited. The validity of a special permit for subsurface use, however, is not affected by a change of ownership of the permit holder. For this reason, a special permit is often obtained by an interested party through acquiring control over the licensee (ie, by purchasing the relevant shares or participatory interest).

The conditions for the use of natural resources must be set forth in an agreement between the permit holder and the authorized governmental agency. The permit holder must start using the subsurface area within two<sup>2</sup> years after the issuance of a special permit (180 days for oil and gas deposits).

<sup>2</sup> The Law of Ukraine “On Gas (Methane) of Coal Fields” requires the start of the activities prescribed in a special permit for exploration and extraction of gas (methane) of coal fields within one year of such permit being issued.

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### 18.7.2.2 Mining allotments

Pursuant to Article 19 of the Subsurface Code, a permit holder must obtain a certificate approving its right to use the defined subsurface area for the purposes of commercial development of minerals, which is called the "mining allotment act" (the "Mining Allotment"). The procedure for issuing Mining Allotments is regulated by Resolution of the Cabinet of Ministers of Ukraine No. 59 "On Approval of the Procedure for Issuance of Mining Allotments" dated 27 January 1995.

To apply for a Mining Allotment, an applicant should have a special permit for subsurface use and a duly approved commercial development design. A Mining Allotment is issued in accordance with the borders of the subsurface area specified in the special permit. A subsurface user is not authorized to transfer the rights granted by the mining allotment act (whether in full or in part) to any third party.

Business entities and/or individuals seeking to develop minerals of national importance or to construct and use underground oil or gas storage facilities must file an application for a Mining Allotment with the State Employment Service of Ukraine. If they would like to develop minerals of local importance, business entities and/or individuals at the location of the relevant deposit should apply to: (i) the regional council; (ii) the city council in the cities of Kyiv or Sevastopol; or (iii) the Ministers' Council of the Autonomous Republic of Crimea.

A decision on the issuance of a Mining Allotment should be made within 21 calendar days.

### 18.7.3 Payments for Subsurface Use

Under the applicable Ukrainian legislation, the following mandatory payments shall be required for subsurface use:

- royalty payments for subsurface use for development of natural resources
- royalty payments for subsurface use not connected with extraction of natural resources (eg, storage of natural gas and related products, and storage of oil and oil products)

When extracting natural resources, the taxable object will include: (i) the amount of mineral resources extracted from the subsurface within the territory of Ukraine, its continental shelf and the exclusive (maritime) economic zone; and (ii) the amount of mineral resources produced from mine waste.



When subsurface use is not related to the extraction of natural resources, the taxable object will comprise the amount of subsurface to be used and will depend on the goals and method of its use. In addition, the Tax Code of Ukraine provides an exemption from the subsurface use payment for open underground constructions at a depth of less than 20 meters with or without their subsequent filling.

Moreover, the Tax Code of Ukraine envisages royalty payments for the transportation of oil and oil products through oil pipelines and oil-product pipelines, as well as for the transportation of ammonia through pipelines.

#### **18.7.4 Production Sharing Agreements**

The applicable Ukrainian legislation envisages certain incentives for investors that undertake mining activities directly pursuant to agreements on the sharing of the output of such activities (a "Production Sharing Agreement" or "PSA").

The basic legal requirements with respect to PSAs are set forth in the Law of Ukraine "On Production Sharing Agreements" (the "PSA Law") dated 14 September 1999 (with subsequent amendments).

The PSA Law envisages that relations arising in the course of prospecting, exploration and development operations, distribution of production and its transportation, processing, storage, use, sale or disposition as well as construction and operation of related industrial facilities, pipelines or other assets shall be governed by a PSA, which shall be concluded in accordance with the PSA Law. Moreover, in the case of any legal discrepancies between the PSA Law and other Ukrainian laws, the provisions of the PSA Law shall prevail.

Under the PSA Law, the Cabinet of Ministers of Ukraine, on behalf of the state and the investor(s), may enter into a PSA whereby the investor agrees to undertake certain mining activities at its own expense and risk, and is entitled to recovery of its expenses and to a certain share of the relevant production. All PSAs are subject to state registration. When entering into a PSA, a foreign investor must establish a representative office in Ukraine within three months of the date on which the PSA was concluded.

The deposits to be granted under a PSA regime are selected under the relevant decision of the Cabinet of Ministers of Ukraine. The investors are then selected through a tender managed by the permanently acting interagency commission.

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In addition, there are several cases when a PSA may be entered into without a tender, including:

- if there is a deposit with insignificant reserves of minerals and the Cabinet of Ministers of Ukraine, together with the relevant local municipal authorities, approved entry into the PSA for such deposit without a tender
- if the subsurface user holding a special permit for subsurface use has commenced works on subsurface use and has expressed the intention to convert its special permit into the PSA-based special permit

The PSA may be concluded for a period agreed by the parties. However, this period may not exceed 50 years. The validity term of the PSA may be prolonged at the investor's initiative if the investor fulfils the obligations under the PSA. Such prolongation is performed through concluding an additional agreement. Simultaneously with the signing of the agreement on prolongation of the PSA, the licenses and other permits issued to perform the PSA will also be prolonged. The agreement on prolongation of the PSA is subject to state registration.

Minerals extracted under the PSA should be shared between the state and the investor in accordance with the PSA terms. Until they have been shared, the state retains title to all minerals extracted under the PSA. The investor obtains ownership of the cost recovery and the profit production determined by the PSA at the moment of their distribution. The remaining part of the minerals shall be retained by the state.

The quarterly cost recovered as part of the extracted production may not exceed 70% of the total quarterly production until the investor has recovered its costs.

The investor is free to use and dispose of the volume of the extracted minerals owned under the PSA and it is not subject to any license or quota requirements.

The investor may be obliged to sell its share of the extracted minerals within Ukraine only if it is expressly required by the PSA, in which case the sale price of the extracted production may not be lower than the price in the international markets. No other limitations of the investor's rights are permitted, unless they are expressly specified in the PSA or follow from the tender terms.





The title to assets created or acquired by the investor while performing its obligations under the PSA is transferred to the state on the date when the value of such assets is completely covered by the cost recovery portion of the minerals, or upon termination of the PSA. However, during the validity of the PSA, the investor enjoys a pre-emptive right to use such assets.

The rights and obligations under the PSA may only be assigned by the investor to a third party with the prior consent of the state, and only if such third party possesses sufficient financial and technical capacity and experience to perform the PSA. The state is deemed to have consented to the assignment if it fails to provide the investor with its response within 90 days after the date of the request for consent.

Taxation of the PSA is regulated by a separate chapter of the Tax Code of Ukraine. The most significant features of the taxation regime under a PSA include:

- During the validity of the PSA, the investor is exempt from paying state and local taxes (save for VAT, CIT and subsurface use payment), which shall be replaced by the production sharing under the PSA between the state and the investor(s).
- CIT shall be paid exclusively by monetary means.
- In the case of import of goods and other property into the customs territory of Ukraine for the purposes of the PSA, no taxes are payable at the customs clearance of goods under the customs regime of import (excluding excise taxes).

For the whole duration of the PSA, the investor enjoys the following incentives, among others:

- Due to recent changes to the Tax Code of Ukraine, the PSA enjoys special royalty rates for natural gas of 1.25% of the product price and 2% for any other types of minerals.
- The investor and its subcontractors are exempt from licensing and quota requirements when importing the equipment necessary for their performance under the PSA. The same applies when such equipment is shipped out of Ukraine upon the termination of the PSA.
- Any product obtained by the investor is subject to VAT when sold within Ukraine, but it is not subject to any VAT, other tax or customs duties when exported out of Ukraine.
- Depreciation rates, other than those provided by the applicable legislation, may be set out in the PSA.

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- Profits received under the PSA are exempt from the profit repatriation tax.
  - Funds received under the PSA are exempt from any restrictions on conversion into Ukrainian or foreign currency, and may be repatriated abroad under the terms and conditions of the PSA. Any requirements for the mandatory sale of foreign currency are not applicable to such funds.
  - The investor enjoys a flexible regime for use of foreign currency for PSA purposes, which includes exemption from restrictions on settlements under export and import contracts (the “180 days rule”<sup>3</sup>); registration of loan agreements with the National Bank of Ukraine (the “NBU”) and maximum interest rate limitations; transfer of foreign currency to the account of other investors in Ukraine; and obtaining the relevant NBU license for this.
  - Compulsory withdrawals of funds from bank accounts, opened by the investor in Ukraine to finance its operations under the PSA, are not permitted.
  - The state will issue work permits to an investor’s foreign employees or to the foreign employees of an investor’s contractors solely upon the investor’s application with an attached list of the relevant foreign workers. The requirements for submission of any other documents required by Ukrainian legislation shall not apply.
  - During the period of the PSA, the rights and obligations of an investor will be regulated under the legislation in force at the time of signing the PSA (except for legislation that reduces taxes or fees or cancels them, simplifies the regulation of economic activity for exploration and development operations, reduces state supervision over business activity, including procedures for customs, currency, tax and other state control, or reduces the responsibility of an investor, legislation of which shall be applied from its date of enactment). However, the above-mentioned stabilization rules do not apply to changes in legislation relating to defense, national security, public order and environmental protection.

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<sup>3</sup> Under the Law of Ukraine “On the Procedure for Settlements in Foreign Currency,” revenues in a foreign currency received by a resident shall be transferred to their bank accounts in the foreign currency within the contractual terms but no later than 180 calendar days from the date of the exported products’ customs clearance. Exceeding such term requires approval from the Ministry of Economic Development and Trade of Ukraine.



### 18.7.5 Pipeline Transportation

The pipeline transportation system of Ukraine consists of the mainstream pipeline (high-pressure) transportation system and the industrial (access) pipelines (low-pressure) transportation system.

The trunk pipeline transportation system is of paramount importance to the national economy and security, and is run by the state. The state-owned mainstream pipeline transportation companies are not subject to privatization or any other actions leading to the private use of such enterprises. However, mainstream pipelines constructed at the expense of municipal or private commercial entities are owned by such companies.

The following activities are subject to licensing:

- transportation of oil and oil products via a mainstream pipeline
- transportation of natural, oil and coalfield gas (methane) by pipeline, as well as its distribution
- supply of natural and coalbed gas (methane) at regulated or non-regulated tariffs
- storage of natural and coalbed gas (methane) in volumes exceeding the threshold determined by the licensing terms

Licenses are issued by the National Commission for State Regulation in the Energy Sphere and Utility Service of Ukraine (the “NKREKP”).

In September 2015, the Code on Gas-Distribution System and the Code on Gas-Transportation System were approved by the Resolutions of the NRREKP.

The Code on Gas-Distribution System is aimed at regulating the relations between the operator of the gas-distribution system and market participants as to use of the system, accounting of gas, access to and joining of the system with construction objects, access for factual supply/distribution of natural gas, etc.

The Code on Gas-Transportation System determines the legal, technical and economic grounds for the operation of Ukraine's gas-transportation system, as well as the procedure for granting access to the system to suppliers, producers and consumers of natural gas.

A number of obligatory standard agreements were approved by the NKREKP; namely, on transportation of gas via mainstream pipelines, distribution of natural gas, storage (pumping-in, storage and pumping-out) of natural gas, supply of natural gas to public and other activities related to

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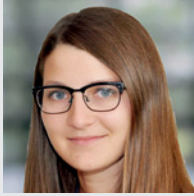
operating elements of the Unified Gas-Transportation System of Ukraine. No such obligatory agreement is approved for the sale and purchase of natural gas between “traders” (ie, who do not supply natural gas to consumers).

Moreover, the Law of Ukraine “On the Legal Status of Land in the Safety Zones of Mainstream Pipelines” dated 17 February 2011 sets the legal regime for the safety zones of trunk pipelines with a view to ensuring their smooth operation, rational use of land within the established safety zones, the regime for economic and other activities, environmental safety and protection, as well as protection of mainstream pipelines from the effects of possible accidents.

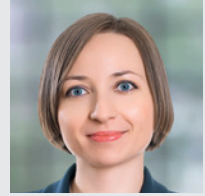
A separate section of the Tax Code of Ukraine regulates royalty payments for payers operating mainstream pipelines and rendering services for transportation of oil, oil products and gas via mainstream pipelines in Ukraine. For the transportation of oil and oil products, the taxable object shall be the actual amount of transported oil and oil products during the taxable period (calendar month). For natural gas and ammonia, the amount of tax shall depend on the type of product (natural gas or ammonia), its amount and the distance it is to be transported.

A significant step forward in the regulation of Ukraine’s gas sector was taken on 9 April 2015 when the Law of Ukraine “On the Natural Gas Market” was adopted. This law established new principles of operation for the natural gas market, limited the permitted state control in Ukraine’s gas sector and regulated relations between natural gas suppliers and consumers.



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## 18.8 PHARMACEUTICALS AND HEALTHCARE

### 18.8.1 General overview

The production and circulation of pharmaceuticals and medical devices in Ukraine is subject to strict control. The statutory framework for the regulation of pharmaceutical products and medical devices in Ukraine is complex and comprises a network of specific laws and regulations. The following are the major laws in the healthcare industry:

NAME OF THE LAW	SCOPE OF REGULATION
The Law of Ukraine "On the Fundamentals of Ukrainian Laws on Healthcare" (the "Fundamentals"), dated 19 November 1992, as amended	Lays out the formal basis of the Ukrainian healthcare system
The Law of Ukraine "On Pharmaceuticals" (the "Pharmaceuticals Law"), dated 4 April 1996, as amended	The principal legislative act setting forth the basic requirements for the development, registration, production, quality control and distribution of pharmaceuticals in Ukraine
The Law of Ukraine "On State Financial Guarantees of Providing Medical Services and Pharmaceuticals" dated 19 October 2017	Lays out the framework for state financing of medical services, pharmaceuticals and medical devices in Ukraine

NAME OF THE LAW	SCOPE OF REGULATION
The Law of Ukraine “On Technical Regulations and Assessment of Conformity” (the “Law on Technical Regulations”), dated 15 January 2015	Governs the processes of development, adoption and implementation of technical regulations, conformity assessments, requirements for bodies that conduct conformity assessments, their duties and appointment procedures
The Law of Ukraine “On Advertising,” dated 3 July 1996, as amended (the “Advertising Law”)	Governs advertising, including advertisement of pharmaceuticals and medical devices
The Law of Ukraine “On Licensing of Types of Economic Activity” (the “Licensing Law”), dated 2 March 2015	Governs licensing activities in Ukraine

After a long public debate, the reform of the healthcare sector in Ukraine has finally been approved. At the end of 2017, the Parliament of Ukraine has adopted the following laws which launched the reform:

- The Law of Ukraine No. 2168-VIII “On State Financial guarantees of Providing Medical Services and Pharmaceuticals” dated 19 October 2017
- The Law of Ukraine No. 2233-VIII “On Amending the Budget Code of Ukraine” dated 7 December 2017
- The Law of Ukraine No. 2206-VIII “On Enhancing Affordability and Quality of Medical Services in Rural Areas” dated 14 November 2017

The main objectives of healthcare reform in Ukraine include the following:

- “Money follows the patient” principle: payments to healthcare organizations for services provided (patients treated) based on unified tariffs instead of allocating fixed amounts of financing to each healthcare organization
- Guaranteeing patients’ free choice of medical service suppliers
- Creating the centralized healthcare procurement agency (the “Agency”)
- Paying for medical services based on agreements between healthcare organizations and the Agency
- Setting out the list of medical services, medical devices and pharmaceuticals to be financed from the state budget funds under a specific budget program and provided to patients free of charge (the “Program”). Medical services, medical devices and pharmaceuticals outside the Program may be financed under other state budget programs, with funds from local budgets, medical insurance or using other permitted sources of financing



- Enhancing technical infrastructure and financial capabilities of healthcare organizations in rural areas
- Introducing the eHealth technologies: registries of patients, healthcare organizations, doctors, e-prescriptions, development of telemedicine, etc.

It is expected that the healthcare financing reform will be launched on the primary care level beginning from 1 July 2018 and will be fully implemented beginning from 1 January 2020.

The main regulatory authority for the healthcare system, pharmaceuticals and medical devices in Ukraine is the Ministry of Health of Ukraine (the “**MOH**”). The pharmaceutical sector is also administered, regulated and supervised by the Cabinet of Ministers of Ukraine (the “**CMU**”), the State Service of Ukraine on Pharmaceutical Products and on Control of Narcotics (the activities of which are directed and coordinated by the CMU through the MOH) (the “State Service for Pharmaceuticals”), the State Expert Center of the MOH (the “State Expert Center”), the Anti-Monopoly Committee of Ukraine, and a number of other state agencies.

### **18.8.2 Placement of Pharmaceuticals into Circulation**

The Pharmaceuticals Law defines “pharmaceuticals” as “substances or combinations of substances (of one or more active pharmaceutical ingredients (“API”) and excipients) that have therapeutic properties and are aimed at the treatment or prophylaxis of illnesses of humans, or substances or combinations of substances (of one or more APIs and excipients) that can be used for preventing pregnancy, restoration, correction or alteration of a physiological function in a human by way of pharmacological, immunological or metabolic impact or for reaching a diagnosis.” The above definition includes APIs, in-bulk, ready-to-use pharmaceuticals, homeopathic products, products used for the detection and removal of pathogens or vermin and cosmetics with medicinal properties.

Pharmaceuticals may be used in Ukraine only after their official state registration by the MOH (ie, marketing authorization). The above rule exempts from the mandatory registration regime those pharmaceuticals that are prepared in pharmacies in accordance with medical prescriptions for individual patients or in accordance with orders placed by healthcare institutions, provided that such pharmaceuticals are prepared from active and auxiliary substances allowed for use in Ukraine.

Official state registration is generally preceded by pre-clinical research and clinical trials.

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(a) *Pre-Clinical Research*

Pre-clinical research is mandatory for APIs, auxiliary substances, finished pharmaceutical products (except immunobiological pharmaceuticals), including herbal medicines, medicinal cosmetics, disinfective, diagnostic and radioactive pharmaceuticals. Pre-clinical research is designed to study the specific potency and safety of pharmaceuticals. The results of the pre-clinical research are submitted to the MOH, which decides whether clinical trials of a pharmaceutical product may be permitted.

Ukrainian legislation requires that, in order to determine the specific activity and safety of a given pharmaceutical product, the pre-clinical research (including chemical, physical, biological, microbiological, pharmacological, toxicological and other scientific studies) be carried out by specialized research establishments. The detailed requirements for the conduct of the pre-clinical research are determined by the MOH under Order No. 944 "On the Approval of the Procedure for Conducting the Pre-Clinical Research of Pharmaceuticals and of the Review of Materials for the Pre-Clinical Research of Pharmaceuticals," dated 14 December 2009. There is no statutory requirement for establishments conducting pre-clinical research to be authorised or licensed, but they must be able to demonstrate an appropriate scientific and methodological level, and ensure the humane treatment of any animals used in the tests.

(b) *Clinical Trials*

Under the Pharmaceuticals Law, a pharmaceutical product may be admitted for clinical trials if its pre-clinical research showed positive results, and the expected benefits of using the pharmaceutical significantly outweigh the risks of side effects. Clinical trials are conducted by specialized medical institutions determined by the MOH based on its decision on conducting the clinical trial. The MOH can approve the decision on conducting the clinical trial based on a positive conclusion of the State Expert Center issued as result of clinical trial materials' evaluation. Clinical trials are conducted after evaluation of ethical as well as moral and legal aspects of the clinical trials' program by the ethics committees under the healthcare institutions conducting the clinical trials. The results of the clinical trials are evaluated during state registration of the pharmaceutical product. The procedures for clinical trials are set forth in the "Procedure for Conducting Clinical Trials of Pharmaceuticals and the Examination of Materials on Clinical Trials and Model Regulation on the Ethics Commission" approved by MOH Order No. 690 on 23 September 2009, as restated by Order No. 523, dated 12 July 2012.





The purpose of clinical trials is to determine the safety of a given pharmaceutical, its therapeutic effectiveness, optimal dosage, short-term and long-term side-effects, and, after registration and market entry, its therapeutic significance, the strategy for its further use, the incidence of side effects, and its action when combined with other pharmaceuticals. The application for clinical trials must be accompanied by, among others, the dossier of the investigational pharmaceutical product, the results of its pre-clinical research (if available), and the clinical trial protocol. The sponsor of the clinical trial is required to obtain insurance policies to cover the lives and health of patients (volunteers) before the commencement of the clinical trials.

The MOH will order clinical trials to be halted in cases of danger to the health and life of a patient or volunteer, the ineffectiveness of a pharmaceutical, or a breach of any ethical norms. The clinical trial can also be temporarily halted or terminated (subject to MOH approval) by the State Expert Center in case the conditions stated in the application for clinical trials are not complied with, in case there is data which compromises the safety of study subjects or the scientific feasibility of the clinical trial, or in case of falsification. Clinical trials of pharmaceuticals for treatment of illnesses of children and the mentally disabled are expressly permitted in Ukraine, provided that certain warranties for such patients' interests are complied with.

*(c) Registration of pharmaceuticals*

The state registration of a pharmaceutical product requires the filing of an application with the MOH. The procedure of the state registration is set out in the Pharmaceuticals Law, and it is further detailed in Resolution No. 376 of the CMU "On the Approval of the Procedure for the State Registration (Re-Registration) of a Pharmaceutical Product and the Fees for the State Registration (Re-Registration) of a Pharmaceutical Product" (the "Registration Resolution") dated 26 May 2005.

Currently, legislation of Ukraine provides for a standard procedure of state registration and three different simplified procedures of state registration of pharmaceuticals.

Under the standard procedure, materials submitted for state registration of pharmaceutical are examined by the State Expert Center. The examination of materials submitted for state registration of pharmaceuticals is regulated by the "Procedure of Examination of Registration Materials for Pharmaceuticals, Which are Submitted for State Registration (Reregistration), as well as Examination of Materials on Amending

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Registration Materials While Registration Certificate is in Force,” approved by MOH Order No.426, dated 26 August 2005, as amended.

Under a simplified procedure, pharmaceuticals which were registered in countries with strict regulatory authorities, in particular in Canada, USA, Australia, Japan, Switzerland and the EU under the centralized procedure, are reviewed by the State Expert Center without expert examination thereof. The review of materials submitted for state registration of pharmaceuticals is regulated by the order of the Ministry of Health of Ukraine of 17 November 2016 No. 1245 “On approval of the Procedure for Consideration of Registration Materials on Pharmaceuticals which Move on State Registration (Re-Registration), and Materials about Modification of Registration Materials throughout Action of the Registration Certificate on the Pharmaceuticals Registered by competent Authorities of the United States of America, Switzerland, Japan, Australia, Canada, Pharmaceuticals which according to the Centralized Procedure are Registered by Competent Authority of the European Union” as amended. This procedure was introduced on 31 May 2016 by way of amending the Pharmaceuticals Law. Full implementation of this registration procedure is conditional upon a number of amendments to existing bylaws, including the procedure of state quality control of pharmaceuticals imported to Ukraine and the procedure for confirming compliance of pharmaceuticals’ manufacturing conditions with good manufacturing practice. No respective bylaws/amendments to the relevant bylaws have been adopted as of today.

Pharmaceuticals purchased under the state procurement through specialized procurement agencies (the “SPAs”) as detailed in section 19.7.9 (a) are also subject to a specific registration procedure established by the “Procedure of Examination of Authenticity of Registration Materials for Pharmaceutical Which is Submitted to State Registration for its Procurement by Specialized Agency” established by MOH Order No. 721, dated 3 November 2015. Based on the amendments to the Pharmaceuticals Law, procurement through SPAs is a temporary measure valid until 31 March 2019, thus the validity period of this registration procedure is also limited until 31 March 2019. Materials submitted for registration within this procedure are only checked for authenticity by the State Expert Center without expert examination thereof.

Innovative pharmaceuticals registered by the European Medicines Agency are also subject to simplified state registration procedure provided by the Registration Resolution. No expert examination by the State Expert Center is required within this procedure either; only the information on quality control methods and instruction for use of the pharmaceutical

are verified for compliance with the registration dossier. This type of simplified registration was introduced prior to introduction of the simplified state registration procedure of pharmaceuticals which were registered in countries with strict regulatory authorities.

Based on the results of registration materials' review by the State Expert Center, the MOH adopts the order on registration of/refusing registration of the pharmaceutical.

The details on types of pharmaceuticals falling under each type of state registration procedure, required documents, scope of the State Expert Center review of submitted materials as well as general timelines of registration for each type of the procedure are summarized below.

	<b>Type of State Registration Procedure</b>			
	<b>Standard Registration Procedure</b>	<b>Simplified Registration Procedure for Products Registered by Strict Regulatory Authorities</b>	<b>Simplified Registration Procedure for Pharmaceuticals Procured by SPAs</b>	<b>Simplified Registration Procedure for Pharmaceuticals Registered by EMA</b>
<b>Pharmaceutical products, which fall under the registration procedure</b>	<ul style="list-style-type: none"> <li>■ APIs;</li> <li>■ ready-to-use pharmaceuticals;</li> <li>■ in bulk pharmaceuticals;</li> <li>■ medical immunobiological products;</li> <li>■ medical devices that contain substances which are transferred into systemic blood circulation during their use.</li> </ul> <p>Depending on the type of the pharmaceutical, the following sub-categories within this procedure exist:</p> <ul style="list-style-type: none"> <li>■ pharmaceutical products within full (independent) dossier (ie innovative products);</li> <li>■ generic, hybrid pharmaceuticals or biosimilars;</li> </ul>	Pharmaceuticals which were registered in countries with strict regulatory authorities, in particular in Canada, USA, Australia, Japan, Switzerland and the EU under the centralized procedure.	Pharmaceuticals which are submitted to state registration based on results of procurement by a SPA.	Innovative pharmaceuticals registered by EMA.

	<b>Type of State Registration Procedure</b>			
	<b>Standard Registration Procedure</b>	<b>Simplified Registration Procedure for Products Registered by Strict Regulatory Authorities</b>	<b>Simplified Registration Procedure for Pharmaceuticals Procured by SPAs</b>	<b>Simplified Registration Procedure for Pharmaceuticals Registered by EMA</b>
<b>Pharmaceutical products, which fall under the registration procedure</b>	<ul style="list-style-type: none"> <li>■ pharmaceuticals with well-established medicinal use;</li> <li>■ fixed combination pharmaceuticals;</li> <li>■ informed consent;</li> <li>■ traditional pharmaceuticals;</li> <li>■ pharmaceuticals from in bulk products.</li> </ul> <p>In addition, separate requirements are set out for certain categories of pharmaceuticals.</p>			
<b>Type of application materials review</b>	Examination of the registration dossier materials	<ul style="list-style-type: none"> <li>■ No examination of the registration dossier materials.</li> <li>■ Only the expedited review should be made.</li> </ul>	<ul style="list-style-type: none"> <li>■ No examination of the registration dossier materials.</li> <li>■ Only an authenticity check should be made.</li> </ul>	<ul style="list-style-type: none"> <li>■ No examination of the registration dossier materials.</li> <li>■ Only the verification of compliance of information on quality control methods and instruction for use of the pharmaceutical to the registration dossier should be made.</li> </ul>



	<b>Type of State Registration Procedure</b>			
	<b>Standard Registration Procedure</b>	<b>Simplified Registration Procedure for Products Registered by Strict Regulatory Authorities</b>	<b>Simplified Registration Procedure for Pharmaceuticals Procured by SPAs</b>	<b>Simplified Registration Procedure for Pharmaceuticals Registered by EMA</b>
<b>Required documents</b>	<p>Application for state registration accompanied by the supporting documentation, including:</p> <p>(i) documents required for all types of registration procedures, in particular:</p> <ul style="list-style-type: none"> <li>■ information on quality control methods;</li> <li>■ a copy of the GMP conclusion (for products covered by the GMP certificate issued by the regulatory authority-member of PIC/S) or GMP certificate (for other products) issued by the State Service for Pharmaceuticals; and</li> <li>■ a copy of a valid patent or a license agreement permitting the manufacture and sale of the registered pharmaceutical and the letter stating that the third party's rights protected by the patent or granted by the license are not violated due to the registration (if a pharmaceutical is related to an item of intellectual property registered in Ukraine); and</li> </ul> <p>(ii) the specific documents within separate types of registration procedures as detailed below.</p>			
<b>Required documents</b>	<p>The composition and precise content of the supporting documentation will vary depending on the type of specific pharmaceutical submitted for registration.</p> <p>In general, the supporting documentation should include:</p> <ul style="list-style-type: none"> <li>■ the reports on the pre-clinical research and the clinical trials of the pharmaceutical product;</li> <li>■ pharmacopoeia description;</li> <li>■ a description of the production technology;</li> <li>■ samples of the pharmaceutical product;</li> </ul>	<ul style="list-style-type: none"> <li>■ The registration dossier based on which a pharmaceutical was registered by the regulatory authority of USA, Switzerland, Japan, Australia, Canada, or EU.</li> <li>■ Instructions for use of the pharmaceutical;</li> <li>■ Product artwork and the labeling text on primary and secondary packaging (subject to availability).</li> <li>■ A receipt evidencing payment of the registration fee.</li> </ul>	<ul style="list-style-type: none"> <li>■ Samples of the pharmaceutical product packaging (original).</li> <li>■ The registration dossier and the assessment report issued by the regulatory authority where the product was registered or issued by the World Health Organization (for pre-qualified products).</li> </ul>	<ul style="list-style-type: none"> <li>■ The registration dossier materials submitted to EMA and the EMA assessment report.</li> <li>■ Receipt evidencing payment of the registration fee.</li> </ul>

	<b>Type of State Registration Procedure</b>			
	<b>Standard Registration Procedure</b>	<b>Simplified Registration Procedure for Products Registered by Strict Regulatory Authorities</b>	<b>Simplified Registration Procedure for Pharmaceuticals Procured by SPAs</b>	<b>Simplified Registration Procedure for Pharmaceuticals Registered by EMA</b>
<b>Required documents</b>	<ul style="list-style-type: none"> <li>■ samples of the pharmaceutical product packaging;</li> <li>■ a receipt evidencing payment of the registration fee.</li> </ul>	<ul style="list-style-type: none"> <li>■ Instead of GMP conclusion/certificate, the applicant may submit the manufacturer's warranty to manufacture the product to be supplied to Ukraine on the same manufacturing facilities that are used for manufacturing products to be supplied to Canada, USA, Australia, Japan, Switzerland and the EU countries.</li> <li>■ Warranty letter confirming the completeness and integrity of submitted information (optional).</li> </ul>	<ul style="list-style-type: none"> <li>■ Instruction for use of the pharmaceutical (original and translation to Ukrainian).</li> <li>■ Translation of the text of product labelling to Ukrainian.</li> </ul>	
<b>Duration of registration</b>	<p>Up to 220 business days:</p> <ul style="list-style-type: none"> <li>■ up to 210 business days for examination by the State Expert Center (depending on the type of specific pharmaceutical, the timelines may be shorter); and</li> <li>■ up to 10 business days for the MOH to render the decision on state registration.</li> </ul>	<p>Up to 17 business days:</p> <ul style="list-style-type: none"> <li>■ up to 10 business days for review by the State Expert Center; and</li> <li>■ up to 7 business days for the MOH to render the decision on state registration.</li> </ul>	<p>Up to 14 business days:</p> <ul style="list-style-type: none"> <li>■ up to 7 business days for authenticity check by the State Expert Center; and</li> <li>■ up to 7 business days for the MOH to render the decision on state registration.</li> </ul>	<p>Up to 55 business days:</p> <ul style="list-style-type: none"> <li>■ up to 45 business days for verification of submitted materials to by the State Expert Center; and</li> <li>■ up to 10 business days for the MOH to render the decision on state registration.</li> </ul>



General grounds for refusing registration of pharmaceutical within all types of registration procedure, as well as specific grounds for refusing registration of pharmaceutical within separate types of registration procedure are presented below.

<b>Grounds for Refusing Registration of a Pharmaceutical Product</b>			
<b>For Standard Procedure of Registration</b>	<b>For Simplified Procedure of Registration for Products Registered by Strict Regulatory Authorities</b>	<b>For Simplified Registration Procedure of Pharmaceuticals Procured by SPAs</b>	<b>For Simplified Registration Procedure of Pharmaceuticals Registered by EMA</b>
Registration violates the intellectual property rights of a third party that are protected by patent			
The effectiveness and quality of the given pharmaceutical product are not proven	<ol style="list-style-type: none"> <li>1. Incomplete package of documents.</li> <li>2. Inaccurate or incomplete information.</li> <li>3. Discrepancies in the manufacturer's name, address and address of its manufacturing facilities, which were indicated in the application for registration and in the information on the basis of which such pharmaceutical was registered by a competent authority in reference country.</li> </ol>	<ol style="list-style-type: none"> <li>1. Failure to submit required documents.</li> <li>2. Incomplete package of documents.</li> <li>3. Inaccurate or incomplete information in the submitted documents.</li> <li>4. Unauthenticity of translation of the text of package labelling or instruction on medical use of a pharmaceutical product.</li> </ol>	The effectiveness and quality of the given pharmaceutical product are not proven.

If registration is approved, the MOH will issue a registration certificate for five years (unless the applicant requests a reduced validity term of the registration certificate). The validity of registration certificates for pharmaceuticals which are subject to public procurement pursuant to procedures conducted by the SPA is limited to 31 March 2019. After state registration, the pharmaceutical product is included in the State Register of Pharmaceuticals, at which time an applicant also receives a registration certificate. Throughout the term of the validity of the registration certificate, the certificate holder will be responsible for the quality of the pharmaceutical product and must report any proposed change of the product registration materials to the MOH, stating the reasons for the change and its effect on the product. The State Service for Pharmaceuticals may prohibit, fully or temporarily, the marketing of a registered pharmaceutical product if the product causes previously unknown dangerous effects or otherwise fails to comply with applicable Ukrainian requirements, including the quality parameters set out in the registration dossier.

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For pharmaceutical products registered based on the standard registration procedure and pharmaceuticals registered based on the simplified registration procedure of pharmaceuticals registered by EMA, upon expiry of the registration certificate, the pharmaceutical product may be authorized for further use in Ukraine, provided that the application for its re-registration is submitted within one year before the expiration date, but not later than 90 calendar days before the expiry date of the previous registration certificate (in which case some test data will not be required). If the application is filed less than 90 days before the expiration date, the re-registration will entail the same procedure as the initial registration. The re-registration of pharmaceuticals registered by strict regulatory authorities is performed based on the procedure set out in the "Procedure of Examination of Registration Materials for Pharmaceuticals, Which are Submitted for State Registration (Reregistration), as well as Examination of Materials on Amending Registration Materials While the Registration Certificate is in Force," approved by MOH Order No.426, dated 26 August 2005, as amended. . Re-registration is not applicable to pharmaceuticals procured by SPAs due to the temporary nature of this registration procedure which is valid until 31 March 2019.

Marketing of a pharmaceutical after the first renewal of its registration is not limited in time. After such renewal, the MOH issues the registration certificate for unlimited period of time. Further, any product supplied to the market during the period when the respective pharmaceutical is allowed to be marketed in Ukraine may continue being offered until the expiration date indicated on its packaging.

*(d) Data Exclusivity*

If an original pharmaceutical product is registered in Ukraine for the first time through the procedure of submission of the full dossier, then the state registration of another pharmaceutical with the same active substance(s) is possible no earlier than five years from the date of the registration of the original product, unless the second applicant has submitted its independently developed full dossier for an original product or has received the right to refer to or use the data from the first applicant's dossier.

The data exclusivity period applies solely if the application for state registration in Ukraine was submitted within two years from the date of the first ever registration of the original pharmaceuticals product in any country in the world. The five-year data exclusivity period may be extended to six years, if, within the first three years after registration of the original product, the relevant Ukrainian authority approves the use of this product for one or more indications that have a special advantage over the previously known





(and registered) indications (however, the criteria for indications that have a special advantage have not yet been defined by the MOH).

In exceptional cases, to protect the health of the people of Ukraine, the CMU may allow the use of the information by a generics manufacturer without the consent of the original applicant.

The intellectual property rights of the owner of the original pharmaceutical will be recognized (and protected from the generics manufacturers under IP, administrative and criminal laws) only if it has obtained a patent in Ukraine or has a patent that is valid in Ukraine. The owner of the original pharmaceutical may use the existence of such patent to object to registration of a generic on the grounds that such registration will violate the patent.

### 18.8.3 Licensing of Pharmaceutical Activities

The Licensing Law and the Pharmaceuticals Law provide for the mandatory licensing of the below activities with respect to pharmaceuticals, narcotics, psychotropic substances, precursors, blood products as well as other human tissues and cells.

The details regarding the types of licensed activities, licensing authorities, timelines for issuing licenses and validity periods of licenses are presented in the table below.

	Product category			
	Pharmaceuticals	Narcotics, psychotropic substances, precursors	Donor blood and its components, pharmaceuticals manufactured therefrom (save for the cord blood, other human tissues and cells)	Cord blood, other human tissues and cells
<b>Activities requiring a license</b>	<ul style="list-style-type: none"> <li>■ manufacturing</li> <li>■ wholesale trade</li> <li>■ retail trade</li> <li>■ import (save for APIs)</li> </ul>	<ul style="list-style-type: none"> <li>■ developing</li> <li>■ manufacturing</li> <li>■ storing</li> <li>■ transportation</li> <li>■ purchasing</li> <li>■ sale</li> <li>■ importing</li> <li>■ exporting</li> <li>■ use</li> <li>■ destruction</li> <li>■ cultivation of narcotic plants defined in the list approved by the CMU</li> </ul>	<ul style="list-style-type: none"> <li>■ processing and storage of donor blood and its components</li> <li>■ sale of pharmaceuticals manufactured therefrom</li> </ul>	<ul style="list-style-type: none"> <li>■ processing</li> <li>■ labelling (coding)</li> <li>■ conservation</li> <li>■ testing</li> <li>■ storage</li> <li>■ supply (sale)</li> <li>■ clinical use</li> </ul>

<b>Licensing authority</b>	The State Service for Pharmaceuticals		The MOH	
<b>Pre-license audit</b>	Required	Not required	Not required	Not required
<b>Timelines for issuing licenses</b>	Ten business days upon receipt of application for issuing a license			
<b>Term of the license</b>	Indefinite			

Upon issue of a license, the license holder is subject to control by various state authorities as to its compliance with the licensing conditions. Failure to comply with the licensing conditions may lead to the cancelation of the license.

The license holder is required to apply for the reissuance of the license in the case of changes to its name (if the change of name is not related to the reorganization). Such application must be filed within one month after the relevant changes take place. Additionally, the license holder is obligated to notify the licensing authority of any changes to the information that was submitted in its licensing application not later than within one month after the changes took place.

Compliance with the licensing conditions for the manufacture, import and wholesale or retail sale of pharmaceuticals is verified by planned or ad hoc audits conducted by the State Service for Pharmaceuticals, including through its branches in various regions of Ukraine. Following an audit, a report is produced identifying any violations (with reference to specific provisions of licensing conditions). The auditors must issue an instruction to rectify any violations identified within five business days from the last day of the audit. The State Service for Pharmaceuticals may suspend or terminate a business entity’s activities only on the basis of a court decision.

### 18.8.4 Manufacturing of Pharmaceuticals

Pharmaceutical products may not be manufactured without a license for the manufacture of pharmaceuticals issued by the State Service for Pharmaceuticals. Detailed licensing requirements are set forth in the “Licensing Conditions for the Production, Wholesale, Retail Sale and Import of Pharmaceuticals (Except Active Pharmaceutical Ingredients)” (the Licensing Conditions), approved by Resolution No. 929 of the CMU dated 30 November 2016.

To obtain a manufacturing license, an applicant must possess the necessary material and technical resources, employ qualified specialists and establish



quality control procedures for pharmaceutical products. Prior to issuing the license, the State Service for Pharmaceuticals inspects the compliance of the applicant's material and technical resources, the qualifications of its personnel, and the conditions for quality control with the applicable requirements. The appendices to the manufacturing license specify the forms of pharmaceuticals that the applicant is licensed to manufacture, as well as any special conditions for carrying out production.

The industrial manufacture of pharmaceuticals can be carried out, provided that the manufacturer has an approved manufacturing unit and processes which comply with the requirements of the valid State Pharmacopoeia of Ukraine and/or other regulations applicable to the pharmaceutical product, its packaging, the terms and conditions of storage and quality control methods.

The industrial manufacture of pharmaceuticals must be carried out in compliance with the GMP requirements, including those for the bulk manufacture of pharmaceuticals. Compliance with GMP has been a pre-condition to obtaining a license to manufacture pharmaceutical products in Ukraine since 2011. The Licensing Conditions also contain further specific and detailed requirements applicable to the manufacture of pharmaceuticals.

### **18.8.5 Wholesale and Retail Sale of Pharmaceuticals**

Under the Pharmaceuticals Law, pharmaceuticals may be sold in Ukraine either pursuant to a doctor's prescription or over-the-counter, that is, without a prescription. The lists of the various categories of prescription pharmaceuticals and the rules for issuing prescriptions are approved by the MOH. The current regulations provide that prescriptions should be made using the INN, rather than a brand name, apart from biosimilars, pharmaceuticals for which an INN is not available, controlled pharmaceuticals which are subject to strict record keeping, pharmaceuticals which are obtained at no charge or on a co-payment basis through pharmacies (save for pharmaceuticals reimbursed based on CMU Resolution No. 862 (as detailed in section 18.8.9 b) below).

Wholesale and retail sales of pharmaceutical products are subject to licensing, save for the sale by manufacturers of pharmaceuticals of their own production which is done on the basis of their manufacturing license. Detailed licensing requirements are set forth in the Licensing Conditions. To obtain a license for wholesale and/or retail trade in pharmaceuticals, an applicant must possess the necessary material and technical resources and qualified specialists. The State Service for Pharmaceuticals checks compliance with the applicable requirements prior to issuing the license.

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The wholesale distribution of pharmaceuticals must be carried in compliance with the effective good distribution practices (GDP) and storage practices, which are harmonized with EU legislation.

The wholesale distribution of pharmaceuticals may only be done through a pharmaceutical warehouse and retail sales through pharmacies and their outlets, save in exceptional cases in rural areas without any pharmacies. Any form of distance selling, such as via the Internet, by post or through any other organizations, is prohibited. The owners of such pharmacies must ensure they observe the proper conditions for storage, production and sale of pharmaceuticals.

Under the Pharmaceuticals Law and the Manufacture and Sales Licensing Conditions, a given pharmaceutical product may be admitted for sale in Ukraine only if its quality is certified by its producer, as confirmed by the State Service for Pharmaceuticals. Such a certificate of quality confirms the compliance of each series of the pharmaceutical product with the requirements set during its state registration. Quality of pharmaceuticals during wholesale and retail sale is also subject to control as set out in Order No. 677 of the MOH "Procedure for the Control of the Quality of Pharmaceuticals During Wholesale and Retail Sale" dated 29 September 2014.

The Pharmaceuticals Law requires that the following information appear on the label and the outer and inner packaging of pharmaceutical products: the name of the product, the name and address of the manufacturer, the registration number, the series number, the consumption method, the dosage of the active ingredient in each product unit, the number of units per package, the use by date, the storage conditions, and restrictions on use.

In addition, all pharmaceuticals in circulation must be accompanied by appropriate instructions for medical use containing the required information.

As a rule, all labels and instructions for medical use of pharmaceuticals distributed in the territory of Ukraine must be in Ukrainian and in a regional language (that is, another language which is recognized as traditionally used in the relevant region of Ukraine (if any)). At the discretion of the manufacturer, the label or the accompanying leaflet may additionally contain a translation into another language. Labels and instructions for medical use of pharmaceuticals procured by SPAs may be in their original language. The external packaging of pharmaceutical products must provide



the following information in braille for sightless individuals: the name of the product, the dosage, and the form of the product. For some pharmaceuticals the MOH may require that only the name of the product be indicated in braille.

#### **18.8.6 Import and Export of Pharmaceuticals**

Only pharmaceuticals registered in Ukraine may be imported into Ukraine, subject to the receipt by an importer of an import license and the availability of a quality certificate issued by the manufacturer for every series of a pharmaceutical (batch release). Unregistered pharmaceuticals may be imported into Ukraine for the purpose of conducting pre-clinical research and clinical trials, pharmaceutical development, state registration in Ukraine, exhibitions, conferences, and similar purposes without the right of distribution, for personal use by individuals, for use by foreign military units stationed in Ukraine, or as technical assistance and humanitarian aid in the case of disasters, catastrophes or epidemics. Any import of unregistered pharmaceuticals requires a special permit of the MOH. The import of unregistered pharmaceuticals is regulated by Order No. 237 of the MOH "On the Procedure for Import of Unregistered Pharmaceuticals, Standard Samples and Reagents into the Territory of Ukraine," dated 11 August 2011, as amended.

The procedure for quality control of imported pharmaceuticals is established by Resolution of the CMU No. 902, dated 14 September 2005, as amended. In particular, a quality certificate (certificate of analysis) is required (batch release), in addition to the confirmation of compliance of the manufacturer with the GMP requirements issued by the State Service for Pharmaceuticals.

A license for the import of pharmaceuticals into Ukraine has been required since 1 March 2013, while the import of APIs is exempt from the licensing requirement starting from 1 February 2015.

Obtaining the import license and undergoing state quality control procedure are not required for the import of pharmaceuticals procured by the SPAs. For import of such pharmaceuticals only a quality certificate issued by the manufacturer for every series of a pharmaceutical (batch release) is required.

The issuance of the import license is performed based on the Licensing Conditions. The Licensing Conditions set forth the requirements for licensees, including the obligation of importers to implement (a) controls over the preparation of internal documents, including the process of drafting, approval, review, archiving and the format of its documents,

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and (b) an internal audit system The importers must maintain (and disclose in the event of any audit) a Site Master File detailing the quality management system policy, including procedures for the storage and quality testing of imported medicines at various stages of their importation and policies on personnel, premises, equipment, storage, product recalls and handling customer complaints. As of 1 March 2018, importers will be required to: (i) have agreements with manufacturers and/or suppliers, and/or marketing authorization holders of imported pharmaceuticals, which should comply with GMP requirements; (ii) store archive and reference specimens; (iii) have written agreements and technical specifications for the outsourcing activities related to the import of pharmaceuticals; (iv) conduct GMP-compliant stability tests after the product has been released into the market; (v) have an elaborated pharmaceutical quality system which includes elements of GMP, GDP, GSP and risk management; (vi) conduct quality control which includes collecting samples, specifications, conducting testing and batch release; and (vii) conduct quality risk management. To obtain an import license, an applicant must possess the necessary material and technical resources, employ qualified personnel and establish quality control procedures for pharmaceutical products; the State Service for Pharmaceuticals checks compliance with the applicable requirements prior to issuing the license. The importer must compile and maintain an "importer's dossier." The import license contains a list of the pharmaceuticals which the license holder is permitted to import, and any special conditions for carrying out its activities. If any additional products need to be imported, the license holder must apply for an amendment to the license.

No license is required for the export of pharmaceuticals from Ukraine, except for the export of pharmaceuticals from donor blood and its components, which may be exported from Ukraine only after having obtained a special permit which is issued by the CMU on an annual basis.

### **18.8.7 Medical Devices**

Beginning from 1 July 2015, the state registration of medical devices is no longer effective. It has been replaced by the procedure of the national conformity assessment to technical regulations and marking with the national conformity sign.

The conformity assessment procedure for medical devices is regulated by the following technical regulations, all of which became effective on 1 July 2015 (together, "the Technical Regulations"): (i) the Technical Regulation



for Medical Devices approved by CMU Resolution No. 753 dated 2 October 2013; (ii) the Technical Regulation for in vitro Diagnostic Medical Devices approved by CMU Resolution No. 754 dated 2 October 2013; and (iii) the Technical Regulation for Active Implantable Medical Devices approved by CMU Resolution No. 755 dated 2 October 2013. The Technical Regulations are based on EU Directives 93/42/EEC, 98/79/EC and 90/385/EEC, respectively.

As of 1 July 2017, the transitional period for partial application of Technical Regulations on medical devices came to an end. During this transitional period, application of requirements of the Technical Regulations was not mandatory for medical devices that held registration certificates and had been registered in Ukraine. As of 1 July 2017, irrespective of whether they hold registration certificates or not, all medical devices must undergo conformity assessment procedures under the Technical Regulations before being placed on the Ukrainian market.

The Technical Regulations divide medical devices into various classes and the conformity assessment procedure significantly differs for each class of medical devices, ranging from self-declaration applicable to medical devices of class I (which are non-sterile and are not measurement tools) and most in vitro devices (analyzers, certain calibrators and in vitro devices for self-control) to conformity assessment procedures involving authorized bodies through on-site inspections or batch certification.

Starting from 7 July 2016, a simplified procedure of conformity assessments of technical regulations for medical devices purchased under public procurement through SPAs is applicable according to CMU Resolution No. 1163, dated 30 December 2015. The simplified procedure implies that such devices can be introduced into circulation without undergoing national conformity procedures assessment if the notified body admits the results of conformity assessment carried out by the foreign accredited conformity assessment body in compliance with the Law "On Technical Regulations."

Based on the Technical Regulations, the manufacturers of medical devices or their authorized representatives (for non-resident manufacturers) are responsible for introducing medical devices, active implantable medical devices and medical devices for in vitro diagnostics into circulation. These persons are obliged to submit a notification to the State Service for Pharmaceuticals with details of the relevant medical devices. The form and content of the notification are set out in the Procedure for Maintaining the Register of Persons Responsible for Introducing Medical

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Devices, Active Implantable Medical Devices and Medical Devices for In Vitro Diagnostics into Circulation, approved by MOH Order No. 122 dated 10 February 2017. This obligation is only imposed in respect of class I medical devices, custom-made medical devices, medical devices for in vitro diagnostics and custom-made active implantable medical devices. If the State Service for Pharmaceuticals, State Service of Ukraine on Control of Safety of Foodstuffs and Consumer Protection or tax authorities establish that the product was marked in violation of specific requirements or was not marked contrary to the obligation to do so under technical regulations, the manufacturer or its representative must bring into compliance the medical devices. Moreover, the person importing and/or distributing such device may be subject to an administrative fine of 150 – 1,500 times the non-taxable minimum income amount (UAH 2,550 to UAH 25,500, ie, approx. USD 91 to USD 910) or up to 30% of the cost of the relevant product batch. If the violation is not eliminated, the circulation of medical device on the market can be restricted or abolished.

#### **18.8.8 Promotion**

The only type of promotion of pharmaceuticals and medical devices that is currently specifically regulated by Ukrainian law is “advertising.” Ukrainian legislation contains few provisions that specifically regulate practices (other than simple advertising) aimed at the promotion or marketing of pharmaceuticals and medical devices.

Pursuant to the Advertising Law dated 3 July 1996, the advertising of pharmaceuticals and medical devices on the territory of Ukraine may be carried out provided that the relevant products have been authorized for use in Ukraine. Furthermore, advertising of a pharmaceutical is allowed provided that it is an over-the-counter product (“OTC”) and it is not on the list of OTCs whose advertisement is prohibited. Advertising of prescription pharmaceuticals (“Rx”) and pharmaceuticals included in the list of pharmaceuticals which may not be advertised is prohibited. The MOH has established criteria for prohibition of the advertisement of pharmaceuticals in Order No. 422, dated 6 June 2012, pursuant to which the following pharmaceuticals may not be advertised, among others: Rx, pharmaceuticals containing narcotic and psychotropic substances and precursors, pharmaceuticals aimed exclusively at pregnant or breastfeeding women or children under the age of 12, as well as pharmaceuticals for treating tuberculosis, cancer, insomnia, and diabetes. The MOH decides whether or not to put a given pharmaceutical on the list of pharmaceuticals which may not be advertised when the pharmaceutical is registered for use





in Ukraine (or when the registration is renewed). Information on whether a pharmaceutical can be advertised should be entered into the State Register of Pharmaceuticals (which is available online). Additionally, on 21 November 2012 in Order No. 876 the MOH approved the list of the OTCs whose advertisement is prohibited (the list is regularly revised). The requirements to the content of the advertisement of pharmaceuticals and medical devices are set forth below.

<p>Advertisement of pharmaceuticals and medical devices <b>must</b> contain:</p>	<ul style="list-style-type: none"> <li>■ Objective information on the relevant product which makes it clear that the relevant information is an advertisement.</li> <li>■ A requirement to consult a doctor before using the product.</li> <li>■ A recommendation to review the instructions for the pharmaceutical.</li> <li>■ At least 15% of the text (or of the duration, as the case may be) of an advertisement must contain a warning that self-treatment could be dangerous to health.</li> </ul>
<p>Advertisements of pharmaceuticals and medical devices may <b>not</b> contain, among other things:</p>	<ul style="list-style-type: none"> <li>■ Comparisons with other products intended to enhance the advertising effect.</li> <li>■ References to actual cases of successful application.</li> <li>■ Recommendations or references to the recommendations of medical professionals, scientists or medical establishments.</li> <li>■ Images and/or names of popular personalities, movie, TV or cartoon characters, or well-known organizations.</li> <li>■ Images or recordings of physicians or people resembling physicians.</li> <li>■ Any information that may imply that there is no need to consult a doctor if the product in question is consumed.</li> <li>■ Suggestions that the eventual medical effect of the product is guaranteed.</li> <li>■ An advertisement of a pharmaceutical product may not contain information that it is generally accepted as a food or cosmetic product or other consumable product.</li> </ul>

Certain other restrictions apply when placing advertisements on television, radio, in the printed media, over the telephone, and other electronic means

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of communications. Sale of pharmaceuticals and medical devices the usage of which requires special knowledge and training via television is prohibited. Manufactures and distributors of pharmaceuticals and medical devices may sponsor television and radio programs by providing information of a promotional nature regarding the name and trademark of the relevant product. However, prescription pharmaceuticals and medical devices the usage of which requires special knowledge and training may not be the subject of any such promotion. There is no specific regulation on the advertising of pharmaceuticals on the Internet; as a result, the general legislative provisions governing the types of information allowed for dissemination must be observed (that is, those applicable to advertisement of pharmaceuticals as set out in the first paragraph of this section).

The above requirements of the Advertising Law are not applicable to the advertising of pharmaceuticals and medical devices which is placed in specialized publications targeting hospitals and doctors and which is distributed at seminars, conferences and symposia on medical topics.

### **18.8.9 State Procurement and Price Regulation**

#### **(a) State Procurement**

The public procurement of pharmaceuticals and medical devices is carried out on the following three levels:

1. Centralized procurement by the MOH.
2. Regional procurement by regional state administrations or councils.
3. Local procurement by individual healthcare organizations.

#### **■ Centralized procurement**

On 19 March 2015, the temporary procedure of pharmaceuticals procurement by the SPAs was introduced based on the Law of Ukraine "On Amending Certain Laws of Ukraine for Securing Prompt Patients' Access to Necessary Pharmaceuticals and Medical Devices Through State Procurement Involving Specialized Agencies Which Conduct Procurement" No. 269-VIII. This Law provides for the possibility of temporary transfer of the procurement function from the MOH to SPAs until 31 March 2019. SPAs are defined as specialized foundations, organizations and mechanisms of the United Nations, International Dispensary Association, Crown Agents, Global Drug Facility, Partnership for Supply Chain Management, which provide services to state governments and/or central state executive bodies of organizing and conducting procurement procedures of pharmaceuticals, medical devices and related services under respective agreements and according to internal rules and procedures of these organizations.



Procurement conducted by SPAs is excluded from the scope of the Law of Ukraine “On Public Procurement” dated 25 December 2015 No. 9222-VIII. Such procurement is governed by the rules and procedures of the respective SPAs.

The list of pharmaceuticals procured by SPAs is adopted by the CMU annually and is specified in the agreements between the MOH and respective procurement organizations. Under CMU Resolution “On Procurement of Pharmaceuticals, Medical Devices and Related Services with Engagement of Specialized Procurement Agencies” No. 263-p dated 19 April 2017, in 2017, all centralized state procurement of pharmaceuticals and medical devices have been transferred from the MOH and should be conducted through SPAs. The list of pharmaceuticals and medical devices which may be purchased in 2017 on the basis of the procurement agreements with SPAs was approved by CMU Resolution No. 494, dated 12 July 2017 as amended. For procurement in 2017, the MOH signed agreements with several SPAs on state procurement of pharmaceuticals and medical devices, in particular, the Memorandum with UNICEF, the agreement with UNDP and the agreement with Crown Agents. No procedures for the 2018 centralized procurement have been adopted by the government as of the date hereof.

As described in sections 19.7.2 (c) and 19.7.7, pharmaceuticals and medical devices purchased under state procurement through SPAs are subject to special regulations. For instance, the amendments to the Registration Resolution provide for a specific registration procedure of such pharmaceuticals, which is further regulated by the “Procedure of Examination of Authenticity of Registration Materials for Pharmaceutical Which is Submitted to State Registration for its Procurement by Specialized Agency” established by MOH Order No. 721, dated 3 November 2015.

Pharmaceuticals and medical devices are also exempt from regulations under provisions of CMU Resolution No. 240, which establishes an obligation to declare the wholesale prices and CMU Resolution No. 862 “On State Regulation of Prices for Pharmaceuticals” which establishes state price regulation through reference pricing mechanism and setting the maximum mark-ups for pharmaceuticals. In addition, such pharmaceuticals are not subject to state quality control pursuant to CMU Resolution “On Approval of the Procedure for Carrying Out State Quality Control of Pharmaceuticals Imported into Ukraine” No. 902 dated 14 September 2005.

After 31 March 2019, when the Law of Ukraine “On Amending Certain Laws of Ukraine for Securing Prompt Patients’ Access to Necessary Pharmaceuticals

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and Medical Devices Through State Procurement Involving Specialized Agencies Which Conduct Procurement” expires, the procurement function will not be transferred back to the MOH. Instead, based on the Law of Ukraine “On State Financial guarantees of Providing Medical Services and Pharmaceuticals” dated 19 October 2017, this function should be transferred to the to-be-established centralized healthcare procurement agency. Currently, the legislative framework for the launch of the centralized healthcare procurement agency is being developed by the MOH.

### ■ Regional and local procurement

Based on the Law of Ukraine “On Public Procurement” No. 922-VIII dated 25 December 2015, purchase of products the value of which equals or exceeds UAH 200,000 (approx. USD 7,142) from state funds generally should be carried out pursuant to the procedure stipulated in the respective law.

Until 1 July 2017, healthcare organizations financed from state or local budgets could procure pharmaceuticals listed in CMU Resolution No. 1071 dated 5 September 1996 (the “List of Pharmaceuticals”). On 1 July 2017, the List of Pharmaceuticals was abolished and healthcare institutions financed from state or local budgets were entitled to procure any registered pharmaceuticals. From 1 January 2018, budget healthcare organizations are entitled to procure primarily pharmaceuticals listed in the National Essential Medicines List (the “NEML”). Only after full demand of NEML-listed pharmaceuticals is satisfied will budget healthcare organizations be entitled to procure non-NEML pharmaceuticals. Preference should be given to pharmaceuticals included into healthcare industry standards (clinical protocols, formularies).

The procurement procedure established by the Law of Ukraine “On Public Procurement” encompasses three possible procurement options: (i) open bidding, (ii) competitive dialogue, and (iii) direct contracting.

Open bidding is the main and most frequently used procedure for procurement of pharmaceuticals and medical devices. This procedure is carried out in the form of an online electronic auction (using the so-called Prozorro system) during which the bidders may consequently reduce the prices for the proposed goods in three stages. The processes of bid submission, opening and assessment of bids are carried out in electronic form. The Prozorro system does not allow for identification of the bidder by the customer during bid submission, electronic auction and price assessment of the bid.



The direct contracting procedure may be used, inter alia, when there is no competition on the respective market and the procurement contract can be signed only with one supplier or if the customer has previously cancelled the tender twice due to insufficient number of bidders (less than two). In such case the procurement contract is signed after price negotiation with the bidder.

*(b) Price Regulation*

Certain pharmaceuticals and medical devices, both imported and domestically produced, are subject to price regulation by the CMU by way of setting maximum permitted wholesale prices, maximum permitted wholesale and retail mark-ups and by way of declaration of changes in prices. The details of the relevant price regulation mechanisms are set forth below.

■ **"Accessible Pharmaceuticals"**

On 9 November 2016, the CMU approved regulations "On the State Regulation of Prices for Pharmaceuticals" No. 862, and "On the Introduction of the Reimbursement of Prices for Pharmaceuticals" No. 863, as amended (the "Reimbursement Regulation"), which provide for the introduction of reimbursement, reference pricing and limitation of maximum mark-ups for certain pharmaceuticals used for treatment of cardiovascular diseases, type II diabetes and asthma.

The Reimbursement Regulation applies to pharmaceuticals meeting all of the following requirements:

- registered in Ukraine;
- included into the NEML;
- included into the register of reimbursable pharmaceuticals (the "Reimbursement Register"); and
- used within outpatient treatment of persons suffering from cardiovascular diseases, type II diabetes and asthma. The precise list of INN's covered by the Reimbursement Regulation is indicated in the annex thereto.

It is expected that in 2018, the scope of the Reimbursement Regulation will be extended to include pharmaceuticals used for the treatment of anaemia during pregnancy, depression, and chronic stomach, duodenum diseases and pharmaceuticals used during transplantation of organs and tissues.

Inclusion into the Reimbursement Register is made by the MOH on the basis of an application filed by the marketing authorization holder or its representative.

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A pharmaceutical can be included into the Reimbursement Register if its price does not exceed the maximum wholesale price. The procedure for calculating maximum wholesale prices for pharmaceuticals based on reference prices is adopted by Order of the MOH No. 1423 dated 29 December 2016. The maximum wholesale price cannot exceed the median of the registered prices of the respective pharmaceuticals in reference countries (Poland, Slovakia, Czech Republic, Latvia and Hungary) based on the daily defined dose established by the World Health Organization.

The reimbursement amount is calculated based on the Procedure for Calculating the Reimbursement Amount for Reimbursable Pharmaceuticals approved by Regulation of the CMU No. 152 dated 17 March 2017. Based on this procedure, the reimbursement amount is calculated based on an internal reference pricing mechanism, ie, the reimbursement amount is equal to the lowest price of the pharmaceutical with the same INN in the Reimbursement Register. If the price of the reimbursable product in the pharmacy is higher than the reimbursement amount, the difference should be covered by patient co-payment.

The maximum wholesale and retail mark-ups are established for pharmaceuticals included in the list of INNs approved by the Reimbursement Regulation, ie, 21 INNs of pharmaceuticals for treatment of cardiovascular diseases, type II diabetes and asthma. Such mark-ups apply to all pharmaceuticals included in the abovementioned regulation, irrespective of their inclusion in the reimbursement system and/or their procurement with public funds. The maximum wholesale mark-up should not exceed 10% of the wholesale price (including taxes), and the maximum retail mark-up for these pharmaceuticals should not exceed 15% of the purchase price (including taxes).

#### ■ NEML-listed pharmaceuticals

Based on CMU Resolution No. 955 "On Measures to Stabilize Prices for Pharmaceuticals and Medical Devices" dated 17 October 2008, pharmaceuticals included into the NEML (save for narcotics, psychotropic substances, precursors, active ingredients (substances) and medical gases) are subject to regulation of maximum wholesale and retail mark-ups. The maximum wholesale mark-up is up to 10% of the declared wholesale price (including taxes and levies), and the maximum retail mark-up is up to 25% of the pharmacy purchase price (including taxes).

#### ■ Pharmaceuticals procured with budget funds

Pursuant to CMU Resolution No. 240 "On Declaring a Change in Wholesale Prices for Pharmaceuticals and Medical Devices," dated 2 July 2014 (as



amended), changes in prices (excluding taxes and levies) for pharmaceuticals purchased and/or reimbursed using state or municipal funds (save for narcotics, precursors, active pharmaceutical ingredients, medical gases and pharmaceuticals manufactured in pharmacies and based on hospitals' orders), must be declared pursuant to the procedure established by this resolution.

Healthcare institutions which are fully or partially financed by state or municipal budgets may purchase the relevant pharmaceuticals at prices which do not exceed the level of declared changes of wholesale prices (for pharmaceuticals) and the maximum mark-ups approved by CMU Resolution "On Measures to Stabilize Prices for Pharmaceuticals and Medical Devices" No. 955 dated 17 October 2008. Based on this Resolution, the maximum wholesale mark-up for the abovementioned pharmaceuticals should not exceed 10% of the declared wholesale price (including taxes and levies), and the maximum retail mark-up should not exceed 10% of the pharmacy purchase price (including taxes). For medical devices purchased using state or municipal funds, the maximum wholesale mark-up should not exceed 10% of the wholesale price (including taxes and levies), and the maximum retail mark-up should not exceed 10% of the pharmacy purchase price (including taxes).

### ■ Insulin preparations

In March 2014, the CMU approved a pilot project on state price regulation for insulin pharmaceuticals. The project provides for the establishment of maximum permitted wholesale and retail prices for the relevant pharmaceuticals based on the reference prices. . The project was planned to be launched in 2015, but was only launched in 2017 due to the absence of certain implementing acts and the register of patients requiring insulin treatment.

Based on CMU Resolution No. 73 "Issues of Implementation of Pilot Project for State Regulation of Prices for Insulin Preparations" dated 5 March 2014, all registered insulin preparations are reimbursable. The marketing authorization holder does not need to apply for reimbursement. Based on Order of the MOH No. 359 on the Register of Reference (Reimbursement) Prices for Insulin Preparations dated 13 April 2016 (the "Order No. 359"), the MOH includes all registered insulin preparations in the Register of Reference (Reimbursement) Prices for Insulin Preparations (the "Insulin Register"). The Insulin Register sets out the full or partial reimbursement price for each insulin preparation.

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The reimbursement price is calculated in accordance with the Procedure for Calculating Reference (Reimbursement) Price for Insulin Preparations approved by Order No. 359. The reimbursement price is based on the average price of the same pharmaceutical in reference countries. The reference countries are Bulgaria, Moldova, Poland, Slovakia, Czech Republic, Latvia, Serbia and Hungary. If the price of an insulin preparation in a pharmacy is higher than the reimbursement price, the difference should be covered by patient co-payment.

Different patient categories are eligible for reimbursement of different types of insulin preparations. Furthermore, for different categories of patients, full or partial reimbursement may be applicable (eg, adults prescribed with insulin in vials may receive insulin in cartridges on the basis of partial reimbursement, while minors may receive insulin in cartridges on a full reimbursement basis).

The maximum wholesale and retail mark-ups for insulin preparations are up to 10%.





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## 19. INTERNATIONAL TRADE AND COMMERCE

### 19.1 World Trade Organization

Ukrainian membership in WTO: one of the longest negotiation processes in WTO history.



Taking into account Ukraine's export-oriented economy, its desire to become a member of the WTO and, as a result, to liberalize its international trade regime is self-explanatory. Ukraine sought WTO membership in order to integrate with the world economy, stimulate the efficiency of domestic industry, remove barriers to trade, promote greater access to foreign markets and increase exports.

Despite the global economic crisis, since Ukraine's accession to the WTO, the geographical distribution of Ukrainian exports has become more diverse and its structure has improved. For the past five years, Ukraine has managed to gain liberalized access to world markets for its products. Ukraine has started reforming its trade policies in order to meet the requirements of WTO rules. In the last few years, the Ukrainian Parliament has adopted a number of laws aimed at deregulating the country's economy. The deregulation process is still ongoing.

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The major achievement of Ukraine's accession to the WTO was integration into the European and global economic community, helping Ukraine become an attractive partner for international businesses. Ukraine's WTO membership was an essential condition to successful negotiation and signing of regional trade agreements with key trade partners, including the Association Agreement between the EU and Ukraine and Canada-Ukraine Free Trade Agreement.

Furthermore, Ukraine entered the WTO dispute settlement mechanism, which has facilitated the defense of Ukrainian trade interests. The WTO dispute settlement procedure is based on clearly defined rules of trade, with which all member states must comply. Ukraine has already sought consultations and dispute settlement with Armenia, Moldova, Australia, Kazakhstan and the Russian Federation regarding trade barriers within the WTO dispute settlement framework.

The most acute trade disputes considered by the WTO are between Ukraine and the Russian Federation. Ukrainian complaints refer to certain measures imposed by the Russian Federation on the importation of railway equipment and parts thereof (DS499) and traffic in transit from Ukraine through the Russian Federation to third countries (DS512). In addition, on 13 October 2017, Ukraine requested consultations with the Russian Federation with respect to measures concerning trade of certain Ukrainian goods (DS532). In its turn, the Russian Federation requested consultations with Ukraine with regard to certain measures undertaken by Ukraine with respect to trade in goods and services (DS525) and anti-dumping measures on ammonium nitrate (DS493).

## **19.2 EU-Ukraine Trade Regime**

### *19.2.1 Autonomous Trade Measures for Ukraine*

Autonomous trade measures (the "ATMs") for Ukraine entered into force on 1 October 2017 and consist of:

- establishing additional quantities of agricultural products which Ukraine can export to the EU under the DCFTA without paying customs duties (ie, wheat, maize, barley, barley groats and pellets, natural honey, processed tomatoes, grape juice and oats); and
- elimination of customs duties for several industrial products (ie, footwear, fertilizers, aluminum products and consumer electronics).

The ATMs shall apply until 1 October 2020 and are expected to further boost Ukrainian exports to the EU countries.



### *19.2.2 Rules of Origin*

The proof of origin must be supported by a EUR 1 certificate or invoice declaration (for consignments of a value not exceeding EUR 6,000 or by an approved exporter). An invoice declaration should be made by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document. A EUR 1 certificate should be issued by the customs authorities of Ukraine in one of the official EU languages.

### **19.3 Pan-Euro-Mediterranean Preferential Rules of Origin**

Starting from 1 February 2018, Ukraine is expected to join the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin (the “PEM Convention”).

The PEM Convention provides for identical rules of origin allowing for diagonal cumulation between its contracting states. This means that materials which have obtained the status of origin in one of the contracting states may be incorporated in goods produced in another contracting state without changing the status of origin of those goods when exported to a third contracting state. Diagonal cumulation shall apply only if the free trade agreements are in place between all contracting states concerned. As of now, Ukraine has concluded the free trade agreements with the following parties to the PEM Convention: the EU member states, Iceland, Liechtenstein, Norway, Switzerland, Montenegro, Moldova, Macedonia and Georgia.

### **19.4 Ukraine Sanctions Legislation**

In response to the military aggression of the Russian Federation and the annexation of the Ukrainian territory, the Verkhovna Rada adopted the Law of Ukraine “On Sanctions” dated 14 August 2014 (the “Sanctions Law”), which became effective on 12 September 2014.

#### *19.4.1 Scope and grounds of application*

The Sanctions Law establishes the grounds and mechanisms for applying special trade and trade-related restrictive measures (sanctions). According to the law, sanctions may be introduced by Ukraine against a foreign state, a foreign legal entity, a legal entity controlled by a foreign entity or an individual, foreign individuals, stateless persons, as well as against other persons involved in terrorist activity.

#### *19.4.2 Types of sanctions*

The Sanctions Law allows both personal and sectorial sanctions to be introduced.

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This list of sanctions is not exhaustive and allows for the introduction of other measures not directly provided by the Sanctions Law but corresponding to the objectives and principles of the Sanctions Law. Moreover, the majority of the sanctions referred to above may be broadly interpreted and further include a wider range of restrictive measures.

The Sanctions Law does not contain a list of persons (either natural persons or legal entities) subject to sanctions but provides for a separate procedure on the approval of such lists.

#### *19.4.3 Effective sanctions*

- *Presidential Decree No. 133/2017 from 15 May 2017 enacting the Resolution of the National Security and Defense Council of Ukraine dated 28 April 2017*

In May 2017, Ukraine prolonged the existing personal sanctions imposed in 2015-2016 on 271 legal entities and 780 individuals and introduced personal sanctions against 97 legal entities and 448 individuals.

Various types of sanctions apply to the abovementioned legal entities and individuals. The list of sanctions includes such measures as freezing assets, restrictions on trade operations, restrictions on removal of capital from Ukraine, suspension of performing economic and financial obligations, prohibition from participating in public procurement, denial and cancelation of visas, prohibition from entering Ukraine, prohibition for Ukrainian internet service providers from providing access to certain online services/websites and other restrictions.

The sanctions were imposed against citizens of Russia, Ukraine, Poland, the United Kingdom, Italy, Greece, Serbia, Spain, France, Bulgaria, Israel, etc.

The sanctions also apply to legal entities, mostly to illegal militarized organizations operating in Eastern Ukraine and Russian legal entities operating in banking and finance, payment services, the military-industrial complex, aviation, navigation, telecommunication and IT sectors.

The term of sanctions varies from one to three years for legal entities and from one to five years, or termless, for individuals.

- *Presidential Decree No. 63/2017 from 15 March 2017 enacting the Resolution of the National Security and Defense Council of Ukraine dated 15 March 2017*



In March 2017, Ukraine imposed personal sanctions against five Ukrainian banks with the capital of Russian state-owned banks: Sberbank PJSC; VS Bank PJSC; Prominvestbank PJSC; VTB Bank PJSC; and BM Bank PJSC.

The sanctioned banks are prohibited from transferring capital outside the territory of Ukraine in favor of any affiliated entities for a period of one year.

### **19.5 Operations in the Crimea and in certain parts of Eastern Ukraine**

Both the Crimea and certain parts of Eastern Ukraine outside of the control of the Ukrainian authorities are the territories of Ukraine and Ukrainian law applies to all business and trade operations therein.

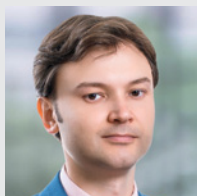
The Crimea has a special status of the territories occupied by the Russian Federation. Ukraine established a free economic zone in the Crimea until 2024 which implies, *inter alia*, a special legal regime for business activities of legal entities and individuals on its territory, including special tax and customs clearance procedures. In addition, the Government Resolution No. 1035 was adopted in 2015 to ban movement of most of the goods between the Crimea and the rest of Ukraine for the period of occupation. In June 2017, the resolution was found illegitimate by the Ukrainian court which, however, has not resulted in lifting of the ban in practice.

Certain parts of Eastern Ukraine have the status of the territories outside of the control of the Ukrainian authorities (the "Uncontrolled Territories") and the status of the area of anti-terrorist operation. The Uncontrolled Territories are occupied by the terrorist organizations, namely the Donetsk People's Republic and Luhansk People's Republic. Starting from 15 March 2017, Ukraine suspended any trade operations with the Uncontrolled Territories (except for the supply of humanitarian aid).





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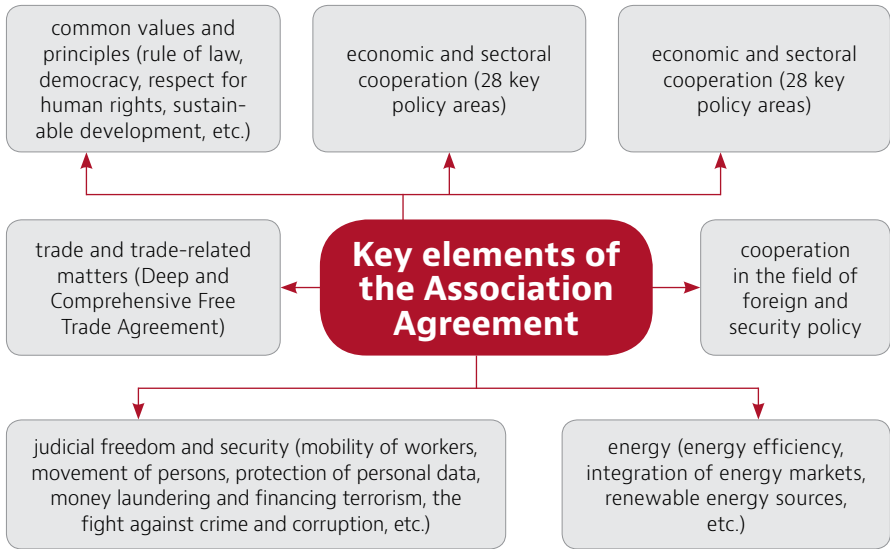
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**Ihor  
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## 20. EU-UKRAINE ASSOCIATION AGREEMENT

Since 2015, the EU became Ukraine's main commercial partner. Ukraine's Association Agreement with the EU (AA), which came into force on 1 September 2017, makes Ukraine an attractive location for regional headquarters for foreign multinational companies and/or outsourcing of their activities to partners in Ukraine in a number of industries (including financial services, such as financial technology services, e-commerce (computer and related services) and telecommunications) due to further elimination of trade barriers in such industries. Ukraine may also become very attractive for foreign direct investment due to potential access to the EU public procurement market upon the approximation of the Ukrainian public procurement laws (reference is made to market access commitments under AA in the public procurement area).



AA contains so-called “deep and comprehensive” free trade agreements providing for the mutual opening of EU and Ukrainian markets for most goods and services. In particular, Ukraine and the EU countries commit to eliminating or substantially reducing all tariffs and barriers in the areas of trade in goods and the provision of services originating from both Ukraine and EU countries. Countries undertake to eliminate or reduce the duties and barriers gradually within a period of not more than 10 years. It is noteworthy in this context that since 1993 Ukraine has benefitted from the EU’s so-called Generalized System of Preferences (GSP) whereby many Ukrainian imports (including oils, base metals, chemicals and textiles) were subject to preferential tariffs. However, since the provisional application of the free trade agreement, Ukraine was removed from the list of GSP beneficiary countries (although it still remains on the list of eligible countries).

Both Ukraine and the EU undertake to afford national treatment to the goods and services of each other. At the same time, AA provides for rather asymmetrical import quotas in favor of an EU party in the agriculture industry, whereby the EU limits the quantity of Ukrainian imports as regards comparatively larger amounts of items. However, on 1 October 2017, the EU introduced preferential import terms for some Ukrainian goods until 1 October 2020, in particular:

- zero-tariff quotas for a number of agricultural products, including natural honey, grape juice, oats, common wheat, certain types of maize and barley; and

- 
- 0% customs duties for a number of goods, including footwear, fertilizers, copper and aluminum products and consumer electronics.

It is also noteworthy that AA is considered as an innovative form of EU trade agreement that offers a new type of integration without actual membership in the EU. AA is different from both EU trade agreements entered into with countries that are close to the EU (such as Norway, Switzerland, Turkey) and those countries that are far from its territory (such as South Korea and Vietnam). AA aims to integrate Ukraine into the EU internal market. However, such opportunity is subject to strict conditions to approximate a number of Ukrainian laws to the relevant EU legislation. Access to the EU Internal Market will become available under a monitoring procedure confirming that Ukraine implemented the respective legislation in accordance with the timelines set out in the relevant annexes. Such timelines range from two to 10 years.



The Cabinet of Ministers of Ukraine approved a plan of measures required for implementing the AA and harmonization of Ukrainian legislation with the EU legislation during 2016-2019, and many of Ukraine's obligations on harmonization have already been fulfilled in accordance with the plan.

Another innovative element of the AA is its enhanced and reinforced type of institutional framework such as Annual Summit meetings facilitating accountability and transparency of the approximation process. AA also creates the Association Council composed of Ministers, which has the power to amend annexes to the AA and exchange information as regards the approximation process.









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