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Investing and Doing Business in Ukraine

created in collaboration with CMS Cameron McKenna Nabarro Olswang Ukraine and UBN

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Contents

Introduction

The country is vastly different today as compared to when CMS first opened in Ukraine. During the last decade, Ukrainians have been steadily turning their gaze from East to West, as evidenced by the Association Agreement that Ukraine entered into with the European Union in 2014, setting the path for gradual harmonisation with Western ways of doing business.

Reforms are already underway at fast pace. The country recently abolished the moratorium over agricultural land – a measure which in itself is anticipated to accelerate GDP growth in Ukraine by up to an additional 1.5% per year. It also passed a key law preventing insolvent nationalised banks from being returned to their former owners. These laws were key requirements for securing funding from the International Monetary Fund, the first tranche of which has recently been disbursed.

The IMF loan is of course important for the financial health of the country as a whole. What is potentially even more powerful however is the message that this sends to the global investor community. The IMF loan serves as a stamp of approval. It says that Ukraine is reforming, and that it is on track to doing what is necessary to attract foreign investment into the country.

The journey is not yet complete of course. But the future upside is potentially enormous. With a population of 43 million, Ukraine is one of the largest countries in Europe, but yet a country that has received some of the lowest amounts of foreign investment to-date. Some of the highest returns have historically been made in countries which are opening up for the first time. Could this now be Ukraine's turn?

On top of this, the global supply disruption arising out of the COVID-19 pandemic demonstrates some of the dangers associated with relying too heavily on China for supplies. Why obtain a bulk of the World's supplies from the other side of the World, when we have countries like Ukraine, right on Europe's doorstop, able to manufacture and supply at similar costs?

The country is very well placed to capitalise on all of this. President Zelenskiy recently announced that he is targeting USD 7 billion worth of foreign investments by 2022. The red-carpet treatment is being rolled-out for foreign investors – with the Government offering 'investment nannies' for investments above a certain size.

Foreign investor appetite is already noticeably higher than it was, a recent example being the entry of DP World to Ukraine (the highest profile transaction in Ukraine in 2020 – and a transaction on which we, CMS, advised).

All of this suggests that Ukraine might be poised to potentially undergo its most important revolution yet – an economic one.

CMS is a top-five global law firm. With the support of over 1,100 partners and 4,800 lawyers in 76 offices across 43 countries, our clients have a worldwide network at their service. In Kyiv, we have a full-service offering in our own right, with our lawyers advising on all aspects required by businesses, and all aspects of transactions – from beginning to end – from on the ground.

We have used the benefit of our experience to compile this guide, which we hope you will find useful.

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CMS in numbers

Staff	*Lawyers*	*Partners*
> 8,000	**> 4,800**	**> 1,100**

In Ukraine:	*Lawyers*	*Partners*	*English law qualified*
	35	**7**	**3**

Operating in **70** **cities**

Across **43** **countries**

EUR 1.426bn
turnover for 2019

19 PRACTICE AND SECTOR GROUPS WORKING ACROSS OFFICES

- **#1 Energy and Projects team in Ukraine**
  (Chambers Europe, Legal 500, IFLR, and Ukrainian Law Firms)
- **#1 law firm in Europe for M&A**
  (Bloomberg, CEE Legal Advisor of the Year (Mergermarket and FT and Real Deals)
- **Exclusive on the ground English-law capability in Ukraine**
  We are the only law firm in Ukraine with two English law qualified and London trained lawyers based in Kyiv – a corporate partner (Graham Conlon) and an associate (Louise Çakar); also, our banking & finance senior associate (Orest Matviychuk) is dual qualified in both Ukraine and England and Wales.
- **Tier 1 Commercial, Corporate/M&A law firm in Ukraine**
  (Legal 500, 2020)

On the next page we present only a selection of our recent experience demonstrating the kind of work we do and our unique selling points.


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Hot topics and areas for investment in 2020 and beyond

Modern Ukraine is attracting investors from all over the world. With its natural and human resources, the country offers a multitude of dynamic investment opportunities in numerous sectors. Opportunities in agriculture, energy, IT, infrastructure and manufacturing have grown to a level unparalleled in the region. With its highly skilled workforce and strategic geographic location, Ukraine has a great deal to offer. Now that we know "Why Ukraine?", we can explore the "Where?"

Agriculture

Unlike most European countries, the Ukrainian agricultural industry offers the greatest scope for foreign investment into the economy. Key positive factors include climatic and demographic variations as well as Ukraine's favourable location in the region. Ukraine has low-cost local resources and a historical predisposition to agriculture. Situated close to the world's leading consumer markets, the EU and the Middle East, it also benefits from developed infrastructure and agricultural machinery. The most successful Ukrainian businesses have their roots in agriculture. Now, with the cancelation of a moratorium on the sale of agricultural land that had been in force for 15 years, this industry has become one of the most attractive sectors for investments. In March 2020, the Ukrainian parliament adopted Law No. 2178-10, which enables Ukrainian citizens to sell and buy, as well as change the designated use of private agricultural land plots. (Please see more about newly introduced land regulation "Property right to real estate").

Software and hardware

Experts and financial analysts often note the high profits of Ukrainian companies that provide software development outsourcing.

In the last couple of years, Ukrainian IT-start-ups have attracted significant investments. For example, in 2012 Google bought Viewdle for EUR 41.3 million, and in 2015 the Odesa start-up Looksery and Snapchat entered into a EUR 137.6 million deal[1]. Recently, the American internet giant Amazon bought Ukrainian start-up Ring for EUR 917 million. Ring develops and sells smart, internet-connected security systems for all types of doors and entrances[2].

Today, Ukrainian IT companies are actively strengthening their positions in the most promising technological areas: data science, AR/VR, machine learning, and artificial intelligence, and can boast a large number of foreign investment success stories.

Telecommunication

In early 2015, Kyivstar, MTS (Vodafone) and Lifecell paid the Ukrainian state UAH 8.7 billion for new licences at a 3G auction. Since then, these companies have invested more than UAH 20 billion in new-generation infrastructure[3]. The shareholders of all three companies are non-Ukrainian entities, meaning foreign investment in the sector has totals about UAH 30 billion, or almost EUR 1 billion.

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[1] www.project.liga.net/projects/ukraine_investment/
[2] www.kyivpost.com/technology/purchased-by-amazon-for-1-billion-startup-ring-relies-on-ukrainian-experts.html
[3] www.medium.com/@KateDobromishev/foreign-investment-opportunity-in-ukraine-10-attractive-industries-3a5f7cde1f3f

5G internet, however, which is available in many developed countries today, has been hampered in Ukraine insufficient implementation of the needed technologies and a lack of investment, even though the mobile network in Ukraine is one of the cheapest in the world[4].

Automotive components

Despite all the difficulties Ukrainian industry has faced over the last few years, it is constantly exploring new markets. This is most noticeable in the automotive components sector, where large estern corporations have found opportunities to invest in Ukrainian engineering.

Ukrainian goods are now used by BMW, Mercedes, Nissan, Ferrari, Porsche, Volkswagen, Opel, Audi, Fiat, and others. For example, in 2016 the Japanese company Fujikura, which specialises in the production of electrical equipment, opened two factories in the Lviv region to produce auto components. German automotive parts suppliers are also interested in Ukraine. Currently, about 25,000 people work at the manufacturing sites of German companies in western Ukraine. Kromberg & Schubert, which already has a factory in Lutsk producing electrical wiring for Volkswagen, Mercedes and BMW cars, built new production facilities in Zhytomyr a couple of years ago.

The main machine-building giants in Ukraine are now: Motor Sich, Turboatom, and Kryukov Railway Car Building Works PJSC[5].

Pharmaceutical industry

According to the European Business Association, in the last five years the Ukrainian pharmaceutical industry has seen investments totalling about EUR 184 million. The industry offers enormous potential for foreign investors in Ukraine.

What attracts investors to the Ukrainian pharmaceutical sector? Primarily, as in other sectors, it is the availability of qualified and trained personnel in Ukraine. The relatively free market and the availability of government programs to support pharmaceutical businesses add to the sector's attractiveness.

Not only in Ukraine but also globally, pharmaceuticals and biotechnology remain the most attractive high-tech industries in terms of absolute and relative costs. Last couple of years, global spending on medicine reached EUR 1.1 trillion and is set to increase to almost EUR 1.4 trillion by 2023[6].

Food

The food and beverage production industry is Ukraine's most competitive, but also its most popular for investment. Nestle, Danone and Carlsberg represent just a small fraction of the global food giants who have set down roots in Ukraine.

Coca-Cola provides a striking example of the impact foreign direct investment has had on the Ukrainian economy: in early 2016, Coca-Cola's FDI in Ukraine reached EUR 451 million, which is 1% of total FDI in the country.

Food and produce retailers

The leading food retailer in Ukraine is a network of supermarkets called ATB, which operates as a discounter. Nevertheless, competition is intensifying. More and more Ukrainians, as well as Europeans, prefer shopping close to home and are not keen on shopping for groceries and essentials at super– and hypermarkets. In fact, French retailer Auchan has plans to open "express" shops in Ukraine, rather than the more common hypermarkets.

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[4] www.kyivpost.com/technology/ukraines-mobile-internet-one-of-worlds-cheapest.html
[5] www.project.liga.net/projects/ukraine_investment/
[6] www.iqvia.com/insights/the-iqvia-institute/reports/the-global-use-of-medicine-in-2019-and-outlook-to-2023

According to a study by GT Partners Ukraine, sales of small retail outlets increased by 22% to reach UAH 24.1 billion in last two years[7]. The largest foreign retailers in Ukraine now are Metro Cash&Carry and Auchan[8].

Summing up

Many Ukrainian business sectors are seeking investments today, including transport, heavy industry, restaurants, and hotels. In addition, over the years of its independence, Ukraine has built up a range of companies that have invested billions of dollars in the country, creating production from scratch or buying ready-to-operate businesses.

For investors, Ukraine's most prosperous sectors, as well as those that are underestimated, offer the greatest opportunities.

[7] www.guideme.com.ua/foreign-investment-opportunity-in-ukraine-10-attractive-industries/
[8] www.project.liga.net/projects/ukraine_investment/

Ten reasons to do business in Ukraine

Attractive growth
The government is targeting GDP growth of 40% over the next five years, raising USD 50 billion in the process.

Europe's last untapped county
With a population of 43 million, Ukraine is one of the largest untapped economies in the whole of Europe.

Unique opportunity in agriculture
With 41.5 million hectares of agricultural land covering 70% of the country, agriculture is Ukraine's largest export industry. The sector is operating at a fraction of the efficiency of other countries in the world, and hence the potential for growth is compelling.

Vast opportunity in infrastructure
Roads, airports, ports, hospitals, railways, rolling stock, you name it – the country is crying out for investment. With a new concessions law just having been passed, legislation is now in place to ensure that investment across all classes of infrastructure is a reality.

At the forefront of IT
From artificial intelligence, blockchain, FinTech to software development and more, Ukraine has over 90,000 IT specialists, and is at the forefront of developments in the industry, with IT outsourcing Ukraine's third-largest export.

An expanding middle-class
As the country prospers, disposable incomes will likely rise, driving a nascent consumer products market.

Greenfield opportunities
Ukraine has a skilled workforce at a fraction of the cost of elsewhere, and local governments are keen to offer incentives to attract investors. Strategically close to the European Union, Ukraine allows companies to manufacture at a lower cost and sell into the European market.

Security and rule of law
Kyiv is as safe as any other major capital city. The government is taking real steps to clamp down on corruption and uphold the rule of law, and Ukraine has bi-lateral investment treaties with most major countries, ensuring investors adequate recourse (against the country itself) through an independent arbitration process in a neutral third-party country.

It's a beautiful country!
From skiing in the Carpathian Mountains and the historical wonders of Lviv, to the beaches and restaurants of Odesa and beyond, Ukraine has something for everyone. It is only a matter of time until foreign tourists discover this hidden gem of a country.

An investment boom
Ukraine has received just a fraction of the foreign direct investment of its former communist neighbours. With the government implementing investor-friendly reforms at a faster pace than ever before, the shackles are finally off, and Ukraine's investment boom is already starting.


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Starting a business in Ukraine

General

Establishing and operating, as well as liquidating, a business in Ukraine is governed mainly by Ukraine's Civil Code, Commercial Code, the Business Entities Law, the Limited and Additional Liability Companies Law, and the Joint-Stock Companies Law. These laws provide for different forms of legal entities that can conduct business in Ukraine. A foreign investor may also conduct its activities in Ukraine through a representative office, which does not have the status of a separate legal entity .

The most common business structures in Ukraine are:

— Limited liability company, in which shareholders (participants) are liable for the company's debts only to the value of their contributions to the charter capital;

— Joint-stock company, in which shares issued by the company must be registered with the National Securities and Stock Market Commission ("Securities Commission"), and shareholders are liable for the company's debts to the extent of the par value of their shares; and

— Representative office, a place through which a foreign company carries out its activities in Ukraine (similar to a branch with the authority to act on behalf of the foreign company in Ukraine).

Registration and the Companies Register

Legal entities in Ukraine, including LLCs and JSCs, are considered to be established from the moment of their inclusion (registration) in the Unified State Register of Legal Entities, Private Entrepreneurs and Public Formations. This state register of companies is nationwide, but it is administered by competent state registrars on the ground, including public and private notaries. Currently, state registration is free of charge.

State registration is a "one-stop shop" procedure, which not only saves time and money but also makes the process more transparent and accessible. The initial state registration can include a number of other post-registration formalities with tax authorities and government bodies, such as tax and statistics registrations, VAT registration, and state pension fund registration.

An LLC may be registered through a simplified procedure based on the Model Charter, which was approved by the Cabinet of Ministers of Ukraine in March 2019.

Forming a JSC, however, is a more complex and time-consuming process, in particular since it includes share issuance and registration with the Securities Commission.

Limited Liability Company

An LLC is the simplest and the most common form of business entity in Ukraine since it provides numerous corporate and operational benefits, including among others the following:

— the limited liability of the participants (shareholders), which means that each participant is liable for debts of the LLC only to the extent of its contributions to the charter capital;

— establishing and operating an LLC is significantly less burdensome and time-consuming;

— there is no minimum capitalisation requirement;

— virtually any type of business activity can be conducted by an LLC, except for those activities that fall under specific regulatory regimes; banks and insurance companies, for example, cannot be registered as LLCs.

An LLC has a charter capital, which can be formed in cash or in kind. There is no requirement to make any capital injections prior to its formation, and the LLC can be capitalised within six months after its state registration or within another period established by the LLC's charter.

Equity (participatory) interests in an LLC do not have the status of "securities" and, therefore, are not subject to registration with the Securities Commission.

Except for a very limited number of express legal restrictions, founders (participants) of an LLC are free to agree on the allocation of participatory interests among them in the charter capital.

Corporate Governance

An LLC has the following governing bodies:

— the general meeting of participants, being the highest governing body;

— the executive body – a sole director or a management board consisting of two or more directors; and

— other governing bodies as may be created by the LLC, including a supervisory board.

General meeting of participants. At the general meeting of participants ("GMP"), each participant in the LLC has a number of votes proportional to the size of its interest in the charter capital (unless otherwise provided for by the LLC's charter). Most resolutions are passed by a simple majority of votes, while certain important issues, such as amending the charter or altering the charter capital, require more than three quarters of all votes (75%). Other decisions require a unanimous vote, for example, the valuation of an in-kind contribution or the re-distribution of participatory interests among participants.

If an LLC has only one participant, then any decision on matters reserved to the GMP can be adopted by a sole participant resolution, without convening the GMP.

Executive body. The executive body is responsible for day-to-day operations of the LLC. The executives are appointed and removed from office by decisions of the GMP or the supervisory board, depending on what is envisaged by the LLC's charter. Both Ukrainian and foreign individuals may serve as members of the executive body of the LLC.

Supervisory board. If created, the supervisory board exercises control over and oversees the activities of the LLC's executive officer(s). Members of the supervisory board may be vested with broad powers, save for those reserved by law to the GMP. Both Ukrainian and foreign individuals may serve on the supervisory board, except that members of the executive body cannot serve as members of the supervisory board at the same time.

Charter Capital Increase
The charter capital of an LLC can be increased (a) by additional injections of equity from participants and/or third parties and (b) on account of the LLC's non-distributed profit.

LLC's participants can increase the charter capital from time to time through a rather straightforward procedure. Contributions to the charter capital can also be made by way of a debt-to-equity swap.

Joint-Stock Company

Despite the heavy regulation of JSCs, especially compared to LLCs, this form of business entity is the second most popular in Ukraine.

Founders (shareholders). A JSC may be established by a sole founder or several founders (either corporate and/or individual). The number of founders or shareholders in JSCs is not limited.

Share capital. The capital of a JSC is divided into shares of equal par value. The JSC must have a minimum share capital equal to 1,250 minimum statutory wages (approx. EUR 200,000 in 2020). Additional minimum capital requirements can also be found in industry-specific regulations.

Limited liability of shareholders. Similar to a LLC, shareholders in a JSC are only liable for the company's debts to the extent of the par value of the shares they hold.

Types of JSCs. JSCs can be public or private. Only those JSCs whose shares are publicly offered and/or listed on a stock exchange are deemed to be public.

Ownership restrictions. Ukrainian law restricts a JSC from (a) being solely owned by another solely-owned company, and (b) having all of its shareholders being owned by the same person (e.g., being under the same umbrella).

Right of first refusal and pre-emptive right. Only shareholders in a private JSC with no more than 100 shareholders may, if the charter allows, have a pre-emptive right to purchase shares offered to a third party. As a general rule, unless it has been disallowed by the decision of a general shareholders meeting, shareholders in a JSC have a pre-emptive right to acquire any additional shares that the JSC issues.

Corporate Governance
A JSC has the following governing bodies:

— the general shareholders' meeting, being the highest governing body;

— the supervisory board, which must be created in any public JSC and in private JSCs with ten or more shareholders;

— the executive body — a sole director or a management board consisting of two or more directors; and

— other governing bodies as may be created by the JSC, including the audit committee or auditor.

General shareholders' meeting. The general shareholders' meeting ("GSM") consists of the JSC's shareholders and has the exclusive competence to decide on the JSC's most significant matters.

A shareholder can participate in the GSM if the shareholder's name is included in the list of shareholders who have a right to participate in the GSM and has been registered by the JSC's registration commission. As a rule, quorum for the GSM is 50% of the voting shares. At the GSM, each shareholder has a number of votes corresponding to the total number of shares owned by it. Resolutions are generally passed by a simple majority of votes, while certain important issues require more than three-quarter of votes (e.g., amendments to the charter, alteration of charter capital, etc.). Some special voting procedures, such as cumulative voting, are used to appoint the members of certain governing bodies.

If a GSM has only one shareholder, then any decision on matters reserved to the GSM can be adopted by a sole shareholder resolution, without convening the GSM.

Supervisory board. The supervisory board protects the shareholders' interests and controls activities of the executive body. The supervisory board has broad and exclusive competence established by law. Among other restrictions, members of the executive body or the audit committee cannot be elected to the supervisory board.

Executive body. The executive body is responsible for the day-to-day operations of the JSC and reports to the supervisory board and the GSM. Executives are appointed and removed from office by decisions of the supervisory board or the GSM (depending on what the JSC's charter provides). Similarly, members of the supervisory board or the audit committee cannot be members of the executive body at the same time.

Audit committee or auditor. Private JSCs with up to 100 shareholders may elect an auditor or an audit committee, while private JSCs with 100 or more shareholders must elect an audit committee. The auditor or audit committee is generally elected for a certain period of time, or in some circumstances to conduct a special audit of the JSC's financial activity. The JSC's officers may not serve on the audit committee.

JSC Shares

Types of shares. A JSC may issue two types of shares, common and preferred. The key differences are as follows:

— Common shares. All common shares give their shareholders the same set of rights, which include voting rights.

— Preferred shares. The voting rights conveyed by preferred shares are based on the same equality principle but can only be exercised with respect to a limited range of matters. Unless the JSC's charter defines the rights of preferred shareholders otherwise, they receive the statutory rights granted by preferred shares. The JSC's charter can provide for several classes of preferred shares with different rights attached to each. The total number of preferred shares, however, may not exceed 25% of the JSC's share capital.

Unlike common shares, preferred shares confer on their holders the right to vote only on the following:

— the termination of the JSC, if such termination implies converting shares into a different class;

— amendments to the company's charter that limit the rights of preferred shareholders;

— amendments to the JSC's charter that entail issuing new classes of preferred shares that give the new preferred shareholders priority if the JSC is liquidated or otherwise distributes its assets; and

— decreases of the share capital.

In a private JSC, the charter may confer additional voting rights to its preferred shareholders.

Form of shares. All shares exist only in electronic form and all operations with shares are therefore carried out through a depositary institution. An extract from a securities account serves as a valid confirmation of the shareholder's title to shares.

Representative Office

A representative office is not a legal entity under Ukrainian law but rather a place through which a non-resident company carries out its activities. There are two types of representative offices that can be established in Ukraine: commercial (a so-called "permanent establishment") and non-commercial. The principal differences are the scope of activity (commercial or non-commercial) that the office can carry out, and the resulting (a) types of bank accounts it may open and (b) its taxation regime.

A representative office must be registered with the Ministry for Development of Economy, Trade and Agriculture of Ukraine ("MEDT") and certain other state authorities. The registration process may take approximately 20 business days to complete (and approximately 60 business days for residents of an aggressor state). A one-time fee payable for the registration constitutes ca. EUR 70 in 2020 (and ca. EUR 2,120 for residents of an aggressor state).

Representative offices that conduct commercial activities are recognised as permanent establishment and are generally taxed at the same rates as JSCs and LLCs, though there are specific rules for determination of taxable base. The representative office is managed by its head, acting on the basis of a power of attorney from the parent company.

Importantly, Ukrainian legislation is often inconsistent with respect to the representative offices and in many cases lack clear guidelines as to their status, permitted operations, and some other regulatory aspects. Among other things, this results in the representative office being a less common business structure in Ukraine.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Employment of foreigners and immigration

Employment of foreigners

For a foreigner to work in Ukraine as an employee of a Ukrainian legal entity, a number of formalities need to be fulfilled:

— the employer needs to obtain a permit to employ a foreigner (a "work permit");

— the foreigner needs to obtain a long-term visa (a "type D visa");

— the foreigner needs to obtain the employer's registration number from the State Register of Individual Taxpayers (a "tax ID"); and

— the foreigner may need to obtain a certificate of temporary residence in Ukraine (a "temporary residency permit").

Work permit

Under Ukrainian law, any Ukrainian company that uses the labour or services of foreigners is required to obtain a work permit for such foreigners.

As a general rule, a work permit is issued for between one year and three years for certain categories of foreign employees including: (a) founders, participants, or beneficial owners of Ukrainian companies; (b) "highly paid" professionals with a salary of more than UAH 236,150 per month (approx. EUR 9,000); (c) IT specialists; (d) secondees; and (e) graduates of the top 100 world universities. Work permits can be extended up to the length of their original term.

There are two options for obtaining a permit: (a) for foreigners that are employed by a Ukrainian entity; and (b) for foreigners sent by their foreign employer to provide services in Ukraine to a Ukrainian entity under a contract between the two companies. The procedures differ slightly and require the submission of a number of documents. The second option is rarely used and, therefore, as employment and immigration bodies lack practical experience of issuing permits under this procedure, it may take longer.

The minimum monthly salary for foreigners employed by public associations, charity funds, or other types of NGOs is UAH 23,615 (approx. EUR 900) and is UAH 47,230 (approx. EUR 1,800) for all others. However, these minimum salaries do not apply to the categories of employees listed in the paragraph above.

Visa and Temporary Residence Permit

On obtaining a work permit, a foreign employee may also need to obtain a long-term visa (type D visa) and a temporary residency permit to be able to stay in Ukraine freely. Normally, a temporary residency permit can be obtained if the foreign employee's stay in Ukraine will exceed his or her visa-free permitted stay (for EU citizens the permitted visa-free stay is 90 days within any 180-day period). The main preconditions for obtaining a temporary residency permit is a work permit and a Ukrainian long-term type D visa.

A temporary residence permit is issued for the duration of the work permit and may be reissued if the work permit is extended. The application process for a temporary residency permit takes about two weeks and requires the submission of a number of documents.

Tax ID

Obtaining a tax ID is required for the employee to be paid his or her salary. This is a relatively quick and simple process that takes around five to ten business days.

Peculiarities for a representative office of a foreign company in Ukraine

Foreign employees of representative offices do not need to obtain work permits. Instead, special registration cards are issued to the foreign employees indicated in the application to the Ministry for the Development of the Economy, Trade and Agriculture of Ukraine to register the representative office.

Certain specifics during COVID-19 period

Foreigners, save for certain exemptions, have been temporarily prohibited to cross the state border and enter Ukraine during the quarantine period. Also, for the period of quarantine, the foreigners who became unable to extend their temporary resident permit were released from respective penalties.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Foreign investments in Ukraine

General

Foreign investors in Ukraine generally enjoy the same treatment as domestic investors, with some exceptions.

Under Ukrainian law, any value injected by foreign investors into an investment target to generate profit or to achieve social goals is considered a foreign investment. Foreign investments can take any form not prohibited by law, including:

— joint ventures with Ukrainian partners;

— the acquisition of shares or other equity interest in an existing Ukrainian company;

— the establishment of Ukrainian legal entities, representative offices, or branches;

— the purchase of movable or immovable property, or other proprietary rights.

Foreign investments can be made in Ukrainian Hryvnia or any foreign currency convertible by the National Bank of Ukraine (EUR, USD, GBP, CAD, etc.).

Guarantees for foreign investors in Ukraine

Protection against changes in legislation. Foreign investors are protected from changes in Ukraine's foreign investment legislation, for ten years following the change at the request of the investor. This guarantee does not apply to issues of national security, environmental protection, and some other matters.

Non-expropriation. Foreign investments cannot be nationalised or expropriated by the state, except under emergency measures authorised by the Cabinet of Ministers.

Compensation and reimbursement of losses. Foreign investors are entitled to be reimbursed for losses, including for lost profits and non-pecuniary damages, caused by the acts, omissions, or improper performance of Ukrainian state authorities with respect to a foreign investor or a company with foreign investments. The losses must be reimbursed in the currency of the investment (or another currency acceptable to the investor) based on the market value and/or a justified valuation confirmed by an auditor.

Return of terminated investments. Within six months of the termination of its investment activities, a foreign investor is entitled to get back (recover) (a) its investments either in kind or in the currency of investment (in the amount actually contributed and not subject to customs duties) and (b) the revenues from such investments in monetary or in commodity form based on the market value at the time the investment activities were terminated.

Profit repatriation. Subject to the currency control rules of the National Bank of Ukraine and after paying all applicable taxes and duties, foreign investors are guaranteed unimpeded and immediate transfer abroad of the profit, revenues, and other funds in a foreign currency, derived from their investment activities in Ukraine.

Limitations and restrictions on foreign investment in Ukraine

Restrictions applicable to foreign and domestic investors. Under Ukrainian law, only state-owned companies can perform certain types of business activities, such as weapon manufacturing, printing banknotes, etc.

Restrictions and limitations on foreign investors. Foreign investors are currently not entitled to own agricultural land. Ukrainian law also contains controversial provisions regarding the right of foreign-owned Ukrainian companies to own any land. Additional restrictions and limitations on foreign ownership or control of a business or natural resource in Ukraine can be found in specific regulations, such as industry-specific laws, laws on regulated activities, etc.

Investment Protection Treaties and Forums for Dispute Resolution

Under Ukraine's investment laws, investment disputes between foreign investors and the state of Ukraine are resolved in the courts of Ukraine, unless otherwise provided by an investment treaty. All other investment disputes involving foreign investors are resolved in Ukrainian courts or in arbitration courts, including arbitration courts outside Ukraine.

Ukraine is currently a signatory to 67 bilateral and three multilateral treaties designed to promote investment flows and protect international investors and their investments in Ukraine. Most of the investment treaties that Ukraine has signed provide for one or more forums where an international investor may submit its investment dispute against the state of Ukraine. The overwhelming majority of arbitration clauses in investment treaties refer to a tribunal established under the International Centre for Settlement of Investment Disputes (ICSID) or an international ad hoc tribunal under the rules of the United Nations Commission on International Trade Law (UNCITRAL). However, there are also treaties that provide for arbitration before the Arbitration Institute of the Stockholm Chamber of Commerce or the International Chamber of Commerce International Court of Arbitration.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Employment and Remuneration

Introduction

Generally, Ukrainian labour law is very employee protective. It is based on the quite outdated *Labour Code of Ukraine* adopted in 1971. Although the labour code has been amended many times since, it still does not reflect the current dynamics and needs of the labour market and businesses.

Under Ukrainian law, employees are hired either under an employment agreement or an employment contract. The employment contract is a specially tailored form of employment agreement that allows more contractual freedom and can only be signed with certain categories of employees, such as with a company director or a foreign employee. The law allows these employment contracts to contain additional provisions and to deviate from the default provisions concerning the term of employment, grounds for termination, material liability, and other conditions.

Probation period

Ukrainian law provides for a general three-month probation period. The length of probation must be stipulated in an employment agreement and repeated in an employment order.

Certain protected categories of employees cannot be put on probation, e.g., pregnant women and employees hired for a fixed-term of less than 12 months.

During probation, an employer may terminate employment on three days' written notice if the employee is found to be unsuitable for the position.

Fixed term and part-time employment

Generally, employment agreements are for an indefinite period. An employment agreement for a fixed term may be signed only where the nature of work does not allow for indefinite employment, when it is in the interests of the employee, and in other cases expressly provided by Ukrainian law, such as for seasonal work or to replace an employee who is temporarily absent. As a consequence, for an employer to justify a fixed-term employment, the nature of the employee's employment must be verified.

A part-time employee is either a person whose employment agreement (contract) provides for shorter working hours during a day or less working days during a week. In this case, the salary is proportional to the working hours.

Compensation

Employees are entitled to compensation for the work they perform, including salary, bonuses, and other remuneration. The compensation system used in most cases is time-based where the salary depends on the amount of time an employee works, and in which case the salary is paid monthly.

Monthly salary

A monthly salary is payable in at least two monthly instalments with an interval between them of up to 16 calendar days, with the last instalment payable within 7 days after the end of the month.

For monthly or hourly work, employees in Ukraine must be paid at least the statutory minimum wage. The minimum wage is established in law, is periodically reviewed, and may increase during the year. From 1 January 2020, the monthly minimum wage is UAH 4,723 (approx. EUR 180).

Bonuses
Under the general rule, the payment of bonuses is at the discretion of the employer. The rules for paying a bonus may be established in individual employment agreements, collective bargaining agreements, the employer's internal orders, or other employer–employee agreements.

Other compensation
An employee is entitled to increased compensation for work on holidays, days off, and night work, and to compensation for business trips, relocation, and other work-related travel.

Employees who are unable to work due to sickness or another temporary disability are entitled to compensation for the entire period of their absence. This compensation is paid by the employer for the first five days of sickness and by the Social Insurance Fund of Ukraine for the remainder of the sick leave.

Employers in Ukraine must pay salaries only in the local currency, which is the Ukrainian Hryvnia (UAH), although an employment agreement may set the value of the salary in a foreign currency (e.g., EUR or USD).

Salary deductions are permitted only in the cases prescribed by law, such as withholdings to cover individual income tax, obligatory contributions to state social funds, and payments under ourt decisions.

Working hours
Generally, the maximum work week is 40 hours excluding lunch breaks. The law does not specify the duration of a working day, which is left to the discretion of the employer and is regulated by the employer's policies, individual employment agreements, or collective bargaining agreements.

The standard working week is five working days, eight hours per day. Some categories of employees, e.g., persons under 18 years of age and pregnant women, may require a shorter working week with a proportional decrease in salary.

Holiday entitlement
All employees are entitled to a minimum of 24 calendar days of paid annual leave after working for an employer for six continuous months. Before the expiration of this six-month period, employees can take paid annual leave on a pro rata basis for the time they have been employed.

At the employee's request, annual leave can be partially replaced by a payment in lieu, although only for the part exceeding 24 calendar days.

An additional maximum of 15 calendar days per year in unpaid leave can be agreed between the employer and employee.

Currently, there are 11 national or religious state holidays, which are non-working days and are not included in the minimum holiday entitlement.

Termination of employment
Under the *Labour Code of Ukraine*, an employment agreement may be terminated on the following grounds:

— mutual consent of the parties;

— termination by the employee;

— termination by the employer;

— expiration of a fixed-term agreement; and

— other grounds, including those stipulated in the employment contract.

Termination by the employee
Employees, including those working under fixed-term agreements, may terminate their employment by giving two weeks' written notice to the employer. The two-week notice period may be shortened if an employee cannot continue to work for justifiable reasons, such as retirement, university enrolment, or a change of residence. Employees have the right to withdraw a resignation statement within the notice period.

Termination by the employer
Valid grounds for termination can be divided into those related to the employee's breaches of employment duties (termination with cause on the part of the employer) and those not related to the employee's actions (termination without cause). Termination is not generally allowed while an employee is on annual or sick leave.

Termination for cause is regarded in most of these cases as a disciplinary sanction and must follow procedures prescribed by law. Normally, termination for cause is a quite difficult and a highly challengeable procedure. Hence, it is recommended only if the employer has bulletproof evidence of cause and properly follows all the necessary procedures.

An employer may terminate an employee without cause in the following cases:

— changes in the organisation of work and production (redundancy);

— the employee's unsuitability for the job or position due to a lack of qualifications or appropriate health;

— reinstatement of an employee who previously occupied the position or was absent from work due to sickness for more than four continuous months;

— recruitment to the army or mobilisation within a certain period;

— the employee's unsuitability for the job or position discovered during his or her probation period; or

— dismissal without notice by an employer of certain categories of employees, such as company officials. In the case of the dismissal of a company official, a statutory severance payment must be made in the amount of 6 months' average salary.

Other than when an employee is absent for four months due to sickness, termination without cause is only possible if the employee cannot be transferred to another position or job.

In all cases, a decision regarding dismissal should be made in the form of a written order, signed by a duly authorised representative of the employer. The employee is to be provided with a copy of the dismissal order on the last day of his or her employment.

The statutory minimum notice period is two months in the case of redundancy. In certain cases, e.g., where there has been a single material breach of employment duties, no notification is required.

Certain categories of employee cannot be terminated by an employer without their prior consent. This "protected" category includes:

— pregnant women;

— women with children under the age of 3, or under the age of 6 if a registered medical practitioner certifies that home care is necessary; and

— single parents or the legal guardians of a child under the age of 14 or a handicapped child.

The law only allows the employment of "protected" employees to be terminated if the employer is liquidated without legal succession.

Health and safety regulations

The employer must provide a safe work environment for its employees and ensure that workplaces and sanitary conditions fully comply with the requirements of Ukrainian law.

Special requirements, including special clothing and protective equipment, additional rest breaks, and regular medical checks, apply to employees whose work involves exposure to dangerous or hazardous conditions.

An employer cannot request an employee to perform work that may clearly endanger his or her life or that does not comply with health and safety laws.

A breach of legal requirements regarding work safety and the workplace may result in a fine of up to 5% of the average monthly salary at the company for the previous financial year, plus administrative and criminal liability, if applicable, for the company's officials.

State authorities may prohibit, suspend, terminate, or limit a Ukrainian company's operations, its separate workplaces, buildings, etc., if the work conditions pose a threat to employees' lives.

Compliance

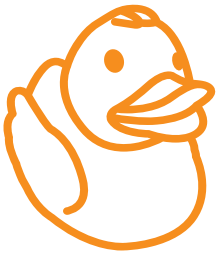
The employer must comply with employment rules established by the labour code. The current enforcement trend is to target sham employment (i.e., de-facto employment that is either undocumented or covered by sham civil contracts) and payroll and tax evasion relating to this.

Paying fines does not release employers from administrative and criminal liability, if applicable, for breaches of labour legislation.

Specifics of the COVID-19 period

During the COVID-19 period, Ukraine has, among other things, introduced special subsidy (aid) by the state for short working hours during the quarantine period, allowed the employers to instruct employees (this includes both state and municipal employees) to work from home or, subject to the respective employee's consent to take vacation.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020



Taxation

Tax at a glance

Below are the key tax rates currently in place in Ukraine.

Type of tax	Rate and Comments
Corporate Income Tax (CIT)	18% general rate; special rates apply to insurance and gambling
Withholding Tax (WHT)	15%, which may be decreased or eliminated by a double-tax treaty
Value Added Tax (VAT)	20% general, 7% for pharmaceuticals, and 0% for exports
Personal Income Tax (PIT)	18% general, 5% on dividends from Ukrainian companies and 9% on dividends from non-resident companies
Military Tax	1.5% applied in addition to PIT on all income
Unified Social Contribution (USC): employer's contribution	22% applied to salaries, subject to a cap of 15 times the statutory minimum salary, which in 2020 is UAH 70,845 or approx. EUR 2,700 (the rate used is 1EUR:26UAH)
Unified Social Contribution (USC): employee's contribution	N/A
Statutory minimum salary	UAH 4,723 per full-time employee or approx. EUR 180 per month in 2020

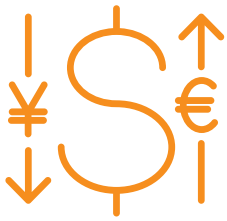
Corporate income tax

General Information

Resident companies are subject to corporate income tax (CIT) on their worldwide income. The general CIT rate is 18%, with special rates for insurance and gambling companies.

CIT is calculated based on the company's financial result under applicable accounting rules but adjusted for certain tax differences. These largely aim at preventing tax avoidance and relate to (1) rules on the depreciation of fixed assets, (2) the creation of reserves, and (3) conducting certain financial transactions (see section "Key Tax Differences").

Small taxpayers with an annual income under UAH 40 million (approx. EUR 1.54 million) may opt out of applying tax difference adjustments.



Key Tax Differences

Depreciating Fixed Assets

For corporate taxpayers, Ukraine's tax code has special rules for the depreciation of fixed assets, including how intangible assets are amortised.

— All depreciation methods used in generally accepted accounting rules are allowed, except for the units of production method.

— Depreciation for tax purposes is based on the value of the fixed assets under the historical cost method, i.e., the purchase cost without any revaluations.

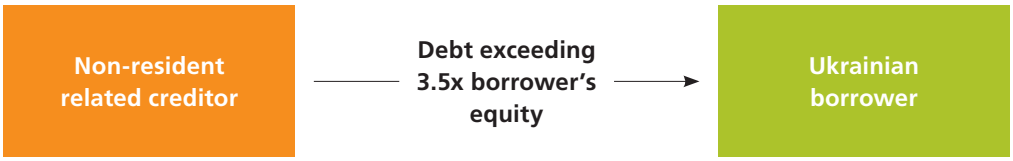
— The following, however, are not subject to depreciation for tax purposes:

- goodwill;
- the purchase or development of fixed assets, including intangible assets, that are not expected to be used in commercial activities; and
- the reconstruction, repair and modernisation of fixed assets, including intangible assets, not expected to be used in commercial activities.

— Depreciation must be applied using a minimum rate set by the tax code for different types of assets.

Earnings Stripping Restriction

Currently, Ukraine's tax code includes an earnings stripping restriction (ESR) that limits the deductibility of interest expenses for the debts owed to a company's non-resident related parties. The ESR applies when the total debt exceeds three and a half times (3.5x) the company's equity. For companies that conduct leasing activity, the multiple is ten times (10x).



Under the ESR, accrued interest for qualified debt may be deducted for CIT purposes, but only up to 50% earnings before interest, tax, depreciation and amortisation (EBITDA). The remaining non-deducted portion may be carried forward but is subject to a 5% annual reduction in the residual amount.

Starting from 1 January 2021, ESR is expected to be replaced by thin capitalisation rules. The new thin capitalisation rules will limit deductibility of company's total interest expenses regardless of whether such interest arises under debt owed to related or non-related parties.

The thin capitalisation rules will apply whenever the total debt exceeds three and a half times (3.5x) the company's equity. In such case, interest accrued by the company will be deductible for CIT purposes only up to 30% of company's taxable profit increased by total accrued interest and depreciation.

The thin capitalisation rules will not apply to companies that conduct exclusively leasing activity.

Note that for CIT purposes, interest paid or accrued under a loan agreement with a related non-resident party must comply with the arm's-length principle (see section "Transfer Pricing Restrictions" below).

Restrictions on Payments to Low-Tax Jurisdictions and Tax Transparent Entities

For goods and services purchased from counter-parties registered in low-tax jurisdictions or who are exempt from corporate income taxation, only 70% of the payment is deductible for CIT purposes, unless the taxpayer can demonstrate that the terms of the relevant transaction comply with the arm's-length principle.

The list of low-tax jurisdictions currently names 79 jurisdictions, including Hong Kong, Ireland, Cyprus and Liechtenstein, and is determined by the Cabinet of Ministers of Ukraine based on the following criteria:

— a corporate tax five or more percentage points below the Ukrainian CIT, i.e., 13% or less;

— the absence of an agreement with Ukraine on the exchange of information, or

— the failure of the jurisdiction's authorities to ensure full and timely exchange of tax and financial information with Ukraine.

The types of legal entities that are exempt from corporate taxes are also set by the Cabinet of Ministers of Ukraine, and include any entity deemed not to be resident in their jurisdiction of incorporation (registration) for tax purposes. For example, the list currently includes Limited Liability Partnerships in the United Kingdom, Free Zone Companies and Establishments in United Arab Emirates, and Limited Liability Companies in certain states of the United States of America, such as Delaware and Nevada.

Restrictions on Deducting Royalties

The amount of royalties paid to non-resident counterparties that can be deducted is limited to the taxpayer's royalty income increased by 4% of the taxpayer's gross income for the previous tax ear.

Royalty payments are non-deductible if they are paid to:

— a non-resident entity that is registered in a jurisdiction that does not tax royalty income;

— a non-beneficial owner of the royalties, unless the beneficial owner has authorised the recipient to collect the royalty payments; or

— a resident company that is exempt from CIT, subject to a different tax regime, or taxed at a reduced rate.

Royalty payments are also non-deductible if they relate to intellectual property originally developed in Ukraine.

These restrictions do not apply, however, if the transaction complies with the arm's-length principle.

Transfer Pricing Restrictions

Under Ukrainian transfer pricing rules, companies that engage in controlled transactions with related parties must determine their taxable base for CIT purposes in accordance with the arm's-length principle. If a controlled transaction does not meet the conditions for being arm's length, the company must adjust its financial results to the level dictated by the arm's-length principle.

In this context, the following transactions are deemed to be controlled:

— transactions with non-resident related parties;

— transactions with counterparties registered in low-tax jurisdictions;

— transactions concluded through a non-resident commissionaire; and

— transactions with counterparties that are exempt from corporate income taxation.

These transactions are subject to transfer pricing control restrictions when the total value of transactions with one counterparty exceeds UAH 10 million (approx. EUR 385,000) in a year and the company's gross income for that year exceeds UAH 150 million (approx. EUR 5.77 million).

Transactions between a non-resident and its permanent establishment in Ukraine are also subject to transfer pricing control requirements if the amount exceeds UAH 10 million (approx. EUR 385,000) in a reporting year.

Transactions between related parties conducted through an independent intermediary may also be deemed to be controlled unless the intermediary performs significant functions or bears significant risks.

To comply with transfer pricing rules, companies must file an annual report on transfer pricing that includes information on each controlled transaction.

Starting from 1 January 2021, Ukraine is expected to implement three-tier reporting system which will allow Ukrainian tax authorities to request from Ukrainian taxpayer not only local transfer pricing documentation, but also global documentation (master file) and country-by-country report (under certain circumstances).

Restrictions on Payments to Non-Profit Organisations

Any benefit given by a company to a registered non-profit organisation, either as money or by providing free goods or services, is deductible but is capped at 4% of the company's taxable profit in the previous year.

If a company purchases goods or services, including fixed assets, from a registered non-profit, only up to 70% of the payments are deductible, unless the total value of all goods and services purchased from non-profit organisations in the reporting year is less than 25 times the minimum statutory amount, which for 2020 is UAH 118,075 (approx. EUR 4,500). This restriction does not apply to purchases from public institutions.

Carrying Losses Forward

Losses incurred by a taxpayer may be carried forward to subsequent tax periods; losses from operations with securities, however, may only be offset against profits from other operations with securities.

Value added tax

General Information

Ukrainian legislation on value added tax ("VAT") is generally in line with the European Union's VAT, even though Ukraine has no formal VAT harmonisation arrangements with other jurisdictions.

Ukrainian VAT is generally charged on goods and services, including imports, at the following rates:

20%

General rate on local supplies

7%

Procurement of pharmaceuticals and certain devices for medical purposes

0%

Exports

Input VAT is generally deductible against output VAT; a positive difference is remitted, while a negative difference is reimbursed.

VAT on purchases of goods, including fixed assets, qualifies as input VAT regardless of whether the goods have been put into operation or used in taxable transactions. VAT on goods and services intended for transactions that are exempt from, or not subject to, VAT does not qualify as input VAT.

Registering as a VAT Payer

Only registered VAT payers can claim input VAT, but any legal entity, individual entrepreneur or permanent establishment ("PE") doing business in Ukraine may register as a VAT payer.

In general, taxpayers not registered for VAT are exempt from accruing VAT on their local supplies. Taxpayers that import goods or services, however, are liable to pay VAT regardless of whether or not they are registered. A company must register for VAT when its local supplies exceed UAH 1 million (approx. EUR 38,500) within any 12-month period.

Electronic VAT Administration

VAT in Ukraine is administered through an electronic system. VAT invoices must be issued in electronic form and logged in a unified register of VAT invoices. Only registered VAT invoices can be claimed for input VAT.

For an invoice to be accepted in the unified register, the amount of VAT on it cannot exceed the registration limit of the respective taxpayer. The limit is calculated primarily on the recognised input VAT of the taxpayer and, if needed, may be increased by monetary transfers from the taxpayer's bank account.

Remittance of VAT to the State Budget is made through special VAT accounts opened with the State Treasury. VAT refunds (reimbursements) are deposited to the taxpayer's current bank account.

Payroll taxes

General Information

Ukraine does not impose a separate payroll tax on employers. However, employers must make a unified social contribution for the benefit of their employees and collect income taxes due from employees.

18%

Personal Income Tax
Withheld by the employer from the employee's income

1.5%

Military Tax
Withheld by the employer from the employee's income

22%

Unified Social Contribution
Paid by the employer at its own additional cost

An employer is responsible for calculating, accruing, withholding and remitting its employees' income taxes and is liable for any violations, including for unified social contributions.

Employees' Income Tax
In general, any income paid or accrued by an employer to its employees, including in-kind benefits, is subject to 18% Personal Income Tax and 1.5% Military Tax. The following, however, are exempt:

— premiums paid on behalf of employees under private pension plans up to 15% of the accrued monthly salary, but not more than two and a half times (2.5x) the minimum statutory salary;

— free food, special clothes, toiletries and personal protective measures provided to employees within statutory requirements and norms;

— compensation of expenses for business trips, within statutory established limits;

— medical care and medical treatment aid, both monetary and in-kind;

— employer's expenses for employee's education and certification training (conditions apply);

— refundable financial aid; and

— in-kind gifts with a value less than 25% of the minimum statutory salary.

Unified Social Contribution
An employer must pay a unified social contribution of 22% of each employee's salary. The amount of salary subject to USC is capped at a maximum of 15 times (15x) the minimum statutory salary per employee. The minimum social contribution per employee is 22% of the minimum monthly salary.

Contributions are due monthly on the date salaries are paid and are deductible expenses for the purpose of the employer's CIT.

Other taxes

Excise Tax

Ukraine charges an excise tax on certain products, both on import operations and their sale in Ukraine. The Ukrainian tax code specifies the excise rate for the categories of goods below. There are ad-valorem and specific tax rates.

List of excisable goods

- Ethyl alcohol, alcoholic distillates, alcoholic beverages, beer
- Tobacco products, tobacco and industrial substitutes
- Petroleum products
- Passenger cars, car bodies, trailers and semi-trailers, motorcycles
- Electricity, except for electricity produced from renewable sources

The payers of excise tax include:

— producers of excisable goods in Ukraine,

— importers of excisable goods into Ukraine,

— retailers of excisable goods,

— producers and suppliers of electricity, and

— sellers of petroleum products.

Land Tax

Under Ukraine's tax code, land tax is paid by (i) owners of land under private ownership and (ii) lessees of land under State or communal ownership. People and organisations that use land without a formal lease pay tax (under certain conditions) at the same rate as land owners.

Land is taxed based on the normative value of the plot, if a valuation is conducted, or on the total area of the plot.

Land tax rates and incentives are set by local municipalities. However, the tax code gives general thresholds. For example, for plots of land where a valuation has been conducted, the tax code stipulates the following:

	Land Tax	Land Lease Payment
Agricultural land	At least 0.3% and up to 1%	At least the land tax set out for the respective land type, but up to 12%
Land of common use	Up to 1%	
Land under forest	Up to 0.1%	
Other types of land	Up to 3%	

Controlled Foreign Companies

Starting 1 January 2021, Ukraine is expected to introduce Controlled Foreign Company ("CFC") regime.

Ukrainian CFC regime will cover any foreign entity (including partnerships, trusts funds and other business establishments without legal personality) under the control of a Ukrainian natural person or Ukrainian legal entity.

Foreign entity may be recognised as CFC in Ukraine if Ukrainian natural person or legal entity:

— holds directly or indirectly more than 50% of shares in the foreign entity; or

— holds directly or indirectly more than 10% of shares in the foreign entity under the condition that other Ukrainian natural persons or legal entities also hold shares in that foreign company of 50% or more in aggregate; or

— exercises, separately or jointly with other Ukrainian resident related parties, factual control over foreign entity.

Ukrainian controller of CFC shall report in Ukraine portion of CFC's profit proportional to controller's share held or controlled by the respective taxpayer. For the purposes of Ukrainian taxation, CFC's profit shall be adjusted by tax differences prescribed by Ukrainian tax code.

CFC's profit may be exempted from taxation in Ukraine in certain cases, including if the CFC pays income tax in its jurisdiction of residence at the effective rate amounting to no less than 13%, provided that the double-tax avoidance agreement or tax information exchange treaty are concluded between Ukraine and the jurisdiction in which the CFC has its registered seat.

Permanent establishments in Ukraine

General Information

The legal framework for foreign companies that constitute a permanent establishment ("PE") in Ukraine is established by both Ukraine's tax code and the relevant double tax treaty in force with the company's country of residence.

The tax code and most double tax treaties share a common definition of a PE. In general, a permanent establishment is a fixed place of business through which the business of a foreign company is fully or partially carried on, including a place of management, a branch, an office, a factory, a server, a workshop, an installation or structure for the exploration of natural resources, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a warehouse or other structure used as a sales outlet.

Apart from the above, Ukraine's tax code recognises the following special types of permanent establishments:

— **Site-based PE** A building site, construction or installation site, or supervisory activities connected to it, constitutes a PE if the work related to the site (within one or several related projects) lasts longer than twelve months. If the double tax treaty that governs the foreign company sets a different length of time, it prevails over the Ukrainian tax code.

— **Agent-based PE** A resident person, either a legal entity or an individual, who has the authority to act on behalf of a foreign company and to negotiate and/or conclude contracts would constitute a PE unless the authority of the person (or entity) is limited to exempted activities (see section "Exempted Activities" below).

— **Service-based PE** A foreign entity that provides services in Ukraine through its employees or other personnel in one or more projects that, cumulatively, last more than 183 days within any 12-month period, amounts to the creation of a PE. Again, if the treaty that governs the company sets a different length of time, it prevails over the Ukrainian tax code.

— **Storage-based PE** A resident person, either a legal entity or an individual, who has contractual or factual authority to store non-resident's goods that are supplied from such storage on behalf of the non-resident. PE does not arise if a resident has a status of customs warehouse operator.

In case if few related non-resident companies are conducting same or similar activities in Ukraine, in certain circumstances their cumulative activities may be taken into consideration when establishing existing of PE.

Exempted activities

Universally under Ukraine's tax code and most of double tax treaties, some preparatory and auxiliary activities are exempt from determining if a foreign company has created a PE:

— using facilities solely for the storage, display or delivery of goods or merchandise;

— maintaining a stock of goods or merchandise solely for storage, display or delivery;

— maintaining a stock of goods or merchandise solely for another enterprise to process;

— maintaining a fixed place of business solely for purchasing goods or merchandise or for collecting information; and

— maintaining a fixed place of business solely for carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

Any of the above activities, even in combination, should not constitute a PE for a foreign company. In practice, the most common such activities recognised by the Ukrainian tax authorities include market research, data collection, and marketing and distributing information to potential clients in Ukraine, as long as no negotiations on terms of possible cooperation are conducted. In addition, when deciding whether the activities of a representative office in Ukraine constitute a PE, the tax authorities compare those activities to the core activities of the head office. If, on the whole, the representative office conducts the same activities as its company, then the tax authorities would consider it to constitute a PE.

Taxation Methods

Profits received by non-resident entities conducting business in Ukraine through a PE may be taxed under general corporate tax rules. For these purposes, the PE is regarded as a separate taxpayer that conducts its activities independently. The taxable base of PE shall be determined in accordance to arm's length principle, meaning that the taxable profit allocated to PE shall correspond to the level of profit which would be earned by independent enterprise from same or similar activities in comparable circumstances.

The taxable profit of the PE is subject to an 18% CIT rate. PEs can register as VAT payers.

Withholding tax for non-residents

General Information

The Ukrainian-sourced income of a non-resident legal entity is subject to a 15% withholding tax, unless a double tax treaty applies. Special withholding tax rates apply to insurance-related income and income earned by advertisement producers.

The following categories of income are generally deemed to be taxable in Ukraine:

— interest income;

— dividends paid by a resident company;

— royalties;

— freight and income from engineering services;

— leasing charges and rent paid or accrued by residents;

— proceeds from the sale of real estate located in Ukraine and owned by a non-resident;

— profit received from transactions with securities or other corporate rights, including capital gains from sale of foreign shares deriving their value from Ukrainian real estate;

— income from joint business endeavours and from long-term contracts;

— remuneration for non-residents' cultural, educational, religious, sports and entertainment activities conducted in Ukraine;

— brokerage, commission or agency fees received from residents;

— risk insurance or reinsurance premiums in Ukraine;

— gambling gains;

— income from charitable contributions and donations; and

— other income received by non-residents from doing business in Ukraine.

The proceeds from sales of goods or services to residents, including international communications services, are not subject to Ukrainian withholding tax.

Application of Double Tax Treaties

A double tax treaty between Ukraine and a company's country of residence may reduce or eliminate the Ukrainian withholding tax on its income. In order to qualify for the exemption or reduction, a foreign company needs to provide the payer in Ukraine with a valid tax residency certificate.

Privileges under double tax treaty may be denied by Ukraine if Ukrainian tax authorities believe that the principle or one of principle purposes of the respective transaction or arrangement is to receive such tax privileges.

Ukraine currently has double tax treaties with 74 countries.

Constructive dividends

Starting 1 January 2021, the value of goods or services paid for by Ukrainian company in excess of arm's length price in operations with non-resident related parties or companies registered in low-tax jurisdictions will be treated as de-facto dividends and, as such, subject to withholding tax at standard 15% rate or lower rate if provided under a double tax treaty.

Tax responsibility

Breaches of Ukraine's tax regulations, whether in accounting, calculations, withholding, reporting, paying taxes or otherwise, may be subject to:

— financial liability;

— administrative liability; and/or

— criminal liability.

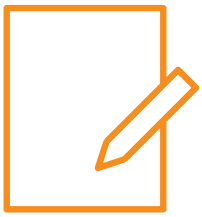
Financial liability takes the form of a fine. The exhaustive list of tax breaches subject to financial liability are set out in Ukraine's tax code and include, for instance:

Failure to file or untimely filing of tax returns	UAH 340 (EUR 12) per instance, UAH 1,020 (EUR 40) per repeated instance within one year
Failure to file a transfer pricing report	300 times the minimum subsistence level, which for 2020 totals UAH 608,100 (EUR 23,400)
Failure to file transfer pricing documentation at the request of the tax office	Three percent of the inspected transaction for which documentation was not filed, but not more than 200 times the minimum subsistence level, which for 2020 totals UAH 405,400 (EUR 15,600)
Failure to register VAT invoices on time	Up to 50% of the value of such VAT invoice depending on the delay in registration
In the case of additional tax liabilities charged by the tax office during a tax audit	25% of such additionally charged tax liabilities (which is expected to be decreased to 10% starting from 1 January 2021, while 25% fine will remain for cases of taxpayer's guilty behaviour) 50% in the event of a repeated instance within three years

Paying a fine for a breach of tax rules does not relieve a company from administrative or criminal liability. Administrative liability is reserved for minor breaches, an exhaustive list of which is given in the applicable legislation. Administrative and criminal liability applies to the officers of the company responsible for accounting and the paying of taxes, typically the directors and chief accountant.

Criminal liability for tax evasion may be invoked whenever the amount of unpaid taxes reaches the minimum threshold set out in the Criminal Code of Ukraine, which for 2020 is UAH 3,153,000 (EUR 121,200). The statute of limitations for financial responsibility is three years, and seven years for breaches of transfer pricing regulations.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020



Foreign currency rules

General

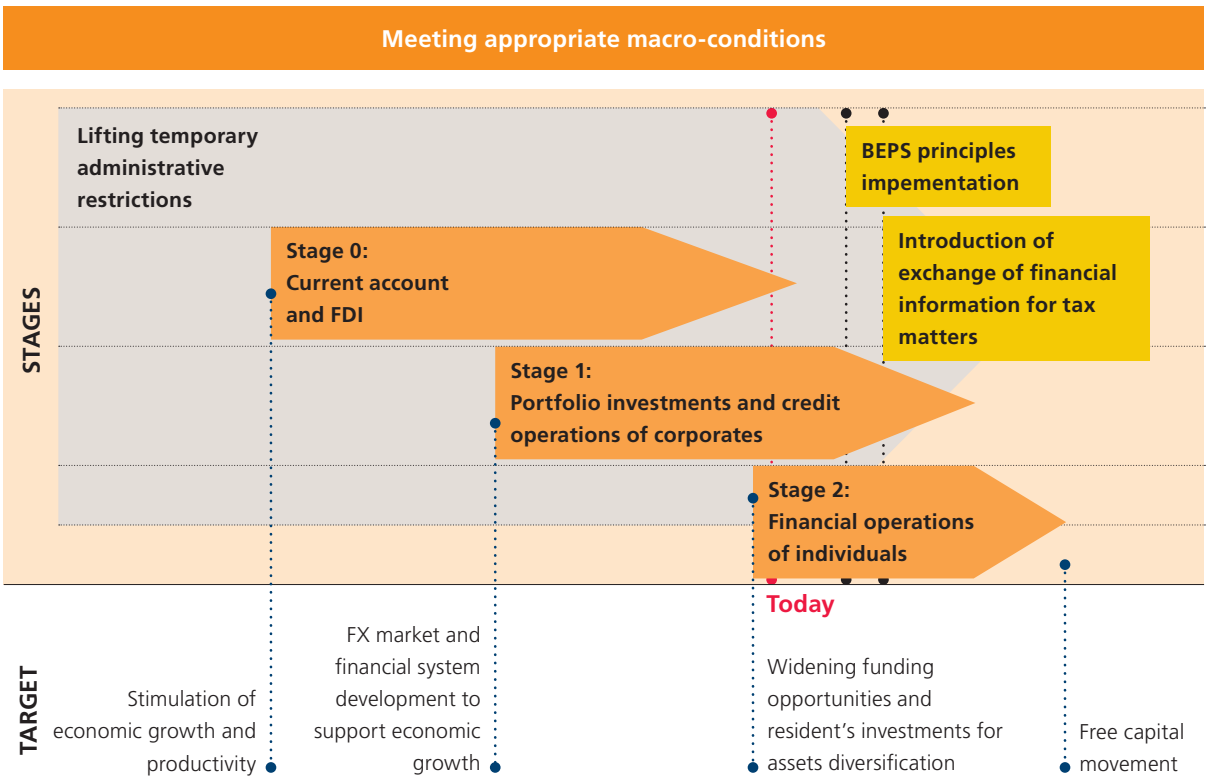
In February 2019, the Law of Ukraine "On Currency and Exchange Transactions" came into force along with a new regulatory framework that cancelled fragmentary, contradictory and obsolete rules and legislation for currency controls.

The key game-changer introduced by the currency law is a new principle: "everything which is not forbidden is permitted", the opposite of past practice. The currency law significantly limits the discretion of regulatory bodies and gives market players a wider freedom of action.

The National Bank of Ukraine ("NBU") presented an ambitious plan to liberalise currency rules. The currency liberalisation plan has no specific timeline, however, since its implementation depends on macroeconomic improvement and the introduction of international tax-avoidance measures ("anti-BEPS") in Ukraine.

In May 2020, the Law of Ukraine No. 466-IX "On Amendments to the Tax Code of Ukraine Regarding Improvement of Tax Administration, Elimination of Technical and Logical Inconsistencies in Tax Legislation" entered into force (except for certain provisions). The law significantly revised taxation rules aimed at deoffshorisation, transparency and launched extensive implementation of anti-BEPS in Ukraine. According to the NBU, this significant development will allow to proceed with currency liberalisation.

Our path: Roadmap for currency liberalisation[9]



[9] www.old.bank.gov.ua/ /doccatalog/document?id=92612181

Transition to the next stage of currency liberalisation can be done in case of implementation of OECD recommendations to BEPS resistance and unified standard of automatic exchange of financial information.

Use of currencies

The Ukrainian Hryvnia (UAH) is the only valid currency for payments in Ukraine. Nonetheless, foreign investments and cross-border payments can be made in a foreign currency, including recognised hard currencies and currencies from developing countries, such as the Turkish lira and Egyptian pound.

Regulatory framework

Foreign currency rules are based on eight key NBU regulations:

— Regulation No. 1, covering the structure of Ukraine's currency market and the terms and procedure for trading FX and bank metals;

— Regulation No. 2, covering the conduct of transactions with currency assets;

— Regulation No. 3, covering the cross-border movement of currency assets;

— Regulation No. 4, covering currency protection measures and criteria for their introduction, prolongation, and early termination;

— Regulation No. 5, covering protection measures and procedures for particular FX transactions;

— Regulation No. 6, covering how banks provide information to the NBU about debt obligations of residents to non-resident creditors;

— Regulation No. 7, covering how banks supervise settlements for export/import transactions by Ukrainian residents; and

— Regulation No. 8, covering the analysis and verification currency transaction documents by authorised institutions.

Overall the NBU's new foreign currency regulations follow these three key principles:

— **Simplicity**: minimising the number of rules and regulations;

— **Clarity**: consolidating these rules and regulations to comply with the currency law; and

— **Accessibility**: adding a foreign currency regulation page to the NBU website with an English translation and links to other laws.

Limits on electronic transfers

Limits on electronic transfers, "e-limits", apply to Ukrainian residents transferring funds outside the country, from both UAH and foreign currency accounts, while no such limits apply to non-residents.

Ukrainian residents can purchase and transfer foreign currency abroad on an annual basis in the following amounts:

— EUR 100,000 for individual residents to perform the obligations of a resident under insurance contracts, make investments, or credit a resident's offshore accounts; and

— EUR 2,000,000 for resident legal entities and individual entrepreneurs to conduct business.

E-limits do not apply to payments under an exhaustive list of exceptions, which includes transfers for (a) cross-border loans; (b) export-import transactions; (c) suretyships, pledges, mortgages, and guarantees; and (d) leasing and factoring. For these transactions, foreign currency purchases and transfers can exceed e-limits with no additional authorisation.

Repatriation of investments

There are no restrictions on the repatriation of investments or dividends from Ukraine by foreign investors.

Cross-border lending

Notification Rules

A bank servicing a cross-border loan must notify the NBU of the loan agreement as soon as it becomes aware of it, e.g. when the borrower informs them or when the first payment under the loan is received by the bank. Loan payments can be conducted by a servicing bank if it has all the loan documentation and the loan's terms have been reflected in the database of cross-border loans kept by the NBU.

The NBU has instructed banks to ask their clients to notify them of cross-border loans before any payment is due in order to avoid delays in the payments. It is good practice, then, to include protection clauses in agreements to avoid a breach of contractual obligations in the event of delays due to verification procedures by banks.

Interest Rates

Banks are required to verify whether that the interest rates and other lending costs of the loans they service reflect market conditions. The NBU advises banks to consider two main criteria when they review this aspect of a loan:

— the base rate for loans in the relevant currency in international or local capital markets; and

— whether the additional margin (above the base rate) reflects (a) Ukraine's sovereign risk and (b) the borrower's risk.

This means that even though the NBU has repealed the maximum interest rate cap, banks still might refuse to effect cross-border payments if they believe they are not in line with market standards, the parties' commercial activities, or Ukrainian legislation.

Early Repayment

There is no prohibition on early repayment. Loans in Ukraine can be repaid at any time as allowed by the terms of the loan agreement.

Accumulation of Foreign Currency

To service their debt under cross-border loans, borrowers may buy and accumulate foreign currency in their Ukrainian accounts up to an amount necessary for the next scheduled repayment. In the case of a lump-sum repayment on the final maturity date, accumulating the entire outstanding debt should be allowed.

Borrowing to purchase foreign currency

Foreign currency can be purchased with loans funded in UAH without limit.

No mandatory sale of foreign currency

Companies may retain any amount of foreign or national currency.

Current accounts for non-residents

Non-resident legal entities may open foreign currency and UAH current accounts in Ukraine. This expands the range of payments that non-residents can make through Ukrainian banks, which were previously limited to investment accounts only.

Settlements of export and import contracts

The time allowed for Ukrainian residents to settle any export-import transaction of more than UAH 4000,000 (approx. EUR 13,500) is 365 days. Import-export transactions below UAH 400,000 are exempt from this time limit, as are the following transactions:

— exporting and importing goods used in spacecraft and aircraft engineering;

— exporting and importing goods covered by a product-sharing agreement;

— importing goods under state defence contracts; and

— importing goods under procurement contracts between a specialised organisation and the Ministry of Health of Ukraine or one of its affiliates.

Services provided to foreign customers are also exempt from the 365-day settlement period, except for works or services related to insurance and transportation. Other exceptions to the 365-day limit on settlement include the sale of intellectual property rights or other non-proprietary rights and the purchase of medical services to treat Ukrainian citizens for rare diseases.

Verification of transactions

From 28 April 2020, the threshold for the financial monitoring regarding transactions was increased to UAH 400,000 (EUR 13,500) from UAH 150,000 (EUR 5,000). Currency control is mandatory for regular, related currency transactions that are below the same threshold. When verifying a transaction, banks must take into consideration, among others, the company's good standing and compliance of a transaction with the company's regular business transactions.

Verification does not apply to certain payments made abroad, including payments made by the state or under state guarantees, payments to international financial institutions, and payments made under agreements between Ukraine and the EU.

Banks are also required to carry out additional verification for all of the following currency transactions:

— under a cross-border loan agreement;

— by a Ukrainian surety under a suretyship agreement;

— for repatriating dividends to a non-resident;

— for repatriating proceeds from the sale of corporate rights or securities to a non-resident; and

— for transactions under the threshold of UAH 400,000 that are related and occur on a regular basis.

A bank, of course, may verify any other transaction that it deems necessary.
The process of verification includes the following:

— examining the good standing of the parties;

— checking if the transaction is in line with the regular commercial activities of the parties; and

— identifying the ultimate beneficial owners of the parties.

Insignificant foreign currency transactions

Under the currency law, carrying out small transactions under UAH 400,000 has been simplified. Both residents and non-residents may purchase and transfer foreign currency funds based on an application and without additional documentation, unless such operations performed without opening of the bank account or it is expressly requested by the bank. Subject to certain conditions, individuals may transfer foreign currency funds abroad without opening an account with a bank, and individuals may buy foreign currency online.

Economic sanctions

The Law of Ukraine "On Currency and Exchange Transactions" repeals the Ministry of Economic Development and Trade of Ukraine's sanctions for violating laws on foreign economic activity. These special economic sanctions included: (i) fines; (ii) a licensing regime; and (iii) the suspension of foreign economic activity for both resident and non-resident businesses.

Instead, the currency law creates a more clear-cut system of sanctions, with different mechanisms applied to banks, non-banking financial institutions, legal entities, and individuals. Sanctions are to be imposed for any breach of currency rules, including a breach of the procedures for (a) conducting settlements under currency transactions, (b) currency trades, and (c) currency transfers. The fines for legal entities other than banks and financial institutions will be determined by the Ministry of Finance and can be up to 100% of the value of the illegal operation. Fines for individuals are set in the Administrative Offences Code of Ukraine and may be up to UAH 68,000 (approx. EUR 2,300) depending on the individual's status and the violation in question.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Customs and international trade

Introduction

General Information

Ukraine has been a member of the World Trade Organization since 2008, and its customs legislation is generally harmonised with WTO standards and the International Convention on the Simplification and Harmonisation of Customs Procedures.

In 2014, Ukraine and the EU established the Deep and Comprehensive Free Trade Area between Ukraine and the EU, and the country undertook to revise its legislation to comply with EU standards in numerous areas, including customs.

The principal law governing customs in Ukraine is the Customs Code of Ukraine.

Customs Registration

Both legal entities and individuals acting as a "declarant" or "importer of record" may declare goods for customs clearance at Ukrainian borders. Only Ukrainian residents may act as importers of record, except in a limited list of circumstances such as individuals moving personal belongings or diplomatic missions transporting goods.

To conduct cross-border operations involving moving goods, a company must register with the customs authorities. The procedure is straightforward and can be done in a business day. Only Ukrainian entities and representative offices of foreign companies may register.

Authorised Economic Operator

Companies that conduct regular cross-border operations and have a positive record of tax and customs compliance may apply to become an authorised economic operator, which qualifies a company for simplified customs procedures. The benefits include an assumption of reliability and safety, as well as the following:

— providing less information before initiating customs clearance,

— storing goods that are under customs control on the operator's own sites,

— conducting customs clearance on the operator's own sites,

— priority customs clearance, and

— an exemption from the requirement to provide a financial guarantee.

The status of authorised economic operator is granted for an unlimited period but can be suspended or annulled.

Customs Broker

Importers of record may clear goods directly or through an authorised representative, namely a customs broker. Ukrainian businesses that conduct customs brokerage activities must first obtain a permit and register with the official register of customs brokers.

Customs regimes

The following customs regimes are recognised by the Customs Code of Ukraine:

Regimes allowing goods into the customs territory of Ukraine

Import

— allows goods for free circulation in Ukraine

— all customs duties and taxes apply

Re-import

— allows goods previously exported from Ukraine to re-enter the customs territory of Ukraine

— exemption from customs duties and taxes

Temporary Import

— allows goods of foreign origin to be temporarily brought into Ukraine

— full or partial exemption from customs duties and taxes

Inward Processing

— allows goods of foreign origin to be brought into Ukraine to be processed in Ukraine and then exported onwards

— conditional exemption from customs duties and taxes

Regimes allowing goods outside the customs territory of Ukraine

Export

— allows goods for final exportation out of Ukraine

— export duties and taxes apply (if required)

Re-Export

— allows goods previously imported into Ukraine to be shipped out of the customs territory of Ukraine

— exemption from customs duties and taxes

Temporary Export

— allows goods of Ukrainian origin to be temporarily moved outside Ukraine

— full or partial exemption from customs duties and taxes

Outward Processing

— allows goods of Ukrainian origin to be shipped outside Ukraine to be processed with further importation of produced goods into Ukraine

— conditional exemption from customs duties and taxes

Regimes allowing for transportation, storing and realisation of goods under customs control

Transit

— allows goods and vehicles to be moved across Ukraine under customs control

— customs duties and taxes do not apply

Customs Warehouse

— allows goods to be stored under customs control

— conditional exemption from customs duties and taxes

Duty Free Trade

— allows goods not intended for free circulation in Ukraine to be sold under customs control at customs border crossing points intended for international connections

— conditional exemption from customs duties and taxes

Free Customs Zone

— allows the shipping of foreign goods in and out of a free customs zone, as well as the export of Ukrainian goods into a free customs zone

— exemption from customs duties and taxes for foreign goods

— customs duties and taxes apply on Ukrainian goods (if required for export)

Regimes allowing for the disposal of goods under customs control

Destruction

— allows for the destruction of goods under customs control

— conditional exemption from customs duties and taxes

Surrender to State

— allows foreign goods to be relinquished to the State

— exemption from customs duties and taxes

Customs clearance

General Information

As is standard at international boundaries, all goods and vehicles crossing in or out of Ukraine are subject to customs and border control, and must undergo three main procedures:

(1) customs control
(2) customs formalities and
(3) payment of duties.

Customs offices located on Ukraine's border clear goods 24 hours a day, while others operate during set business hours. Goods transported through pipelines or power transmission lines are cleared with specially designated offices.

Customs Declaration

The importer of record or its authorised representative submits a customs declaration to the customs office or, in certain cases, a document which substitutes for a declaration. The customs code recognises the following types of customs declarations:

Regular Customs Declaration
A declaration comprising the full scope of information needed for clearance.

Preliminary Customs Declaration
A declaration filed in advance of goods reaching the customs territory of Ukraine for a preliminary assessment of the customs risks.

Temporary Customs Declaration
A declaration that may be filed if an importer does not have all the necessary information to submit a regular customs declaration. A temporary declaration must be supplemented with the missing information within 45 days.

Periodic Customs Declaration
A declaration that may be submitted for the regular movement of identical goods with the same counterparty under the same contract for up to 180 days.

Additional Declaration
A declaration filed in addition to a preliminary, temporary or periodic customs declaration that includes full details of transported goods.

Customs declarations may be submitted electronically with a qualified electronic signature, and they may also be filed in advance of goods crossing the border.

Customs Clearance Documents
Importers must submit supporting documents to confirm the information in the customs declaration. The most common supporting documents include:

— cross-border contract

— invoice

— packing list

— shipping documents (bill of lading, consignment note, CMR, etc.)

— documents confirming the customs value

— declaration or certificate of origin (if required)

— certificate of conformity (if required)

— documents confirming the payment of customs duties and taxes

Other documents may be required from an importer of record by law or at the request of the customs authorities depending on the chosen customs regime, the type of goods being transported, the means of transportation, etc. Supporting documents or their certified copies may be submitted electronically.

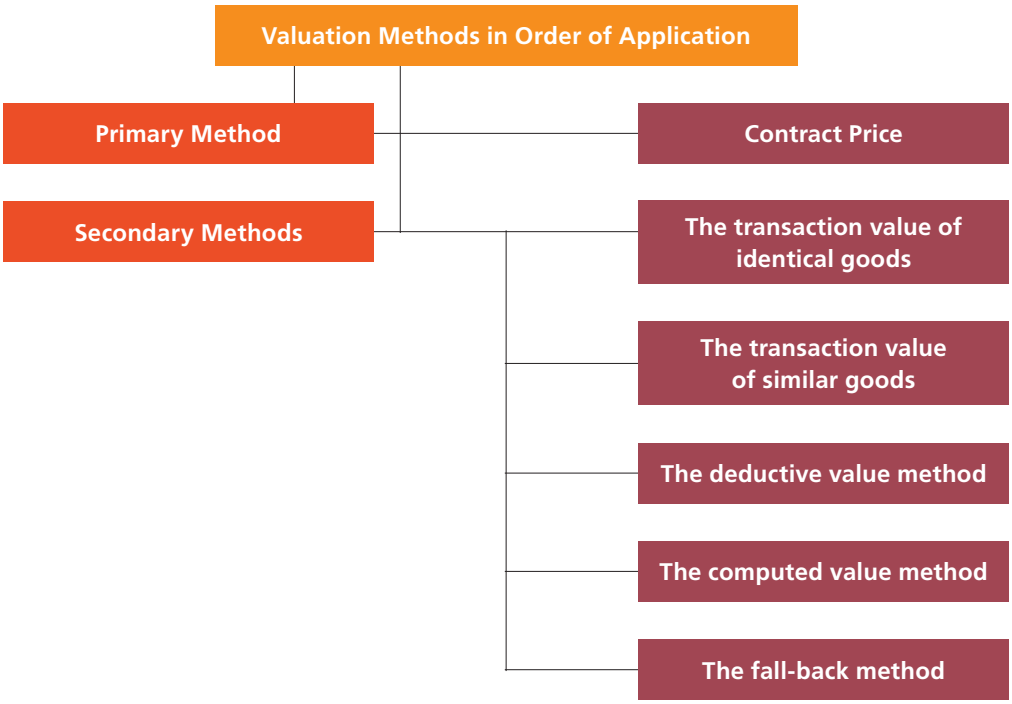
The documents must be in Ukrainian or an official language of a customs unions of which Ukraine is a member.

Term of Customs Clearance
Under Ukraine's customs code, clearance should be completed within four business hours from the presentation of the goods and the submission of the declaration; although this may be extended in exceptional circumstances. The goods are officially cleared when the customs office puts its stamp or other mark on the customs declaration and accompanying shipping documents.

Customs valuation and fees

Customs Value
Ukrainian rules for valuing goods for customs purposes are generally in line with international standards, namely the Agreement on the Implementation of Article VII of the GATT 1994. The customs value is generally based on the price paid or due for the goods, determined at the transactional value (primary method). If this is not available, then the value is determined by one of five secondary WTO methods, which apply in sequential order:

The customs value of goods imported into Ukraine commonly includes the cost of the goods, as well as insurance costs and transportation costs to the border of Ukraine.



Customs value is determined and declared by the importer of record based on true and correct documents. The exhaustive list of documents required for determination of customs value is set under the Customs Code. In a limited set of cases, the importer may have to submit a formal declaration of the customs value.

The customs office can refuse to clear goods if it believes that the information filed for determining the customs value is incorrect or incomplete, or if the customs value has been determined improperly.

Classification of Goods

The amount of duty to be paid and other non-tariff measures are based on the type of goods being imported (or exported) according to the Ukrainian Classification of Commodities in Foreign Economic Activities, which is based on the Harmonised Commodity Description and Coding System (2012 edition).

Customs Duties and Taxes

An importer of record pays (a) customs duties, both import and export, (b) value added tax, and (c) excise tax, if applicable.

Import duties are set under the Customs Tariff of Ukraine. There are three types of customs duties rates applied in Ukraine:

Preferential Rate
Charged on goods originating from countries with which Ukraine has preferential customs regimes under free trade agreements (e.g., from EU countries).

Reduced Rate
Charged on goods originating from countries who belong to the WTO or from countries that have been granted most-favoured nation status.

General Rate
Charged on all cases not covered by preferential or reduced rates.

Export duties are charged only on a few limited types of goods, such as livestock, gas, or scrap iron.

Value Added Tax is charged on imports at 20% (7% for medicines and medical appliances), while exports are generally charged 0% VAT. Excise tax is charged on imports of excisable goods at the rates set out in the Tax Code of Ukraine. Whenever a particular customs regime provides an exemption for customs duties, in most cases VAT is also exempted. (See sections "Value Added Tax" and "Excise Tax").

International trade restrictions

Trade Restrictions with the Russian Federation

In 2015 the Russian Federation suspended its Free Trade Agreement with Ukraine and placed an embargo on imports of certain Ukrainian products, and Ukraine introduced reciprocal measures in response. Currently, the following restrictions with the Russian Federation are in force:

- Application of preferential import rates to goods originating from the Russian Federation is ceased until 31 December 2020.
- Additional special duties apply on importation of certain goods originating from the Russian Federation, effective until Russian Federation ceases its discriminatory and unfriendly measures.
- An embargo applies to imports of certain listed goods originating from the Russian Federation (including food, medicines, clothes, equipment, etc.), effective until 31 December 2020.
- An embargo on automobile imports takes effect in 2020 (from 1 January 2020 to 31 December 2020).

Trade with Crimea

When the Russian Federation annexed Crimea, Ukraine introduced a blockade for the duration of the occupation, whereby all supplies of goods from Crimea to mainland Ukraine and *vice versa* are banned, except for limited items such as personal belongings and certain foods.

The blockade does not apply to electricity, goods of strategic importance, and humanitarian aid. At the same time, Ukraine established a free economic zone called "Crimea", allowing goods to circulate within Crimea as if in a free customs zone (see section "Customs Regimes" above).

These blockade measures have been declared unlawful in court; however the decision is under review by the court of cassation.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Real estate and property rights

In Ukraine, real estate refers to land, buildings and structures located on it. Each, however, has a separate legal regime. In each case, ownership and other rights to the real property requires registration in the State Register of Proprietary Rights to Real Estate (the "Property Register"), which can be carried out by both public and private registrars. All real estate information, including who holds title and/or rights to the property, as well as zoning and permitted uses, is publicly available online.

Legislative framework

A variety of laws and bylaws regulate real estate in Ukraine, among which the main pieces of legislation are:

— Civil Code of Ukraine;

— Commercial Code of Ukraine;

— Land Code of Ukraine;

— Law of Ukraine "On Land Lease";

— Law of Ukraine "On Land Management";

— Law of Ukraine "On Town Planning Regulation";

— Law of Ukraine "On Architectural Activity"; and

— Law of Ukraine "On State Registration of Proprietary Rights to Real Estate and their Encumbrances".

Use of land plots

Generally, a plot of land is a piece of surface land with established borders whose rights regarding ownership, uses, etc., are defined. From a legal standpoint, a plot is "formed" when its boundaries are determined, its technical specifications and registration have been approved by state bodies, and it is assigned a unique cadastral number, indicating that the parcel of land is registered in the State Land Cadastre.

A plot of land may only be used for the activities permissible for its category under the land code, which divides land into the following categories:

— agricultural land;

— land for residential and public buildings;

— land for nature preservation and other nature protection purposes;

— land for health-improvement purposes;

— recreational land;

— land for historical and cultural purposes;

— forest land;

— water resources land; and

— land for industry, transportation, communications, energy, defence, and other purposes.

A land plot category and permitted use are reflected in its land management documentation, its title documents, the State Land Cadastre, and the Property Register. Both the Cadastre and the Register are available online and contain general information about land plots, their boundaries, total area, ownership and users, if any, etc.

The owner and/or user of a registered land plot may apply to change its category. The procedure, however, depends on the land plot's current category and relevant town planning documentation.

A land plot's uses can be further restricted if it falls within a zone with special requirements. Thus, it is advisable to check for all existing and specific restrictions on a plot of land before starting a project. The most common restrictions are a prohibition on construction, prohibition on arrying out certain types of activity and a prohibition on residential development.

Title to land

Ukrainian law defines several types of title, each providing for a different range of rights and obligations:

— ownership;

— use:

- permanent use;
- temporary use:
- lease;
- servitude (easement);
- emphyteusis; and
- superficies.

As a side note, ownership to a plot of land automatically transfers when the ownership of a building or structure on the plot changes hands. Furthermore, ownership of real property comes with land use rights for servicing the property; however, a separate agreement must still be concluded, and the rights to the plot registered in the Property Register.

A moratorium currently restricts the change of designated use and sale of certain types of agricultural land. Moratorium was established in October 2001 and was designed as a temporary measure to allow parliament to put in place the legislative infrastructure for the market.

Subsequently, the temporary measure went on for almost two decades.

Under the moratorium, it is prohibited to:

1. Sell state and municipally owned agricultural land; and
2. Sell or change the designated use of certain types of privately-owned land, such as land shares (land distributed among the members of former collective farms), and land for commercial and individual farming.

While this covers the vast majority of agricultural land, there are still some types of private agricultural land, not covered by the moratorium, which can thus be acquired by Ukrainian residents.

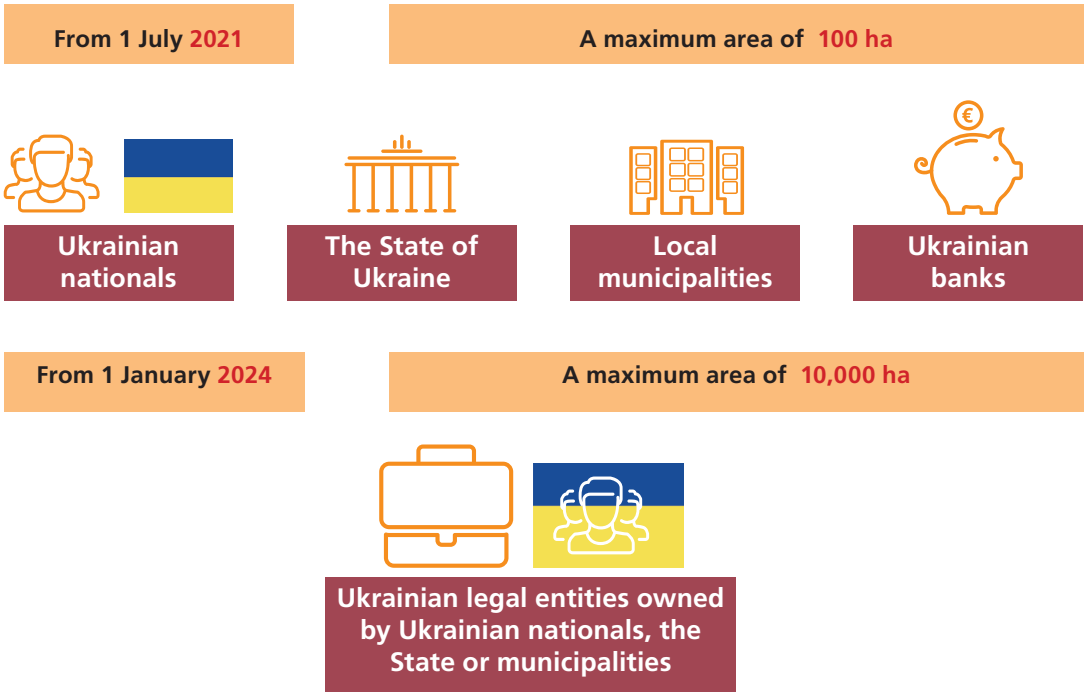
Under Ukrainian law, non-residents are not allowed to own agricultural land. Non-resident individuals and companies, however, may own non-agricultural land, both within a settlement and outside a settlement, if they acquire real property on the land plot, and in a settlement for the development of any building or structure.

However, on 31 of March 2020, the Ukrainian parliament adopted a new Law No. 2178-10, which lifts the moratorium on disposal of agricultural land plots. The new law will enable Ukrainian citizens to sell, buy and change the designated use of private agricultural land. The contribution of land shares to the charter capital of Ukrainian legal entities will also become possible.

Below are some of the highlights and important changes, introduced by the new Law:

— *From 1 July 2021*, agricultural land will be available for disposal for: Ukrainian citizens, the State of Ukraine, municipalities and Ukrainian banks. The maximum permitted total area of land, which is allowed to be accumulated by one person, is 100 ha. This limitation does not affect existing ownership and banks. Ukrainian banks, including those with foreign capital are allowed to obtain ownership rights as a result of collateral enforcement. Within two years, such land must be sold via land auctions.

— *From 1 January 2024*, the maximum permitted total area of land, which is allowed to be accumulated by one person will be 10,000 ha. The list of permitted buyers (on top of Ukrainian citizens, the State of Ukraine, municipalities and Ukrainian banks) will be expanded to Ukrainian legal entities owned by Ukrainian citizens, the state or municipalities.



Permitted buyers

— Foreign citizens and companies remain being restricted from acquiring agricultural land plots, unless otherwise decided at the Ukrainian national referendum.

— State and municipal agricultural land remains under the moratorium.

— According to law, for some persons the prohibition to acquire agricultural lands will remain unchanged regardless of the referendum's results. Those include:

- legal entities owned or beneficially owned by citizens of a state declared as an aggressor by Ukraine;
- members or former members of terrorist organisations;
- legal entities owned or beneficially owned by foreign states;
- legal entities in which the ultimate beneficiary cannot be determined;
- legal entities with ultimate beneficiaries registered in offshore zones as determined by the Ukrainian Government;
- persons and entities under economic or other sanctions imposed by Ukraine that restrict the acquisition of land plots, as well as their affiliated persons.

— Tenants hold a pre-emptive right to purchase agricultural land. The pre-emptive right to purchase land will become transferrable, i.e. a lessee will be able to transfer their pre-emptive right on the purchase of the leased land to a third party.

— If a person or a legal entity acquires agricultural land plot in breach of the new Law (e.g. the area of the land exceeds 100 ha before 1 January 2024 or 10,000 ha afterwards), then such land plot becomes a subject to confiscation by the court. The court then initiates the disposal of such land at the land auction. The same scenario applies if the permitted area of the land plot is exceeded.

Acquisition of title to land

Three forms of real estate ownership are recognised and protected in Ukraine, namely (i) state, (ii) municipal, and (iii) private ownership. The legal requirements for purchasing land depend on the form of ownership, the type of title (e.g., ownership or lease), and the land's permitted use(s).

As a rule, vacant state or municipal land is sold via auction, with the land going to the highest bidder. Exemptions to this include, among others, when a potential purchaser already owns a building or structure on the land or already leases the land. The Land Code describes the general procedure for acquiring municipal land, while detailed procedures are established by local regulations.

Acquiring state or municipal land for construction purposes requires prior development of a detailed plan of the territory (the "DPT") or a zoning plan, both being a local town-planning documentation providing for the planning organisation and development of the territory. For the development of the DPT, the potential land user obtains a decision on the development of the DPT from the local authority, namely: (i) the district state administration (if a land plot is located beyond the boundaries of any settlement) or (ii) the executive body of a village or city council (if a land plot is located within the boundaries of a settlement). Further, the potential land user needs to enter into an agreement on development of the DPT and conduct a public hearing. The local authority that passed the decision on the development of the DPT should approve the developed DPT. The term of development of the DPT usually varies from 2 to 4 months.

Acquiring state or municipal land requires an allocation procedure. Firstly, if the land plot is not yet legally "formed", the necessary land management documentation must be prepared and approved by the state and municipal bodies. Note that each particular purchase of state or municipal land requires a decision by the local municipal or state authorities.

Only when a valid land management documentation has been approved by the competent authority may the state or municipal body lease or sell the plot and subsequently enter into a lease or sale and purchase agreement.

The land management documentation is a set of documents and technical materials that establish the boundaries of the plot and its designation. Land management documentation should be prepared by a land manager who holds a certificate for this work. In some cases, land management documentation is also subject to state expert review.

The purchase of private land does not require an allocation procedure or the preparation of land management documentation. The purchase, however, should comply with general legal requirements for commercial transactions in Ukraine. For example, applicable laws set out the material terms that should be included in a land lease or a sale and purchase agreement for it to be valid. Although the courts tend not to declare agreements that omit one or more material terms invalid when a claimant's rights are not violated. Though complying with all relevant legal rules helps for a smooth and definite transfer of the land title.

Construction process and registration of title

In Ukraine, the development process is quite complicated and can be notionally divided into the following steps:

Obtaining initial data for the project design | Project design, approval, and state review | Preparatory work | Construction | Commissioning and title registration | Obtaining other permits

Initial data, construction design and approval

The legal requirements for preparing the design and construction plans are set out in the Law of Ukraine "On Architectural Activity" and the Law of Ukraine "On Town Planning Regulation", as well as in a number of relevant bylaws.

The first step is to obtain the initial data necessary for designing the planned building or structure. This initial data is found in the following documents:

Town planning conditions and restrictions

The design of the building or structure should be developed in compliance with town planning documents. A development restrictions document, issued by the local architectural bodies, will contain a set of planning and architectural requirements for designing a building or structure, such as its maximum allowable height, the maximum area of the plot that can be developed, the minimum space from the planned building or structure to the plot's boundaries, landscaping requirements, and more. The development restrictions are valid until construction is completed.

Technical conditions

The technical conditions are a set of terms and requirements of the utility providers, as well as the capacity and availability of their services or networks, such as water, heat, electricity and gas supply, as well as water disposal, external lighting, waste water disposal, and telecommunications. The required set of technical conditions will vary depending on the utilities required for that particular project, but they should be in line with the project's calculated parameters.

The technical conditions are issued by the agencies and organisations that own or maintain the relevant engineering networks and are valid until construction is completed.

Design assignment

The design assignment is prepared based on the development restrictions and determines the customer's reasonable requirements for the design, architectural, engineering, and technological solutions of the construction project, its key parameters and price. The customer is the individual or legal entity that holds title to the underlying plot of land and intends to develop the property.

The design assignment should be prepared and approved by the customer, with the input of a project designer. The design of the building or structure should be prepared under the supervision, or with the mandatory involvement, of a chief designer who holds a valid certificate, issued in accordance with the requirements of Ukrainian law. The design should comply with construction norms, rules, and standards.

At this stage, the designer must identify which class of construction consequences the project falls under. Ukrainian law divides all construction projects into three cconsequences classes:

— CC1: insignificant construction;

— CC2: construction of medium significance; and

— CC3: significant construction.

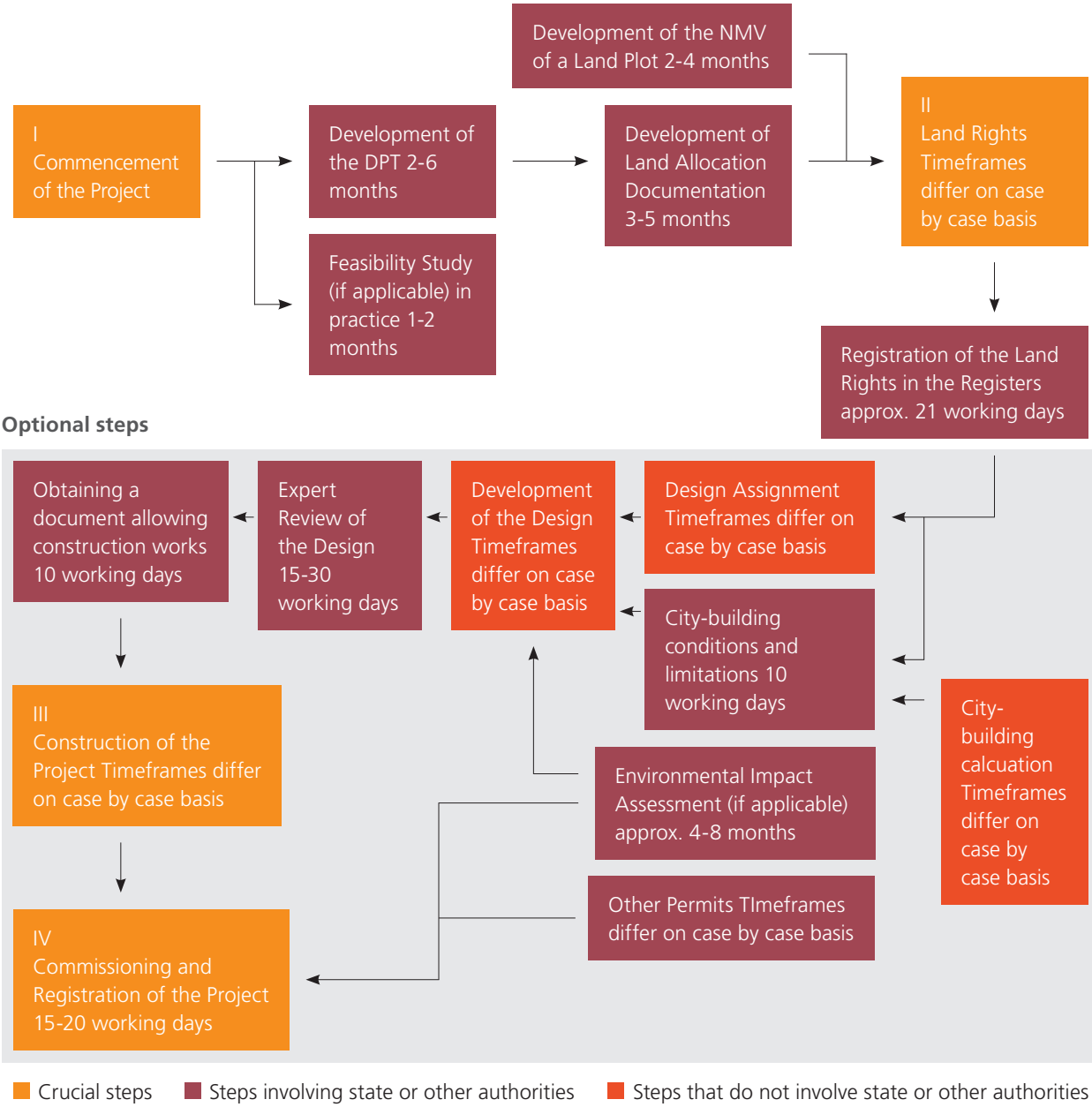
The construction design, prepared in accordance with the development restrictions, is subject to approval by the customer, and does not require approval by state bodies. In certain cases, however, expert review and/or an environmental impact assessment are pre-requisites for the customer to approve the design.

Classes of construction consequences

The criteria for assigning the class of construction consequences to a development project are based on the potential effect of the building or structure collapsing or otherwise failing, include the number of people who may be endangered, the financial or social damages, and the effect on infrastructure and transportation. The project's location — on heritage sites or protected zones — and other characteristics also contribute.

The standard steps of a development project in Ukraine

Development chart



Crucial steps Steps involving state or other authorities Steps that do not involve state or other authorities

Abbreviations and definitions

— Design: design documentation

— DPT: detailed plan of the territory

— Land Allocation Documentation: a land allocation project or the technical documentation on the determination of the boundaries of a plot of land

— NMV: technical documentation on the normative monetary valuation of a plot of land

— Registers: State Register of Proprietary Rights to Immovable Property of Ukraine and State Land Cadastre

Preparatory work
Ukrainian law classifies the following types of work, among others, as preparatory work:

— levelling the ground;

— fencing the site;

— demolition;

— land exploration;

— erecting temporary structures for organizing and servicing the construction;

— access roads;

— placing construction materials on the site;

— installing temporary engineering networks; and

— vegetation removal.

Preparatory work requires either (i) notifying the architectural authority of the start of the preparatory works, or (ii) notifying the architectural authority of the start of construction, or (iii) the architectural authority issuing a construction permit, as the case may be.

Construction works
The principal act setting out the legal framework for construction is the Law of Ukraine "On Town Planning Regulation". Under this law, CC2 and CC3 projects may only be carried out by a licenced contractor.

The Cabinet of Ministers of Ukraine on March 2020 adopted bylaw, according to which new licences are no longer being issued. Instead, certification of individuals responsible for certain type of works was introduced to replace construction licences. This change is a part of the upcoming construction reform. However, no relevant amendments to laws have been introduced yet, as well as no bylaws regulating issuance of certificates has been adopted yet. Thus, the licences are still required. The construction industry in Ukraine faces a transition period and legislation required to fully implement the reform is yet to be adopted.

To carry out the actual construction, the customer must file a notification of the start of construction (CC1) or obtain a construction permit (CC2 and CC3).

Information about the start of construction, construction commissioning documents, as well as lists of certified designers and licenced contractors are publicly available and can be reached via the official website of the architectural authority.

Notably, construction activities should be supervised during the entire construction period. Such supervision generally includes design supervision and technical supervision.

Design supervision is carried out by the project designer, other project design developers, or an authorised person, and ensures that the construction and other installations comply with the design documentation.

Technical supervision is carried out by a person engaged by the customer who holds a valid certificate in Ukraine. Technical supervision ensures that state constructions standards, norms, and rules are followed and oversees the quality and scope of the construction work.

If a designer or technical supervisor detects any non-compliance, he or she will request the contractor to remedy the issue. Otherwise the supervisor informs the customer and the architectural authority.

Commissioning and title registration stage
Once construction is completed the building or structure is commissioned; operating a completed construction project that has not been duly commissioned is prohibited by law.

The legal procedure for commissioning real property depends on its class of construction consequences (CC1, CC2, or CC3). Either the customer, or the contractor on the customer's behalf, submits a commissioning declaration, or the architectural authority issues a commissioning certificate based on signed attestations from the key responsible persons (e.g., the customer, general contractor, subcontractors if any, designer, technical supervisor, and insurance company.

The architectural authority verifies the submitted commissioning declaration or commissioning documents and issues a commissioning certificate. If the architectural authority deems it necessary, it may also examine the building or structure before registering the commissioning declaration or issuing the commissioning certificate, or it may refuse on specific grounds provided for by law. For construction of CC2 and CC3 objects such examination by the architectural authority is mandatory.

When construction is completed, the building or structure must undergo a technical inventory. A technical inventory measures a number of elements of the completed real property to determine its actual composition and technical condition. After the technical inventory is completed, a technical passport is prepared. This document specifies the key parameters of the property, such as its location, composition, technical characteristics, the area of the plot, its description, etc.

Information about the real property is then entered in the Rroperty Register as part of registering the title. Title registration is generally carried out based on the following documents:

— commissioning document;

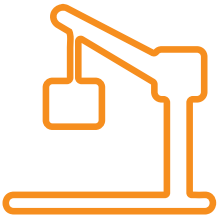
— document confirming assignment of a legal address;

— technical passport; and

— document confirming payment of the title registration fee.

The registrar verifies the submitted documents, registers the ownership right of the applicant, and issues the relevant extract confirming the registration of the title. The whole procedure, from submitting an application and supporting documents to the registration of ownership may take from two hours to five business days, and the registration fee will vary depending on the time required by the registrar (approx. EUR 7 to 350).

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020



Agriculture

General

Agriculture is one of Ukraine's principal economic sectors. According to the Ukrainian government, Ukraine has 41.5 million hectares of agricultural land and 32.4 million hectares of arable land. Ukraine's agricultural land benefits from its extremely fertile black soil (*chornozem*), which amounts for around of 25% of total black soil reserves in the world.

According to the International Trade Center, Ukraine is globally, by volume and export value, the largest exporter of sunflower oil and sunflower cake, the second-largest exporter of rapeseed, the fourth-largest exporter of corn, barley and dried peas, the fifth-largest exporter of walnuts, and the sixth largest export of wheat and soybeans globally. In the nine months of 2019, the foreign trade turnover of agricultural products amounted to around USD 20bn. The export of agricultural products amounted to 42.5% of foreign exchange earnings from the total exports of Ukraine and amounted to USD 315.8bn. The main export markets for agricultural products in 2019 were: Asia (43.0% of total global agriproducts exports), the EU (34.0% of total global agriproducts exports), Africa (12.0% of total global agriproducts exports) and CIS countries (8.0% of total global agriproducts exports).

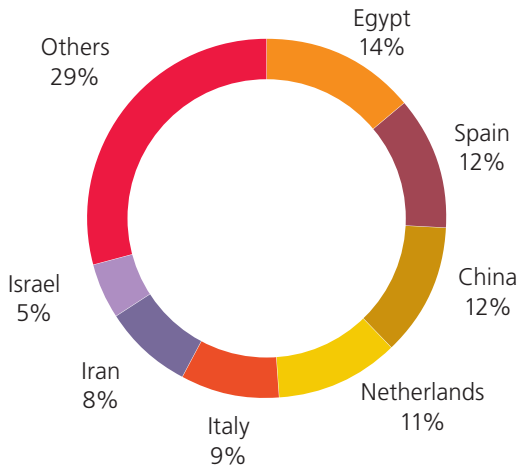
In the 2019/2020 marketing period Ukraine produced 75.1 million and 22.3. million tons of grain and oilseed crops, respectively.[10]

Ukraine has potential to significantly increase food production. Once called the breadbasket of Europe, Ukraine's black soil's production ability is only 40% utilised.

On 31 March 2020 the Ukrainian Parliament adopted a new Law No. 2178-10, which lifts the moratorium on disposal of agricultural land. Please see more about the newly introduced reform in "Real Estate and Property Rights".

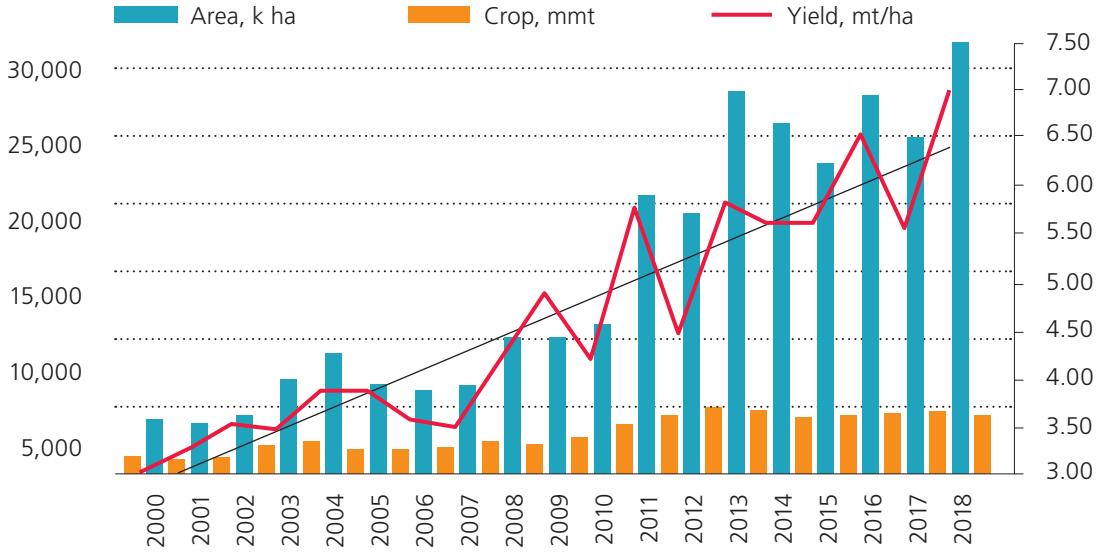
Ukrainian corn is a good example of farming development. Please see the graphs below.

Main destinations of corn export, 3Y avg[11]



[10] According to UkrStat data (http://www.ukrstat.gov.ua/)
[11] According to UkrStat data (http://www.ukrstat.gov.ua/)

Corn crop history[12]



Certain Regulatory Matters

On 8 December 2015, Ukraine's Parliament adopted the Law of Ukraine "On Amendments to Certain Ukrainian Legislation Related to Deregulation in Agribusiness" (the "Deregulation Law"). The Deregulation Law sets forth the cancellation of 22 out of 110 state approvals in the fields of crop production, cattle farming, pesticides and agrochemicals, fisheries, food products and environmental management. Furthermore, the Deregulation Law limits the powers of certain authorities to perform state control in Ukraine's agricultural sector.

On 30 December 2015, the Ukrainian government approved the 'Concept of the State Target Programme for Development of the Agricultural Sector of Economy' policy until 2022. The implementation of the programme is based on strategic priorities, which include, among others: (i) the harmonisation of Ukrainian law in the agricultural sector with EU and international standards by implementing the EU-Ukraine Association Agreement; (ii) the improvement of the competitiveness of Ukraine's agricultural entities through trade liberalisation, reduced trade transaction costs and export promotion; (iii) establishing a policy system for food security; (iv) the rationalisation and elimination of existing drawbacks in the agricultural sector's taxation system; and (v) restructuring and reorganising the agrarian state agencies and state-owned enterprises.

The Law of Ukraine "On State Support of Agriculture of Ukraine" dated 24 June 2004 (the "State Support Law") sets out various state policies aimed at supporting the development of the agricultural market in Ukraine. The State Support Law empowers the Ukrainian government to specify which kinds of agricultural products in any given year will be subject to state pricing regulation. Once specified by the government, the relevant ministry sets the minimum and maximum interventional prices for the relevant agricultural products. The minimum and maximum prices are not mandatory trade prices but are used as benchmarks against which the state will determine whether intervention is necessary to stabilise prices for agricultural products in Ukraine. The stabilisation of prices for agricultural products is carried out by the Agrarian Fund of Ukraine, a state specialised institution which is authorised to implement a pricing policy in agrarian industry.

State Support of Agriculture

For obvious reasons one of the major priorities of the Ukrainian government remains the support of the agricultural sector. Currently, state support to the agricultural sector is provided in two key forms:

— government grants, and

— special tax regimes.

[12] According to UkrStat data (http://www.ukrstat.gov.ua/)

The current system of direct budget grants was introduced in 2017 and is expected to operate until 1 January 2022. In order to qualify for such grants, agricultural producers must ensure that either: (i) sales of their own-produced agricultural products represent more than 75% of their total sales during the preceding consecutive twelve months; or (ii) they are included in the Register of recipients of budget subsidies; or (iii) they are engaged in activities set out by the State Support Law.

The State Budget of Ukraine for 2020 provides, among others, a general UAH 1.2bn budget allocation for interest loan compensation for farmers, UAH 1.0bn for cattle farming, UAH 1.0bn for compensation of costs regarding agricultural equipment, and UAH 400m for small family farms.

Under Ukrainian law, qualifying producers of agricultural products are permitted to elect between general and special regimes of taxation with respect to certain taxes. Currently Ukrainian agricultural producers registered as payers of the unified tax (which was introduced in 2015) are not obliged to pay any corporate profit taxes. In turn, the unified tax is calculated as a percentage of the normative value of a taxpayer's land. An agricultural producer is eligible to apply for the unified tax payer status if it meets both of the following requirements: (i) the share of its income from agricultural production equals or exceeds 75% of the total share of its income; and (ii) these agricultural products were cultivated on land that is owned or leased by such agricultural producer and the relevant ownership title or lease has been duly registered.

Access to Financing by SMEs

It is reported that Ukrainian farmers and other agricultural value chain players need better access to finance for working and investment capital and for managing risks. It is also challenging for small farmers to obtain bank finance because they often do not have collateral to secure bank loans. With that in mind, the IFC, a member of the World Bank Group, launched a project "Ukraine Crop Receipts" with the aim to develop an innovative financing instrument to assist small and medium agricultural producers. IFC reported that 2,000 farmers in Ukraine gain access to USD 1bn of financing through crop receipts.

The Law of Ukraine "On Crop Receipts" (the "Crop Receipts Law") has come into effect on 19 February 2013. It was drafted based on Brazil's experience where Cedula de Produto Rural has been successfully implemented around 20 years ago and has become one of the factors to stimulate the active growth of the agricultural industry. In Ukraine this instrument became widespread only after 2018 as not all regions participated in the IFC project.

Under the Crop Receipts Law, a crop receipt is a document issued by a farmer confirming the farmer's obligations secured by pledge to deliver a certain amount of farm produce or to pay the cash equivalent at a future date. A receipt can be issued to an input or equipment supplier, a bank, a trader or a financial investor that will be providing pre-harvest finance against such receipt. Whereas warehouse receipts can create collateral from grain stored in a warehouse, crop receipts allow farmers to obtain funding secured by agricultural products they will grow in their land plots.

The receipts exists in two forms: physical (or commodity) receipts (which is similar to a prepaid forward supply contract), and financial receipts (which is similar to a collateralised loan). There are certain formalities that should be complied in order to preserve creditors rights. The crop receipts should be certified by a local notary and registered in both crop receipts register and movable property encumbrance register.

A distinct advantage of crop receipts, as compared to other security instruments available under Ukrainian law, is that creditors are entitled to monitor crops pledged under the receipt and to harvest the crop in case of a farmer's default.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Data Protection

Legal Framework

The key data protection laws in Ukraine are:

— the Law of Ukraine "On Personal Data Protection" (1 June 2010); and

— the Strasbourg Convention for the Protection of Individuals regarding the Automatic Processing of Personal Data 1981, ratified by the Ukrainian Parliament on 6 July 2010.

The law on personal data protection ("PDP") essentially complies with EU Data Protection Directive (95/46/EC). So far, no changes have been made to the PDP law to reflect the GDPR approach. However, such changes are expected in light of Ukraine's commitments under the Ukraine – EU Association Agreement.

Scope of the PDP Law

The PDP law regulates the processing of personal data, which is broadly defined as any action or combination of actions with personal data, including collection, storage, and processing.

The PDP law also provides greater protection for data that comprises a special risk to the rights and freedoms of individuals ("special risk data"), including:

— racial or ethnic origin;

— political, religious, or philosophical beliefs;

— political party or trade union membership;

— health or sex life;

— biometric and genetic data;

— nationality;

— a person's location and routes of movement;

— information about a person's suffering from violence or other abuse.

The Regulatory Authority

The Human Rights Ombudsman[13] (Уповноважений Верховної Ради України з прав людини) is the main authority for regulating the protection of data in Ukraine and for supervising compliance with the PDP law.

Consent

A subject's consent is generally required to process his or her personal data. Consent should be:

— in writing; or

— in any other form, including electronic, that shows proof of consent.

[13] www.ombudsman.gov.ua/ua/page/zpd/

Consent is not required when:

— it is explicitly provided for by another law;

— the data is necessary in order to:

  - maintain national security;
  - maintain economic welfare; or
  - protect human rights.

For people under 18 years old, consent should be provided by a parent or guardian.

Other grounds for processing

The PDP law provides a limited number of grounds for processing personal data without consent, including the following:

— when authorisation is granted to the data controller by law exclusively for authorities to use the data;

— when the processing is governed by an agreement to which the subject of the data is a party or which is concluded for the benefit of that person; or

— when the data is processed in order to conclude an agreement with the subject, at his or her request;

— when the processing is necessary to protect the relevant person's vital interests;

— when the processing is necessary to perform the data controller's legal obligations; and

— when the processing is necessary to protect the legitimate interests of the data controller or third parties to which the personal data has been transferred, except for cases when the necessity to protect the subject's basic rights and freedoms overrides these interests.

Compliance Records and Data Protection Officers

In Ukraine, there are no specific requirements to maintain internal records or to establish internal processes or documentation regarding personal data. According to the PDP law, data controllers must comply with the following obligations:

— personal data must be processed openly and transparently;

— the method of processing personal data must correspond to the purpose of the processing;

— personal data must be protected from accidental loss, destruction, or unauthorised processing and access.

Organisations that process special risk data are legally required to create a separate department or to appoint a data protection officer ("DPO") who will be in charge of organising the protection of personal data. On the appointment of the DPO and/or the establishment of a relevant department, the Human Rights Ombudsman must be notified. Regarding other types of personal data, no such requirement exists. There are no requirements regarding the qualifications or skills of a data protection officer, and the PDP law lists only several functions which the officer should perform.

Data controllers and processors who process special risk data must notify the Human Rights Ombudsman within 30 days of starting to process the data. The notification is a formal procedure that includes completing an application, filing it with the Human Rights Ombudsman, and the Human Rights Ombudsman publishing the filed information on its official website.

Notification Requirements

The PDP law requires data subjects to be informed of any amendment, deletion, or destruction of their personal data within 10 business days. However, there is no specific requirement to inform subjects about security breaches.

Cross-Border Transfers

The PDP law requires that personal data be transferred only to countries which provide an adequate level of data protection. Specifically, the PDP law refers to the members of the European Economic Area as well as all other countries that have joined the Convention of the Council of Europe on Protection of Persons in Connection with Automated Personal Data Processing.

Alternatively, cross-border personal data transfers are possible only if one of the following conditions is satisfied:

— express consent is provided by the data subject;

— it is necessary in order to conclude or fulfil an agreement between the data controller and the third party for the benefit of the data subject;

— it is necessary for protecting the key interests of the data subject;

— it is necessary for protecting the public interest or to pursue legal remedies; or

— the data controller provides guarantees that it will not interfere with the private and family life of the data subject.

Enforcement

Ukrainian law sets out various levels of liability, both monetary sanctions and criminal liability, for a breach of data protection rules, including but not limited to the following:

— an administrative fine up to UAH 34,000 (approx. EUR 1,050) for a failure to comply with the PDP law that results in unauthorised access to personal data;

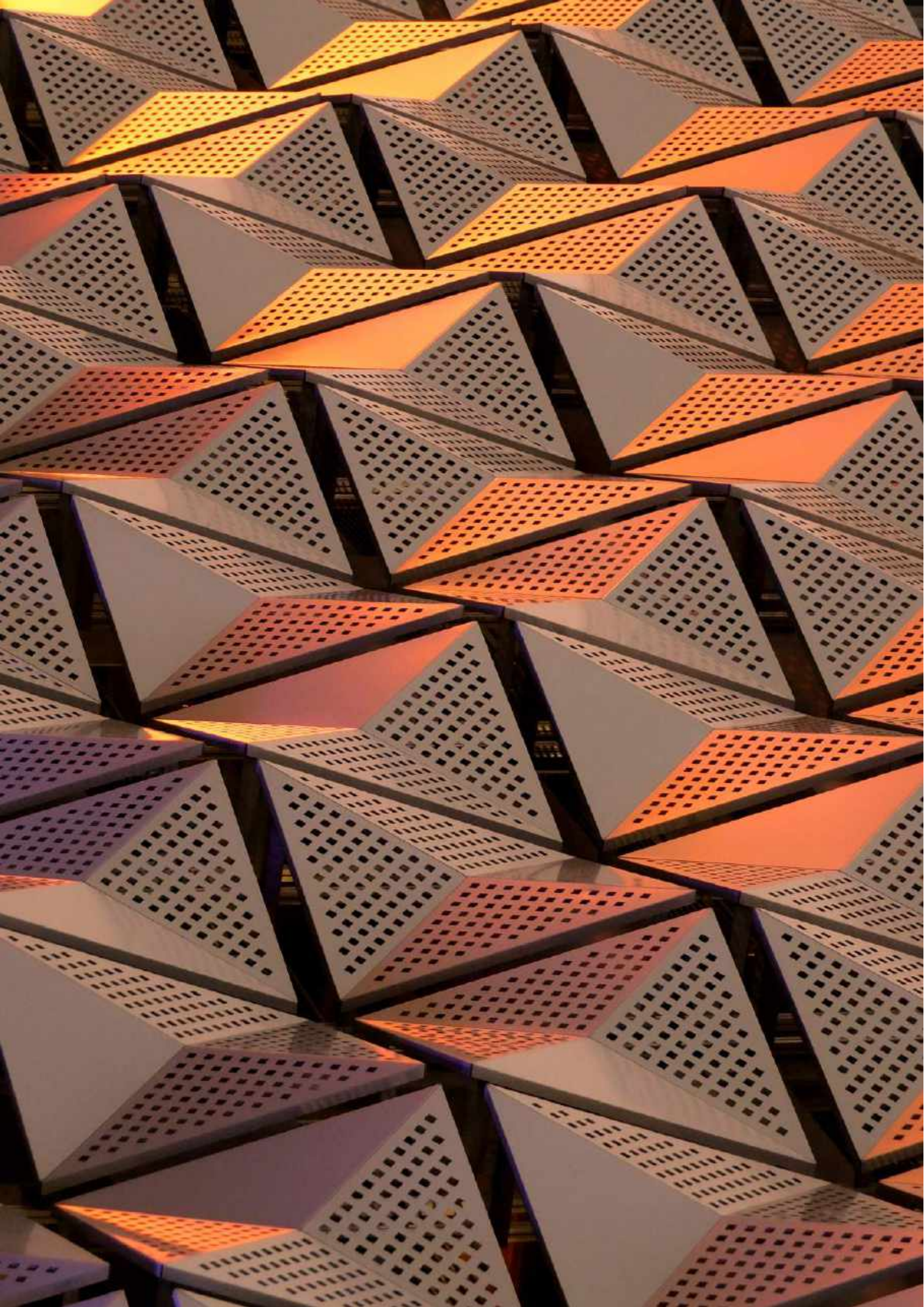
— criminal liability, including imprisonment for up to 5 years, for illegal collection of personal data or illegal storage or dissemination of personal data.

— A data subject may seek compensation in court for damages caused by a breach of personal data protection rules.

Specifics of COVID-19 period

Apart from the brief clarification on employers processing their employees' health data mentioned above, the Ombudsman has not issued any other guidance or comments to businesses or the public on how to comply with the data protection requirements and data subject rights during the COVID-19 pandemic.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020



Mergers and Acquisitions

Background

In the past, the majority of M&A activity in Ukraine consisted of domestic deals driven by major Ukrainian players. However, interest from foreign investors is growing rapidly; 2019 was the busiest period for M&A activity in five years, indicating increasing confidence amongst the investment community.

Over 2019, 132 deals were recorded, a 25.7% increase against a year earlier making it the strongest year since 2015. Deal value was also up and reached EUR 1.77bn, the highest for six ears.[14]

Ukraine's M&A market is therefore thriving, but it remains to be seen how the COVID-19 pandemic will impact activity and deal value in 2020.

Deal structure

Share acquisitions are far more common than asset deals in Ukraine, and joint venture transactions are frequently structured at the level of an off-shore holding company. Common jurisdictions are those which have a favourable tax and bilateral investment treaty in place with Ukraine such as the Netherlands or Cyprus. The transaction documents are also frequently governed by foreign (i.e. non-Ukrainian) law, typically the laws of England and Wales, intended to provide comfort to foreign investors seeking familiarity and increased certainty in an otherwise potentially unfamiliar market.

Ukraine is seeking to increase the attractiveness of structuring M&A deals at the Ukrainian level, thus likely increasing the use of Ukrainian law. Ukrainian law now makes it possible to implement shareholder agreements ("SHAs") at the level of Ukraine itself. At the same time, there are a number of risks (which are magnified even further in the case of a minority shareholder) associated with implementing a joint venture onshore in Ukraine. In particular:

— SHAs remain largely untested in Ukraine. Court practice under the new underlying legislation is lacking and past negative court practice has not yet been overturned;

— the possibility of applying foreign law to onshore joint venture SHAs is currently questionable; and

— given the lack of court practice, there is no clarity whether Ukrainian law would recognise all the instruments and concepts which are commonly used in foreign jurisdictions. There is therefore a risk that certain provisions (particularly those in relation to minority rights) if embodied in a Ukrainian SHA could potentially be deemed unenforceable or may not operate in the same way as in foreign jurisdictions.

In view of the above, the use of English (or other foreign) law governed SHAs at the level of a holding company in a tried-and-tested jurisdiction has remained the prevailing market practice, particularly for larger, more high calibre deals, as the parties can avail themselves of all he customary instruments used in foreign-law SHAs and be comfortable about their enforceability, knowing that they have been tested (in the courts) many times before.

[14] The figures contained in this section are taken from the "Emerging Europe: M&A Report 2019/2020" https://cms.law/en/gbr/publication/emerging-europe-m-a-report-2019-2020"

However, in those cases where the joint venture will be structured at the Ukrainian level and it is not commercially viable for the parties to carry out a corporate restructuring to achieve the necessary ownership structure for an SHA at the level of a foreign holding company, then the parties may opt to enter into a Ukrainian law-governed SHA to regulate their relationship, albeit potentially not to the same extent as would be permitted by a foreign law-governed SHA.

Regulatory approvals

A change of control over a business, the establishment of a joint venture by two or more founders, or an acquisition of 25% or more of the shares in a Ukrainian company requires a merger clearance approval from the Anti-Monopoly Committee of Ukraine ("AMC") if the parties to the transaction meet certain financial thresholds. In addition to merger clearance, some joint venture transactions will also require a separate "concerted actions" clearance from the AMC if they result in the coordination or limitation of competition between the parties. For example, concerted actions clearance, subject to certain exceptions, will likely be triggered by the incorporation of restrictive covenants in the transaction documents, such as non-compete or exclusivity clauses. Please refer to the Competition section of this guide for further information in relation to merger control in Ukraine.

Depending on the sector the target business operates in, certain other regulatory approvals or notifications may also be required. For instance, in many cases a prior notification must be submitted to the National Bank of Ukraine when undertaking M&A transactions in the banking sector, and transactions in the financial services or securities sectors may require consent from the relevant regulatory body.

Key differences between European and US deals[15]

Deals in Ukraine tend to follow most of the legal and commercial trends seen in other European markets. M&A processes in Europe revolve around a backbone that is similar to any M&A process that might be carried out in the US. There are nevertheless differences between the uropean and US approaches, including as follows:

— *Purchase Price Adjustment Clauses* ("PPAs"): in 2019 95% of US deals included a PPA (usually with working capital as the adjusting factor), compared with just 45% of European deals;

— *Liability caps*: the US market has a more consistent and less varied range of liability caps in that the vast majority (95%) of deals in 2019 had a cap of 25% or less of the purchase price. Indeed, 66% of US deals have a cap of less than 10% of the purchase price. In contrast only 18% of European deals with a liability cap in 2019 had a cap of less than 10% of the purchase price and many European deals (28%) had a liability cap equal to the purchase price as compared with just 3% of US deals. Another way of looking at it is that the European market is more 'buyer friendly';

— *MAC clauses*: in contrast to Europe, where only 16% of deals included MAC clauses in 2019, there were MAC clauses in 97% of US deals according to the most recent US ABA Report for 2018 and Q1 2019. The European approach is therefore largely to avoid MAC clauses, and address any specific transaction, asset and/or deal-related concerns as specific conditions precedent instead; and

— *Baskets*: a basket (e.g. a minimum amount of harm that needs to be reached before a buyer has the right to claim against a seller for breach of warranty under a share purchase agreement) is common both in Europe and in the US. However the key difference is that baskets tend to be 'excess only' in the US, whereas in Europe they tend to be on a first-dollar basis (i.e. once the basket threshold is reached then a buyer can claim everything in and above the basket – and not just the excess as is typical in the US).

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

[15] The figures contained in this section are taken from the 2020 edition of CMS' European M&A Study (twelfth edition) https://cms.law/en/nld/news-information/cms-european-m-a-study-2020

Privatisation in Ukraine

General

In March 2018, the long-awaited Law of Ukraine "On Privatisation of State and Municipal Property" (the "Privatisation Law") entered into force. The Privatisation Law established a conceptually new approach towards privatisation in Ukraine and was designed to become a game changer. Its declared objective was to foster the privatisation process by providing clear and transparent rules and procedures.

The State Property Fund of Ukraine (the "Fund", and together with its local departments and representative offices, or municipal authorities (the "Privatisation Authorities") and the Cabinet of Ministers of Ukraine (the "Government") have repeatedly emphasised the strategic importance of privatisation for the Ukrainian economy and the need for success privatisation stories. With the adoption of the Privatisation Law, foreign and domestic investors have boosted their hope and trust in the privatisation in Ukraine.

In 2019, privatisations of small-scale assets generated a total revenue of ca. UAH 550 million. At the same time, the Privatisation Law has not yet been tested for privatisation of large-scale assets, which has, for the period of the Covid-19 quarantine in Ukraine, been suspended (yet the assets are nevertheless being prepared for privatisation). The current list of large-scale privatisation assets includes a number of potentially attractive assets for those interested in investing in energy (Centrenergo (power generation) and a number of regional power distribution companies), mining (Artemsil (salt production) and United Mining and Chemical Company), hotels & leisure (President Hotel), chemicals (Odesa Port Plant (fertiliser production)), agriculture (Ukragroleasing (leasing of agricultural equipment) and State Food and Grain Corporation of Ukraine (national grain market operator)), machinery (Azovmash and First Kyiv Machine-Building Plant) and others.

The Government set the privatisation of both small-scale and large-scale assets as one of its utmost priorities for the coming years and expects to generate a further total of ca. UAH 12bn from privatisation of more than 300 targets in the nearest future.

Categories of privatisation assets

Assets, which can be privatised, are divided into two categories: large-scale assets and small-scale assets.

Large-scale assets are asset complexes of state and municipal enterprises and shares in companies, where Ukraine as a state owns at least 50% shares, and which total asset value exceeded UAH 250 mln. (approximately EUR 9.25 mln.) in the previous financial year. A list of large-scale assets available for privatisation is approved by the Government upon a motion of the Fund.

Small-scale assets include (for example) objects of unfinished construction, separate property of state and municipal enterprises and other assets that do not fall into category of large-scale assets.

Privatisation methods

The Privatisation Law envisages only two methods of privatisation being as follows:

— a privatisation auction (which can be conditional (e.g. with certain privatisation conditions being imposed on investors), unconditional, on the basis of a step-by-step reduction of the starting purchase price and further submission of tender bids, on a reduced price basis, and on a price survey basis (e.g. when an auction is held in two stages, the first being to collect and analyse existing bids with a view to determining the starting purchase price)); and

— a sell-out (in the event that only one bidder participates in the auction, then the privatisation asset may be sold to such bidder at its proposed price, as long as it is not less than the starting purchase price (with certain exceptions)).

Qualification requirements for bidders

Any person can qualify as a bidder, unless it is included into the list of persons banned from participating in Ukrainian privatisations.

The Privatisation Law sets outs that (among others) the following entities are banned from participating in Ukrainian privatisations:

— state enterprises owned by Ukraine;

— (A) a country recognised by the Verkhovna Rada of Ukraine as a state-aggressor (currently, the Russian Federation), (B) companies (and entities controlled by them) where the state-aggressor owns any interest, or (C) companies, where at least 10% of shares are beneficially owned by the state-aggressor (except for companies which shares are traded on foreign stock exchanges, other than those located in such state-aggressor);

— companies or individuals, which are subject to sanctions imposed by Ukraine, and their affiliates;

— (A) companies incorporated in offshore jurisdictions (as defined by the Government, which list currently includes the Isle of Man, BVI, Guernsey, Cayman Islands, Monaco, Marshall Islands, to name a few) with non-transparent ownership structure (i.e., which ultimate beneficial owners are not fully disclosed), or (B) companies incorporated in non-cooperative jurisdictions (as defined by the Financial Action Task Force (FATF) ("FATF Companies"), and companies, where at least 50% of shares are owned directly or indirectly by such FATF Companies,

— companies whose ultimate beneficial owners are not disclosed in accordance with the applicable Ukrainian law;

— external advisors that have been engaged in preparation of the asset for privatisation; and

— persons (and their affiliates) that have been a party to a privatisation sale and purchase agreement, which has been terminated due to its breach by such person.

Determination of the starting purchase price

The starting purchase price for large-scale assets is determined by an advisor (if involved) or, if no advisor is involved, by an auction committee following the valuation methodology approved by the Government. In case of small-scale assets, an auction committee determines its starting purchase price on the basis of the asset's balance sheet value or, if the balance sheet value is not available, following the valuation methodology approved by the Government.

No merger clearance exemption

The Privatisation Law does not establish any exemption from the requirement to obtain clearance of the Anti-Monopoly Committee of Ukraine for privatisation, if such a clearance is required under applicable law, and potential investors are therefore required to obtain such clearance before the privatisation is completed (if applicable).

Anti-leakage protection for investors

The Privatisation Law envisages additional protection to investors (being potential owners) against any extraction of value from the company/property complex, which is subject to privatisation. In particular, none of the following transactions (among others) can be entered into by the target company without a prior approval of the Privatisation Authority during the period starting from the adoption by the Privatisation Authority of a decision on privatisation and ending upon the transfer of title to the target company/property complex to the winning bidder:

— any transactions which value exceeds 10% of value of the target company's assets for the preceding financial year;

— any loan or credit agreements, factoring agreements, debt assignment/set-off agreements;

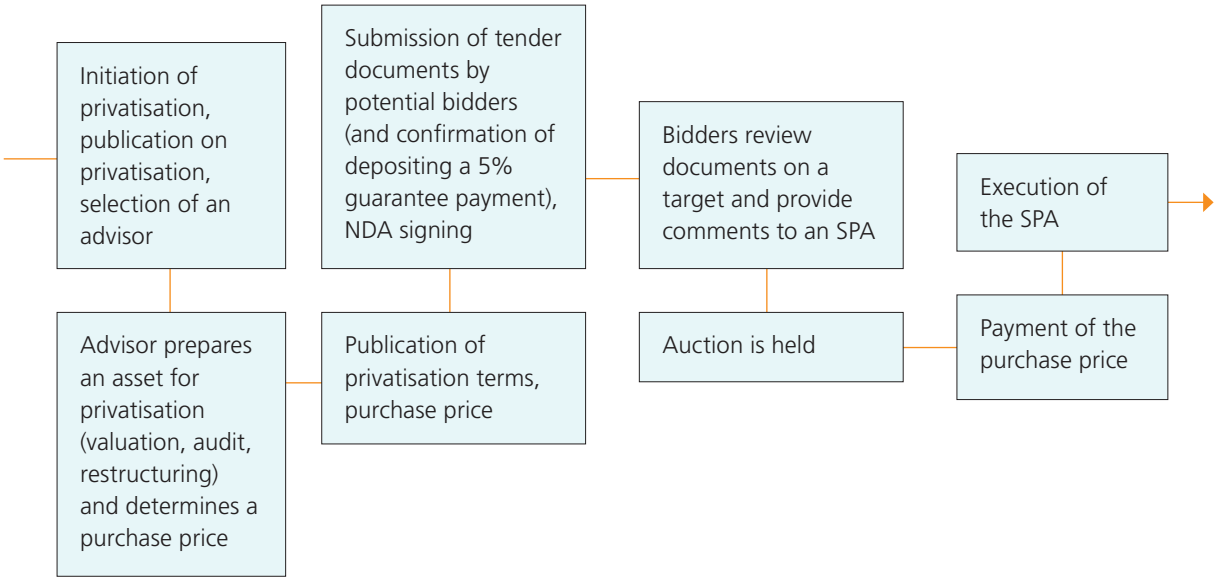
— any suretyship/guarantee agreements;

— any agreements on the sale or purchase of land plots or real estate, or agreements leading to diminution of value of such property;

— any agreements on establishment of encumbrances over land plots, real estate or fixed assets of the target company;

— any agreements on the lease of land plots, real estate or fixed assets of the target company; and

— any transactions on the sale, purchase, disposal or acquisition in any other way of shares, participatory interests or any other securities.



Schematic description of the key steps of large-scale privatisation (assuming advisors are involved).

Large-scale privatisation

The general rule is for large-scale privatisations to be carried out via conditional privatisation auctions, which implies that certain privatisation conditions are imposed on investors.

A large-scale privatisation includes the following key steps and features:

— initiation of the privatisation, which may be done, among others, by an interested bidder;

— adoption and publication by a Privatisation Authority of a decision on privatisation of a particular asset (not later than 30 days after approval of the list of assets to be privatised);

— preparation of the target asset for its privatisation, which may include its valuation, audit, restructuring, etc. (including with involvement of advisors selected on a transparent and independent basis);

— creation by the Privatisation Authority of an auction committee to determine the privatisation terms, save that the starting purchase price is determined by an advisor (if engaged);

— preparation and publication by the Privatisation Authority of a privatisation information note setting out, in particular, information about the privatisation terms and conditions, as well as the starting purchase price;

— the privatisation auction should take place within 30 - 60 days following the publication date (the "Auction Date");

— the bidder submits a set of tender documents, and provides confirmation that it has deposited 5% of its proposed purchase price into a bank account of the Privatisation Authority (or submits an irrevocable bank guarantee in lieu of the deposit);

— following publication of the privatisation information note and execution of a non-disclosure agreement, the bidder receives a set of documents with detailed information on the target asset;

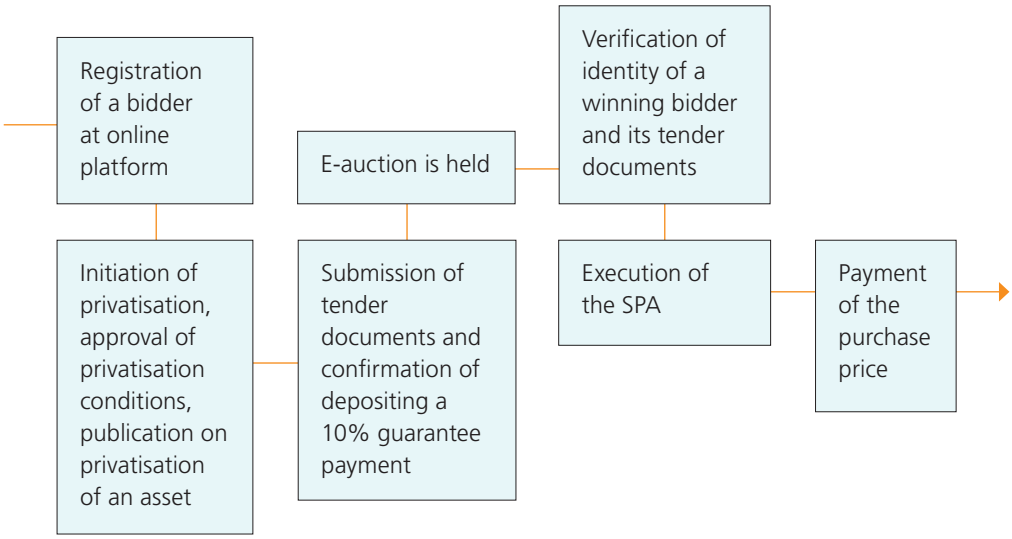
— the bidder may provide comments on the draft of a privatisation sale and purchase agreement (the "SPA"), and the Privatisation Authority should, not later than 10 days prior to the Auction Date, provide the final draft of the SPA to all the bidders;

— on the Auction Date, an auction will be deemed to have taken place if at least two bidders were present, and at least one bidding step (being not less than the starting purchase price) was made. In case there is a single bidder, the auction is deemed not to have occurred, however the Privatisation Authority may decide to sell-out the target asset to such bidder nevertheless (provided that its proposed purchase price is not lower than the starting purchase price);

— the winning bidder transfers the purchase price for the target asset to a designated account of the Privatisation Authority within 30 days from the date of signing the privatisation SPA; and

— in the event the target asset is not sold during the initial conditional auction or the sell-out stage, the Privatisation Authority may decide to sell such asset at an unconditional auction or an auction on a reduced-price basis (with a 25% or a 50% discount). Finally, an auction on a price survey basis may be held if none of the above results in the actual sale of the target asset.

Small-scale privatisation



Schematic description of the key steps of small-scale privatisation.

Small-scale privatisations should be carried out via online platforms only (and currently, these are done via ProZorro.Prodazhi).

A small-scale privatisation includes the following key steps and features:

— initiation of the privatisation, which may (similarly to large-scale privatisation) be done by an interested bidder;

— adoption and publication by a Privatisation Authority of a decision on privatisation of a particular asset (not later than 30 days after approval of the list of assets to be privatised);

— creation by the Privatisation Authority of an auction committee to determine the privatisation terms (within 10 days after the date of a decision on privatisation of the asset), which should then be published within 10 days upon their approval by the Privatisation Authority;

— the privatisation auction should take place within 20 - 35 days following the publication date;

— all procedures relating to submission of the tender documents (including a confirmation of depositing a 10% guarantee payment), bidding and determination of a winning bidder are automated and processed through the relevant online platform;

— an electronic auction will be deemed to have taken place if at least two bidders participated, and at least one bidding step (being not less than the starting purchase price) was made. If the electronic auction is deemed not to have occurred and there is a single bidder, the Privatisation Authority may decide to sell-out the target asset to such bidder nevertheless (provided that its proposed purchase price is not lower than the starting purchase price). If the sell-out is not carried out, then the auction gets re-launched automatically by the online platform on a reduced-price basis (with a 50% discount);

— after the electronic auction has been held, the Privatisation Authority verifies whether the winning bidder has complied with all applicable requirements of the Privatisation Law (including qualification requirements) and approves the minutes of the auction and execution of the SPA; and

— the winning bidder transfers the purchase price for the target asset to a designated account of the Privatisation Authority within 30 days from the date of signing the SPA.

Governing law and dispute resolution

The Privatisation Law allows the parties to apply (currently, up until 1 January 2021) the laws of England and Wales to govern a large-scale privatisation SPA – though the actual share transfer mechanics will remain subject to mandatory requirements of Ukrainian law. Such option is not available for small-scale privatisation SPAs.

The parties may also agree to refer disputes arising from the SPA to international commercial arbitration, with the Arbitration Institute of the Stockholm Chamber of Commerce being a default orum (if the parties fail to reach an agreement on the arbitration forum).

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Banking and financial services

Banking reform

The Ukrainian banking sector has undergone significant reform since 2014. Measures were introduced to reduce the number of banks, down from 180 to 75 in 2020. The National Bank of Ukraine implemented a risk-oriented supervisory review, increased information disclosure requirements, and initiated the transition to Basel III standards. Most experts agree that the banking sector is now more transparent and competitive, and in 2018 Ukraine's banks started earning income for the first time since 2013, gradually becoming one of the most profitable markets in Central and Eastern Europe.

Despite these successes, more efforts are needed to maintain the steady growth of the banking market, in particular, measures to reduce the high number of non-performing loans. As of the beginning of 2020, 48.4% of bank loans were non-performing.

In May 2020, the Parliament adopted comprehensive amendments to banking and other specialised legislation aimed at improving the procedure of removing insolvent banks from the market, dispute resolution and banking supervision matters. The implementation of new rules for insolvent banks should prevent insolvent banks from being brought back to the market and to avoid the restitution of such banks to their former shareholders.

Later, to mitigate the negative impact of COVID-19 on the Ukrainian banking sector, requirements for the minimum amount of charter capital for the banks were reduced from UAH 500 million to UAH 200 million (EUR 6.9 million). Softening the requirements for the minimum amount of the charter capital is substantial support for small banks with Ukrainian capital that are substantially affected by the financial crisis.

In recent years, and in particular in 2020, the Ukrainian banking sector experienced significant improvements. Introduced reforms facilitate the stability of the Ukrainian economy, increase its attractiveness for investors, and gives an access to further financing from the IMF. Efficient development of banking sector will depend considerably on following reforms, including judiciary reform to strengthen the impartiality of Ukrainian courts.

Legal framework

The following laws govern banking and financial services in Ukraine:

— the Civil Code of Ukraine dated 16 January 2003;

— the Commercial Code of Ukraine dated 16 January 2003;

— Law of Ukraine "On Banks and Banking Activity" No. 2121-III dated 7 December 2000;

— Law of Ukraine "On National Bank of Ukraine" No. 679-XIV dated 20 May 1999;

— Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" No. 2664-III dated 12 July 2001;

— Law of Ukraine "On Financial Leasing" No. 723/97-BP dated 16 December 1997;

— Law of Ukraine "On Credit Unions" No. 2908-III dated 20 December 2001;

— Law of Ukraine "On Non-State Pension Provision" No. 1057-IV dated 9 July 2003;

— Law of Ukraine "On Joint-Stock Companies" No. 514-VI dated 17 September 2008; and

— Order of the President of Ukraine "On the National Commission Conducting State Regulation of the Financial Services Markets" No. 1070/2011 dated 23 November 2011.

Financial regulators

Currently, financial services in Ukraine are regulated by the NBU, which overseas banking and funds transfer activities; the National Commission Conducting State Regulation of the Financial Services Markets (Financial Services Commission), which oversees financial services markets; and the State Commission for Securities and Stock Market (Securities Commission), which oversees securities markets and derivatives. The following types of businesses are considered financial institutions:

— banks;

— credit unions;

— pawnbroker;

— leasing companies;

— trust companies;

— insurance companies;

— pension accumulation institutions;

— investment funds and companies; and

— other legal entities that offer only financial services.

On 1 July 2020, however, legislation with the goal of regulating financial services markets more efficiently will come into force, moving Ukraine to the "two agency" model and substantially changing the roles of the regulatory institutions. Under the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Improve Functioning of the State Regulation of Financial Services Markets" No. 79-IX, the Financial Services Commission will close and its regulatory powers will transfer to the NBU and the Securities Commission.

According to the NBU, it is at the final stage of the preparatory works and ready to accept and perform the functions of the Financial Services Commission. The regulator made transformation of its internal bodies, developed regulation concepts, amended reporting standards and procedures, and continues to work on improvement of non-banking financial services regulation.

New Regulatory Roles starting from 1 July 2020

National Bank of Ukraine

- Credit unions
- Financial leasing companies
- Factoring companies
- Insurance companies
- Pawnshops

Securities Commission

- Non-state pension funds
- Construction financing funds

National Bank of Ukraine

Ukraine's central bank has a broad regulatory and supervisory role that includes:

- determining and implementing monetary policy;
- regulating and overseeing the activities of banks;
- licensing banking activities;
- acting as the creditor of last resort for banks;
- setting mandatory economic standards for banks; and
- overseeing the activities of financial institutions.

The NBU's highest governing body is its Council, which develops the general principles of the country's monetary policy and oversees its implementation. Of its nine councillors, four are appointed by the President of Ukraine, and four others by Parliament. The ninth member is the council's chairman, who is nominated by the president and thereafter appointed by the Parliament.

Financial Services Commission

The Financial Services Commission regulates the activities of non-securities and non-banking financial institutions. It is subordinate to the president and accountable to Parliament.
The Financial Services Commission:

- registers financial institutions;
- sets minimum capital requirements; and
- issues licences for financial institutions.

Regulated banking and financial services

Companies in Ukraine that offer financial services require a license. Under current regulation this includes but is not limited to:

- issuing payment documents, payment cards, or traveller's cheques;
- clearance and other types of settlement facilitation;
- managing financial assets in trust;
- currency trading;
- financial leasing;
- lending funds;

— providing guarantees and suretyships;

— the transfer of funds;

— insurance services and pension accumulation services;

— professional securities trading;

— factoring;

— administering financial assets to purchase goods within a group;

— property management to finance construction; and

— transactions with mortgage assets in order to issue mortgage securities.

Banking services are recognised as a subdivision of financial services and include:

— accepting funds and banking metals on deposit ;

— opening and maintaining current (correspondent) client accounts; and

— placing funds and banking metals that have been accepted on deposit.

The new law coming into effect in July 2020 will shorten this list, and the following services will no longer be subject to licencing:

— issuing payment documents, payment cards, or traveller's cheques;

— clearance and other types of settlement facilitation;

— managing financial assets in trust;

— providing suretyships;

— administering financial assets to purchase goods within a group;

— property management to finance construction; and

— transactions with mortgage assets in order to issue mortgage securities.

Consumer protection for financial services

Ukrainians who use financial services can, unfortunately, encounter false advertising, unlawful personal data disclosure and other illegal practices. In January 2020, a law came into effect to address these problems, introducing uniform rules for disclosing information about financial services, new requirements for advertising, and penalties for violating the rights of consumers. "On Amendments to Certain Legislative Acts of Ukraine to Protect Rights of Consumers of Financial Services" No. 1085-1 sets out standards for the quality and transparency of financial services that banks and other financial institutions provide.

The aim of lawmakers appears to have been to create a legal framework based on the following EU instruments:

— Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

— Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising;

— Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC; and

— Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

Rules for Disclosing Information
Financial service providers must publish the following information on their websites:

— a list of the financial services they provide;

— procedures and conditions for receiving financial services;

— prices, tariffs, and interest rates for the financial services they provide; and

— the mechanisms in place to protect the rights of their customers.

Making Advertising More Reliable
Financial service providers are prohibited from spreading incomplete, inaccurate or unreliable information about any of their services. Advertising is deemed "unfair" if:

— a financial service provider does not have status as a financial institution or lacks the required permits and licenses;

— the offered financial services are prohibited in Ukraine; or

— an advertisement fails to provide clear information about the financial services.

Fines for Violations
Financial authorities can impose fines on any financial service provider for violating consumer rights in the following cases:

— failing to provide a customer with full information about financial services before entering into a contract, with fines from EUR 185 to EUR 370 per violation;

— failing to provide a customer with a draft financial services agreement, with fines from EUR 185 to EUR 370 per violation; and

— unilaterally increasing a fixed interest rate or failing to notify customers about changes in a variable interest rate, with fines from EUR 310 to EUR 495 per violation.

The authorities that can issue penalties include the NBU, the Financial Services Commission and the Securities Commission. Consumers can refer violations directly to any of these bodies instead of initiating court procedures, which makes the complaint process both time- and cost-effective. (Note that in July 2020 the responsibilities of the Financial Services Commission will be assumed by the NBU and the Securities Commission).

Banks
Any legal entity planning to conduct banking activities must obtain a licence from the NBU within a year of registering with the state. Banks must be established in the form of a public joint-stock company or a cooperative bank. Banks must have a minimum charter capital amounting to UAH 200 million (EUR 6.9 million).

The general meeting and the board are the management bodies of a bank. The former is entitled to elect the bank's council, whose responsibilities include:

— developing and approving a risk-management policy;

— approving a business strategy;

— approving the bank's budget.

Credit unions

A credit union is a non-profit organisation established by individuals, trade unions, or their associations to provide joint lending to its members and to offer financial services using the monetary contributions of its members.

Members of a credit union must meet at least one of the following requirements:

— have a common place of work or study;

— belong to the same trade union or other public or religious organisation; or

— reside in the same village, settlement, city, district or region.

A credit union may be established at a constituent assembly with at least 50 participants. The capital of a credit union consists of its shares, reserve and additional capital, as well as of non-distributed income. A credit union may provide only financial services, and its capital must not be less than 10 per cent of the amount of its general obligations.

Guarantees and suretyships

By a "guarantee" Ukrainian law understands any irrevocable undertaking to pay securing a primary obligation of a debtor. A guarantee is independent of the termination or invalidity of a principal obligation. A suretyship is a secondary obligation to fulfil the obligations of a principal debtor who defaults.

Only banks or other financial institutions may issue a guarantee. A suretyship is also recognised as a financial service that can be offered by a bank or financial institution, but may also be issued by a non-financial institution if it complies with Ukrainian civil legislation and Ukrainian anti-money laundering requirements. As a result, suretyships are commonly issued by a non-financial institutions.

Non-state pensions

Ukraine provides its citizens with a state pension, but pension funds, insurance companies, and banks can offer non-state pensions. There are three types: (i) an open pension fund can be established by one or several legal entities; (ii) a professional pension fund can be established by an association of legal entities for their employees, an association of individuals, including trade unions and associations of trade unions, or individuals related by their professional activity; and (iii) a corporate pension fund can be established by a legal entity or several legal entities for their employees. Other employers may also join a corporate pension fund.

Companies and employees participate in a non-state pension on voluntary basis, and contributions must be in addition to the obligatory state pension insurance. Participants of pension funds can be Ukrainian citizens, foreigners and stateless individuals, and payments can be made to a participant or his or her heirs.

A non-state pension fund must not make a profit for its founders, and providing pensions must be its only activity.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Capital markets

Overview

Ukraine's capital markets remain largely underdeveloped, and in general, investment capital is insufficient to meet demand.

Over the past couple of years, the National Securities and Stock Market Commission has repeatedly declared a campaign against "toxic" securities, mirroring the National Bank of Ukraine efforts to clean up the Ukrainian banking system. Despite these efforts, capital markets in Ukraine fail to form fair market prices and do not use common financial instruments to support economic development.

The key legislation governing capital markets in Ukraine include the following:

— Civil Code of Ukraine (16 January 2003);

— Law of Ukraine "On Securities and the Stock Market" (23 February 2006);

— Law of Ukraine "On the State Regulation of the Securities Market in Ukraine" (30 October 1996); and

— Law of Ukraine "On the Depositary System of Ukraine" (6 July 2012).

Securities commission

The National Securities and Stock Market Commission is the main regulator of Ukraine's securities market and establishes its overall legislative framework. The commission is subordinate to the President of Ukraine and accountable to Parliament.

Its objectives are developing Ukraine's securities market and protecting investors. The securities commission's responsibilities also include:

— preparing a development programme for the capital market;

— establishing rules for securities trading;

— enforcing procedures for issuing and registering shares;

— setting out licensing conditions for professional participants in the capital market; and

— setting out the requirements for admitting foreign securities into the market.

The securities commission works on cleaning up the securities market, developing improved securities market infrastructure, and aligning Ukrainian laws, including those on supervision and controls, with relevant EU legislation under the framework of the Ukraine–EU Association Agreement.

Types of securities

The Law of Ukraine "On Securities and the Stock Market" permits the following types of securities to circulate in Ukraine:

— shares;

— investment certificates;

— shares of corporate investment funds;

— certificates of funds for operations with real estate;

— corporate bonds;

— state bonds of Ukraine;

— treasury bonds of Ukraine;

— municipal obligations;

— deposit certificates;

— bonds of international financial institutions;

— bonds of the Deposit Guarantee Fund;

— mortgage-related certificates;

— privatisation securities;

— derivative securities; and

— commodity securities, e.g., bills of landing and warehouse certificates.

According to the securities law, all securities are divided into documentary and non-documentary securities. The former are written or electronic documents prepared in compliance with statutory requirements, while the latter are accounting records in the securities depositary accounting system.

The following institutions and entities can hold securities in Ukraine:

— the National Bank of Ukraine;

— the National Depositary of Ukraine;

— the financial settlement centre;

— depositary institutions;

— correspondent depositaries;

— stock markets;

— clearing institutions;

— issuers;

— securities traders;

— asset management companies;

— securities deposit account holders; and

— nominal holders.

Transfer of ownership of securities

For bearer documentary securities, ownership is transferred the moment they are physically delivered to a new owner. The ownership of non-documentary securities passes to a new owner when they are transferred to the new owner's account at a depository institution.

Foreign issued securities may be traded or otherwise circulated on Ukraine's stock exchanges and may also be transferred by sale and purchase agreements, gift agreements, and other private agreements outside of the exchanges.

Ukraine's securities commission will approve the turnover of foreign issued securities based on the application of either the foreign issuer itself or the National Depository acting in the investor's interests. They may be circulated on the territory of Ukraine if:

— the issuer is duly registered in a foreign country;

— the security's issuance and/or prospectus is registered in the issuer's state of origin or in countries where it circulates;

— the security has been assigned an ISIN code;

— the National Depositary of Ukraine has confirmed receipt of the security; and

— the security already trades on one of the following stock markets: (a) stock markets of Nasdaq, Inc.; (b) New York Stock Exchange (NYSE); (c) stock markets of EU countries; and (d) Hong Kong Exchanges and Clearing.

National depositary

The National Depositary of Ukraine is a public joint stock company. The state of Ukraine and the NBU are its majority shareholders, and the NBU provides certain supervisory functions, in particular for state securities.

The depositary system law authorises the national depositary to:

— be the custodian of securities and global certificates;

— maintain accounts for depositary institutions; and

— regulate some functions of the stock market.

Securities traders

Banks and companies whose only business activities relate to securities transactions may trade securities. To become a securities trader requires a licence from the securities commission. Securities trading may be carried out as:

— a brokerage activity;

— a dealer activity;

— underwriting; and

— a securities management activity.

Stock exchange

In Ukraine, securities are traded on:

— the PFTS stock exchange;

— the Ukrainian stock exchange;

— the Perspectyva stock exchange;

— the Ukrainian exchange;

— the UMVB stock exchange; and

— the Innex stock exchange.

A stock exchange can be incorporated either as a joint stock company or a limited liability company. It must obtain a licence in order to operate.

Stock exchange and OTC trade

Stock exchanges are regulated by Ukrainian law as well as their internal rules. Although being allowed under Ukrainian law, Ukraine's stock exchanges have not formed any self-regulating organisations. The main legislation governing the operation of the exchanges and the trading thereon includes:

— Civil Code of Ukraine (16 January 2003);

— Commercial Code of Ukraine (16 January 2003);

— Law of Ukraine "On Securities and the Exchange Market" (23 February 2006);

— Law of Ukraine "On the Custodian System of Ukraine" (6 July 2012); and

— Law of Ukraine "On the State Regulation of the Securities Market in Ukraine" (30 October 1996).

Securities can be traded with brokers both over-the-counter and via stock exchanges, subject to certain peculiarities in relation to rules on original placement of such securities. State, municipal and corporate bonds can also be traded both over-the-counter and via stock exchanges. The issuer of securities and/or stock exchanges may set additional requirements to traders.

Securities have to be registered with a stock exchange in order to be traded thereon. The rules of different stock exchanges may set various requirements. In addition, securities emission prospectus can set additional limitations on the securities trade (e.g., to trade securities only via one specific stock exchange).

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Sanctions regime in Ukraine

Background

The sanctions legislation in Ukraine is relatively new. The Sanctions Law No. 1644-VII was introduced in 2014 against the backdrop of Russia's annexation of Crimea and the ensuing armed conflict in Eastern Ukraine. The initial sanctions (special economic and other restrictive measures) were introduced in September 2015. They mainly targeted companies, institutions and individuals believed by Ukraine's government to be associated with Russia's aggression.

Grounds for imposing sanctions

According to Article 3 of the Sanctions Law, the grounds for Ukraine imposing sanctions include actions by foreign states, entities, individuals and other subjects that:

- pose a real or potential threat to the national interests, security, sovereignty and territorial integrity of Ukraine
- facilitate terrorism
- result in the occupation of Ukraine's territory, expropriation of its assets, limiting or damaging the property rights of Ukraine and its nationals
- impede the stable economic development of Ukraine, full exercise by Ukrainian nationals of their rights and freedoms
- result in violations of the Universal Declaration of Human Rights and the United Nations' Charter

In addition, according to the Sanctions Law Ukraine can impose sanctions based on Resolutions of the United Nations General Assembly and the Security Council, as well as the decisions and regulations of the Council of the European Union.

In terms of the scope of the covered persons, the Sanctions Law provides that sanctions can be imposed: (i) either against an indefinite range of persons or foreign state as a whole ("Sectoral Sanctions"); or (ii) against particular individuals and entities ("Personal Sanctions").

However, since the Sanctions Law was introduced Ukraine has imposed only personal sanctions against specific individuals and legal entities.

Procedure for imposing sanctions

Under the Sanctions Law, proposals for imposing sanctions can be submitted by the Parliament of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine and the Security Service of Ukraine.

Types of Sanctions

The Sanctions Law explicitly lists 25 types of sanctions, although that list is not exhaustive. The Sanctions Law does not contain a precise description of the scope and the essence of the listed sanctions. So far, the practice of courts and state authorities on interpreting such sanctions is extremely scarce. Therefore, the risk is there that the state authorities of Ukraine can interpret the sanctions as broadly as possible.

The sanctions explicitly set out by the Sanctions Law include:

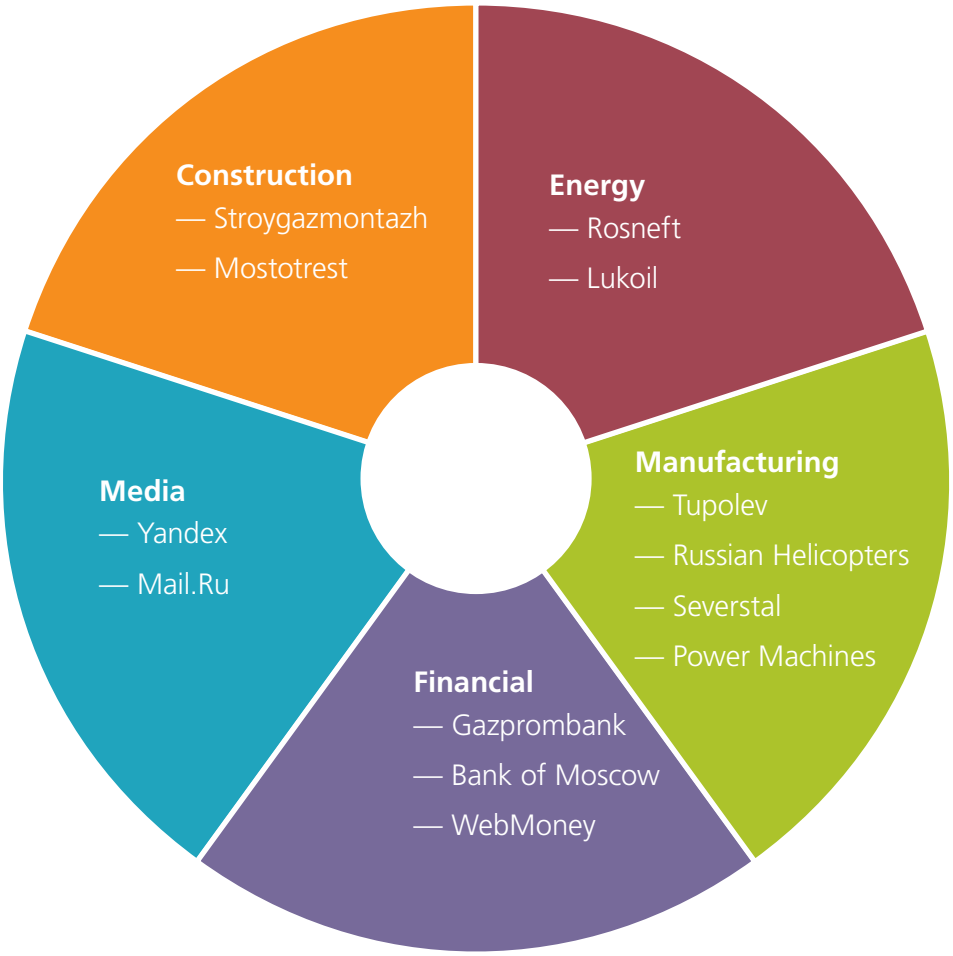
- **Assets freezing**
- **Restricting trade operations**
- **Banning withdrawal of capital from Ukraine**
- **Suspending performance of economic and financial obligations**
- **Annulling licences and permits**
- **Prohibiting usage of radio frequency resource of Ukraine**
- **Barring from public procurement tenders**
- **Restricting dealing in the issuer's securities**
- **Prohibiting increase of charter capital in Ukrainian companies**

Who has been targeted so far?

The sanctions imposed by Ukraine target a wide range of companies, institutions and individuals from a variety of sectors. The overwhelming majority of the sanctions target Russian business groups, individuals associated with them, as well as individuals and organisations (whether Russian or Ukrainian) that are allegedly associated with the armed aggression in Eastern Ukraine. The sanctions also target companies and individuals who are allegedly close to the Russian government or conduct business in Russia-occupied Crimea.

As of October 2019, Ukraine placed over 1,540 legal entities and over 3,800 individuals on its sanctions lists.

The sanctions against companies target entities operating the in construction, financial, energy, media, manufacturing sectors.



Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Ukraine–EU Association Agreement

Background

The relationship between Ukraine and the EU started in December 1991 when the Netherlands, holding the presidency of the Council of the European Communities, officially recognised Ukraine as an independent state on behalf of the European Union, after which began a long period of negotiations that continues today.

The Ukraine – EU Association Agreement was initiated on 30 March 2012 in Brussels, but after a number of attempts to integrate with the EU over the next year, Ukraine failed to uphold a decision to sign the agreement. This failure triggered mass protests to protect the European aspirations of Ukrainians, which became known as "EuroMaidan". The scope of the protests soon widened, resulting in calls for the resignation of President Viktor Yanukovych and his government and the 2014 Revolution of Dignity.

After the victory of the revolution and the overthrow of the Ukrainian government, the Parliament of Ukraine adopted a resolution on 13 March 2014 confirming the irreversibility of Ukraine's integration with the EU.

The Ukraine – EU Association Agreement was signed on 27 June 2014 and ratified by Parliament on 16 September 2014. At both occasions, President of Ukraine Petro Poroshenko and Parliament declared the agreement a step towards Ukraine's ultimate full membership in the European Union.

The agreement, including its Deep and Comprehensive Free Trade Area (DCFTA), entered into force on 1 September 2017, although several of its provisions had been provisionally applied since 1 November 2014 and the DCFTA since 1 January 2016.

Ukraine–EU Association Agreement in a nutshell

The Ukraine–EU Association Agreement is the main political and legislative tool for bringing Ukraine and the EU closer together. It promotes deeper political ties, stronger economic links, and respect for common values.

The Preamble sets out the agreement's purpose and underlying philosophy, and is followed by 7 sections concerning:

— general principles;

— political cooperation and foreign and security policy;

— justice, freedom, and security;

— trade and trade-related matters (DCFTA);

— economic and sectorial cooperation; and

— financial cooperation to combat fraud.

The Agreement also contains Institutional, General and Final Provisions; 43 annexes setting out EU legislation to be adopted by specific dates, and three Protocols. The document is over 1,200 pages long, making it the longest and most comprehensive agreement the EU has signed with a third country.

Progress on Ukraine–EU association agreement

Stronger Society

Since visa-free entry became possible for Ukrainians on 11 June 2017, Ukrainians have made almost 3 million visa-free visits to the EU using biometric passports[16].

Ukraine is one of the largest beneficiaries of the Erasmus+ programme. More than 7,250 Ukrainian students and academics have benefited from this academic exchange opportunity. Cooperation between Ukraine and EU in this, as well as in cultural and artistic spheres, is supported through the House of Europe programme, with supporting reaching EUR 18 million.

The Rule of Law

Since the Revolution of Dignity, Ukraine has undergone a huge democratic transition with significant renewal of its key governmental institutions, and in 2019, the election of new political leaders. In this context, the association agreement remains an important reference for Ukrainian authorities, providing a starting point for reforms that bring Ukraine and the EU closer together. Moreover, the agreement also helps Ukraine provide stability and prosperity to all its citizens and trengthen its resilience.

Ukraine's reforms have made expeditious progress in a great number of areas.

Corruption. Illicit enrichment has been re-criminalised, and legislation to relaunch the National Agency for Prevention of Corruption ("NAPC") and to protect whistle-blowers has been adopted. The work of the new High Anti-Corruption Court is particularly important, as none of the highest-level officials have been convicted for corruption so far.

Transparency. The resurrection of the NAPC changed its management structure from a collegiate body to a single head, and international experts participated in the selection of the new chief executive. Progress has also been made in the sphere of electronic asset declarations for public officials.

Business. Ukraine's trade with the EU has continued to increase and it remains Ukraine's top export market. The Ukrainian economy is growing, and its finances and banking sector have stabilised. However, the business climate still needs improving to encourage investment, in particular by enforcing the rule of law and supporting the fight against corruption.

Banking and finance. With respect to financial services legislation, Ukraine has made progress on current payments and the movement of capital, disclosure requirements for securities issuers, and capital requirements in the banking sector.

Economic and sectoral reforms have delivered notable achievements, such as introducing medium-term budget planning at central and local levels, and the reform program is improving customs, market deregulation, public procurement, and health, although the latter has advanced more slowly. Reforms in the sphere of intellectual property rights remained limited.

Subsidies. Rules for state aid in Ukraine are not fully in line with EU regulations. However, the current legal framework has enabled more effective control of state aid. In 2019, the Anti-Monopoly Committee of Ukraine adopted an average of 20 decisions per month, but most cases were minor, and large schemes continue to bypass controls. In 2019, EU experts completed the first-ever comparative analysis of Ukrainian competition law with EU law, providing a sound basis for further alignment.

[16] www.kmu.gov.ua/en/news/majzhe-3-miljoni-gromadyan-ukrayini-skoristalisya-bezvizom-z-yes-protyagom-dvoh-rokiv

In June 2019, a strategy for the managing the state debt was approved, with a target of reducing Ukraine's debt-to-GDP ratio to 43% by the end of 2022. The strategy has four pillars: (1) increase the share of domestic currency debt, (2) lengthen the maturity of the state debt, (3) continue to attract concessional funding, and (4) enhance strong investor relationships[17].

Stronger Governance

Since 2014, Ukraine's governmental reform has received extensive support through programmes for decentralisation (U-LEAD with Europe), anti-corruption (EUACI), the rule of law (PRAVO), public administration reform (EU4PAR), and public finance management (EU4PFM), totalling over EUR 300 million. These initiatives have enhanced the transparency and accountability of municipal authorities and improved their ability to offer services. EU humanitarian assistance for basic needs, like healthcare, food, and shelter has also been provided where these are needed[18].

Stronger Trade

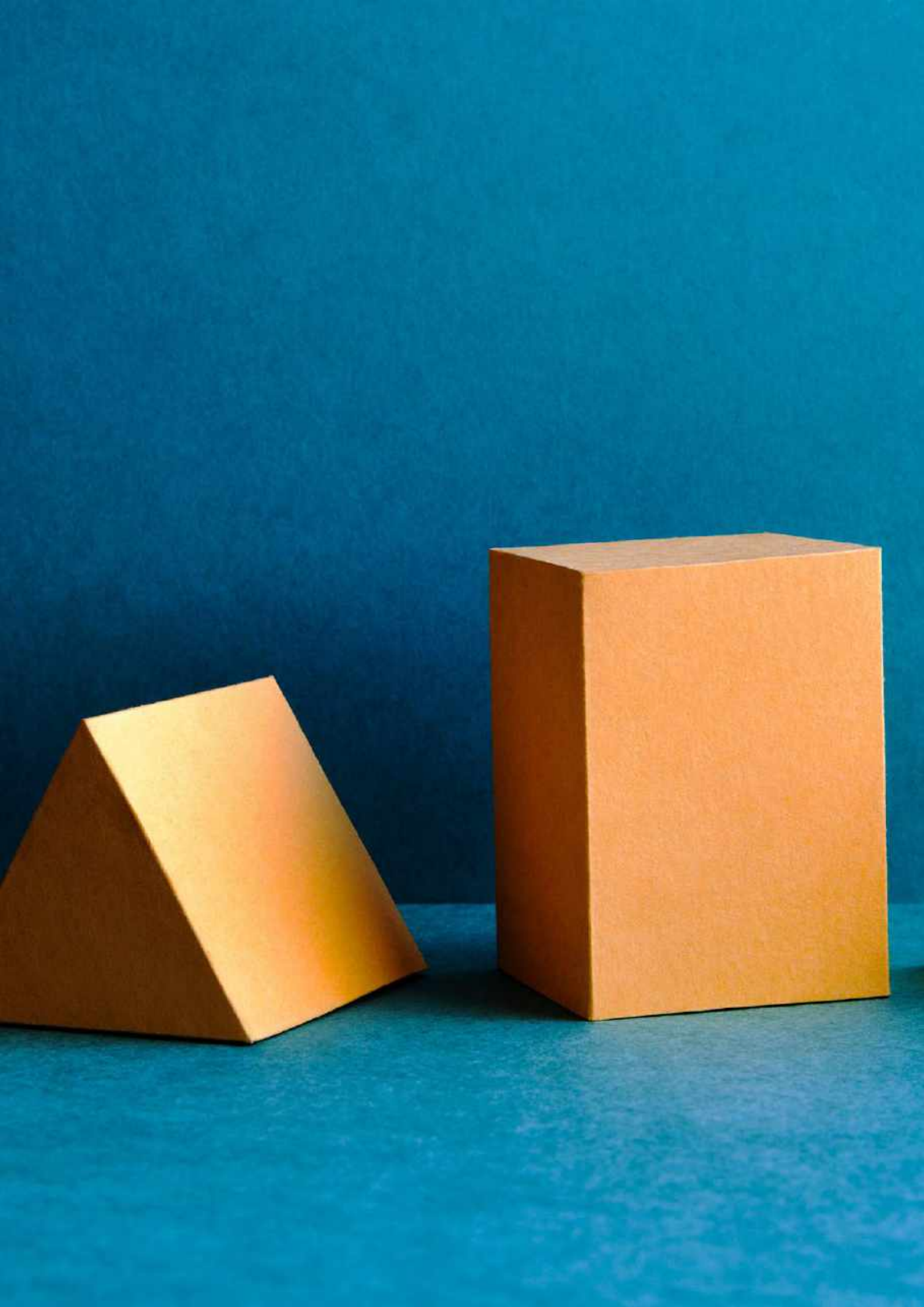
The DCFTA is a landmark document in bilateral trade and offers new economic opportunities to both the EU and Ukraine, while providing a framework for the modernisation of Ukraine's economy and improving its trade relations.

The EU is now Ukraine's largest trading partner, accounting for 42% of total trade, with bilateral trade between Ukraine and the EU having grown 49% since the application of the DCFTA's provisions.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

[17] www.eeas.europa.eu/sites/eeas/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf

[18] #easternpartnership www.eeas.europa.eu/headquarters/headquarters-Homepage/4081/eu-ukraine-relations-factsheet_en



Litigation and dispute resolution

Litigation

Introduction

Litigation is the usual mechanism for resolving civil and commercial disputes, as well as conflicts with state and municipal bodies. In Ukraine, however, litigation has been criticised as unreliable and frequently unpredictable. The reasons are plentiful, but recent improvements have raised both the perception and quality of Ukraine's judicial process.

For example, in October 2017 Law No. 6232, the lengthiest in Ukrainian history at 800 pages, restated the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, and the Code of Administrative Procedure of Ukraine and amended more than 20 other legislative acts.

Doing Business 2020 now ranks Ukraine 63rd among economies for its criteria on enforcing contracts, 35 positions higher than in 2016.

Organisation of the Judiciary

The judiciary in Ukraine is separate from the legislative and executive branches of power. The country's general courts form a unified judicial system, while the constitutional court operates separately.

The general judicial system of Ukraine is comprised of:

— local (trial) courts;

— courts of appeal, including 26 appellate courts of general jurisdiction, seven appellate circuit courts for commercial matters and eight appellate circuit courts for administrative matters;

— two specialised courts, namely the High Court of Intellectual Property and the High Anti-Corruption Court;

— Ukraine's Supreme Court, the highest court in the judiciary, which includes four cassation courts that each cover criminal, civil, administrative and commercial matters.

Supreme Court Grand Chamber of the Supreme Court					
Criminal Court of Cassation	**Civil Court of Cassation**	**Administrative Court of Cassation**	**Commercial Court of Cassation**		**III instance**
	Appellate courts (courts of the AR Crimea, regional courts, courts of cities of Kyiv and Sevastopol)	**Appellate administrative courts** (appellate circuit courts)	**Appellate commercial courts** (appellate circuit courts)		**II instance**
High Anti-corruption Court	**Local general courts** (circuit courts)	**Local administrative courts** (circuit courts)	**Local commercial courts** (circuit courts)	**High Court on Intellectual Property**	**I instance**

The ability to appeal against a judgement is part of the fundamental right of access to a court declared in Ukraine's constitution. Appellate courts review judgements by local courts, while Ukraine's Supreme Court acts as the court of appeal where an appelate court acted as the court of first instance. It also reviews the judgements of first instance courts and courts of appeals in cassation proceedings.

Procedural Legislation

In many Common Law countries, the rules governing court procedures and practices are internal documents of the respective courts, but in Ukraine these rules are part of Ukraine's procedural law. The principal statutes are:

— the Commercial Procedure Code of Ukraine,

— the Civil Procedure Code of Ukraine,

— the Code of Administrative Procedure of Ukraine, and

— the Criminal Procedure Code of Ukraine.

While the first three codes adhere to the same structure and therefore generally resemble one another, the Criminal Procedure Code is very different.

In late October 2019, the President of Ukraine submitted a new draft law to Parliament to further modify the procedural codes, which were last restated in 2017. The consequences if the draft law is adopted are unclear, but it is worth recognising that the trend for the step-by-step modifications to the procedural codes will continue.

Legal Representation

Until recently, any authorised individual might have represented another person or legal entity before a court, except in criminal proceedings which were reserved for advocates. Since 2017, however, only licensed advocates have been allowed to represent clients before the cassation courts, and since 2018, before the appellate courts, and since 2019 before trial courts, except for a limited list of minor cases.

These changes were expected to ensure that citizens and corporations have access to high-quality legal services and representation, in part because advocates are governed by their professional bodies and must comply with the strict codes of professional conduct.

Ukraine's parliament, however, has recently made an effort to return to the old regime, and as of the date of this publication, it is not clear whether a new law will be adopted.

Foreign-qualified advocates and their qualifying equivalents from recognised jurisdictions may conduct litigation before the Ukrainian courts, but only if they successfully apply for registration with the Unified Register of Advocates in Ukraine.

Enforcing Court Judgements

In Ukraine, except for limited exceptions that require a state enforcement officer, a creditor may take the judgement of a court to a private enforcement officer for enforcement. Enforcement proceedings, however, are not always straightforward and the prospects for recovery are often uncertain. While enforcement proceedings look perfectly acceptable as written, in practice a creditor who wins a favourable judgement in Ukraine has not reached the end of the matter, but rather the beginning of a long saga.

Alternative Dispute Resolution

Introduction

Arbitration and mediation are the main forms of alternative dispute resolution in Ukraine; other forms are either non-existent or rarely applied.

Arbitration

Domestic and international commercial arbitration is governed by two separate legal regimes. The statute governing international commercial arbitration is the Law of Ukraine "On International Commercial Arbitration", which is based on the UNCITRAL Model Law on International Commercial Arbitration, but with a few notable differences. Domestic arbitration, in turn, is governed by the Law of Ukraine "On Third-Party Courts".

Ukraine is a party to all major treaties governing international commercial arbitration (the United Nation Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the European Convention on International Commercial Arbitration), and to numerous regional multilateral and bilateral treaties as well.

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry is the leading permanent arbitral institution in Ukraine. The following matters may be referred to it by the parties to an agreement:

— disputes of contractual or other civil law connected with foreign trade and other kinds of international business where one of the parties has its place of business outside Ukraine;

— disputes between enterprises with foreign investment, international associations and organisations established in Ukraine or between members thereof, or disputes between them and other subjects of Ukrainian law.

Remedies awarded by arbiters outside Ukraine (and judgements of foreign courts) may be enforced by a competent court in Ukraine in the same manner as a judgement of the Ukrainian courts.

More than 500 companies and organisations provide arbitration for domestic disputes in Ukraine, but they play a very limited role in the legal resolution process.

Mediation

In Ukraine, mediation is rarely used as an alternative to court proceedings or arbitration but is gaining attention from both the government and market participants. In fact, in August 2019 Ukraine signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, establishing a harmonised legal framework for the right to invoke settlement agreements as well as for their enforcement. (Legislation ratifying the convention has not yet entered into force.)

Nonetheless, despite numerous attempts to have Parliament pass a law to regulate mediation activities and who can call him or herself a mediator, such a law is yet to be adopted. As a result, specific rules for out-of-court mediation in Ukraine do not exist, and a mediator chosen by disputing parties (or the parties themselves) is free to choose the procedure for mediating the dispute at his or her full discretion.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020


ethere

Fintech

Overview

Fintech is a relatively new industry that provides businesses and consumers more accessible and user-friendly financial services using new technology. Fintech companies are disrupting both traditional banking and the non-banking financial services market in such areas as money transfers, payments, lending, finance management, mobile wallets, insurance, and others.

In Ukraine, more than 100 companies are currently operating in Fintech, and more than 60% of them started in the last four years. Some of the Ukrainian Fintech companies already work in the international market, whereas the majority of Ukrainian Fintech companies only intend to expand their businesses internationally. Fintech is a fast-growing industry, and one of the key drivers of digital transformation in Ukraine.[19]

Legal framework

Even though Ukrainian Fintech legislation is not yet as developed as comparable EU legislative, the following laws and regulations should be considered the basis for Ukraine's Fintech legal framework:

— Civil Code of Ukraine (16 January 2003);

— Commercial Code of Ukraine (16 January 2003);

— Law No. 2664-III "On Financial Services and State Regulation of Financial Services Markets" (12 July 2001);

— Law No. 2346-III "On Payment Systems and Money Transfer" (5 April 2001);

— Law No. 2155-VIII "On Electronic Trust Services" (5 October 2017);

— Law No. 361-IX "On Preventing and Counteracting to Legalisation (laundering) of Proceeds of Crime, Terrorist Financing, and Financing Proliferation of Weapons of Mass Destruction" (6 December 2019) (the "AML Law");

— Resolution No. 481 of the Board of the National Bank of Ukraine "On Amendments to Certain Regulatory Acts of the National Bank of Ukraine in relation to Issue and Circulation of Electronic Money" (4 November 2010); and

— Resolution No. 43 of the Board of the National Bank of Ukraine "On Approval of the Regulation Establishing the Procedure for Registration of Payment Systems, Participants of Payment Systems and Operators of Payment System Services" (4 February 2014).

[19] Ukrainian fintech market map - https://fintechua.org/en/market-map

Regulators of Fintech in Ukraine

Depending on the type of company and area of operation, Fintech providers are governed by the following regulators:

- National Bank of Ukraine, regarding (i) banking institutions in Ukraine and various aspects of providing banking services; and (ii) non-banking financial institutions providing lending, payment, insurance, and other financial services;
- National Securities and Stock Market Commission, regarding investment funds and stock markets in Ukraine; and
- State Financial Monitoring Department of Ukraine, the executive authority implementing Ukraine's policy on anti-money laundering and combating the financing of terrorism.

Note that the above is not exhaustive; only regulators of financial services providers have been listed.

Additional operational requirements

Certain types of activity performed by Fintech companies in Ukraine, such as payments, money transfers, lending, and others, are considered financial services and are subject to complicated legislative requirements. Companies offering these services must register as a financial institution with a charter capital of at least UAH 3,000,000 (approx. EUR 100,000) and obtain a licence from the NBU. To provide money transfer services, Fintech companies must also obtain a separate licence from the NBU.

Cryptocurrency

The legal status of cryptocurrencies in Ukraine is not officially determined yet. Due to the complex legal nature of cryptocurrencies, the Ministry of Finance of Ukraine does not recognise them as funds, a currency, a foreign payment instrument, currency valuables, electronic money, or money surrogates. The NBU also emphasises that transactions with cryptocurrencies are not subject to Ukrainian currency laws or legislation governing money circulation, electronic money, securities, or payment instruments.

In May 2020, the Ministry of Digital Transformation of Ukraine released the "Draft Law On Virtual Assets", which stipulates that crypto asset is a virtual asset. If the law to be adopted, it will determine an official status of the cryptocurrencies in Ukraine.

The first Ukrainian law to mention the term virtual asset is the AML Law. Unlike the "Draft Law On Virtual Assets", the AML law has a very broad definition of this term which does not explicitly cover cryptocurrency/crypto assets. Considering that the AML Law has been developed with NBU's support, it seems that the NBU has no objections considering cryptocurrencies as virtual assets.

As long as the status of cryptocurrencies and rules of their circulation remains undetermined officially, state consumer protection agencies, courts, and other public authorities are not able to adequately protect participants in cryptocurrency markets.

Further regulatory transformation

Cryptocurrency Regulation

In June 2020, the Digital Transformation Committee of the Parliament registered the "Draft Law On Virtual Assets". The draft law is aimed, among others, to determine the legal status of virtual assets, their use and circulation in the Ukrainian market, regulate issuance of virtual assets. As of the date of this report, the Parliament has not voted on the Draft Law On Virtual Assets.

Regulation of Payment Systems and Money Transfers

The NBU announced its strong intention to harmonise national legislation for payment systems and money transfers with EU Directive 2015/2366, also known as PSD2. The "Draft Law On Payment Services" developed in tight cooperation with the NBU and is aimed to introduce the following key concepts into Ukrainian legislation:

— distinguishing between different payment services;

— transforming the types of money transfer providers and the roles of the payment services providers;

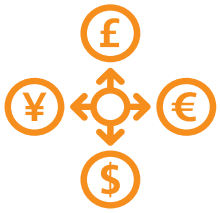
— categorising payment service providers;

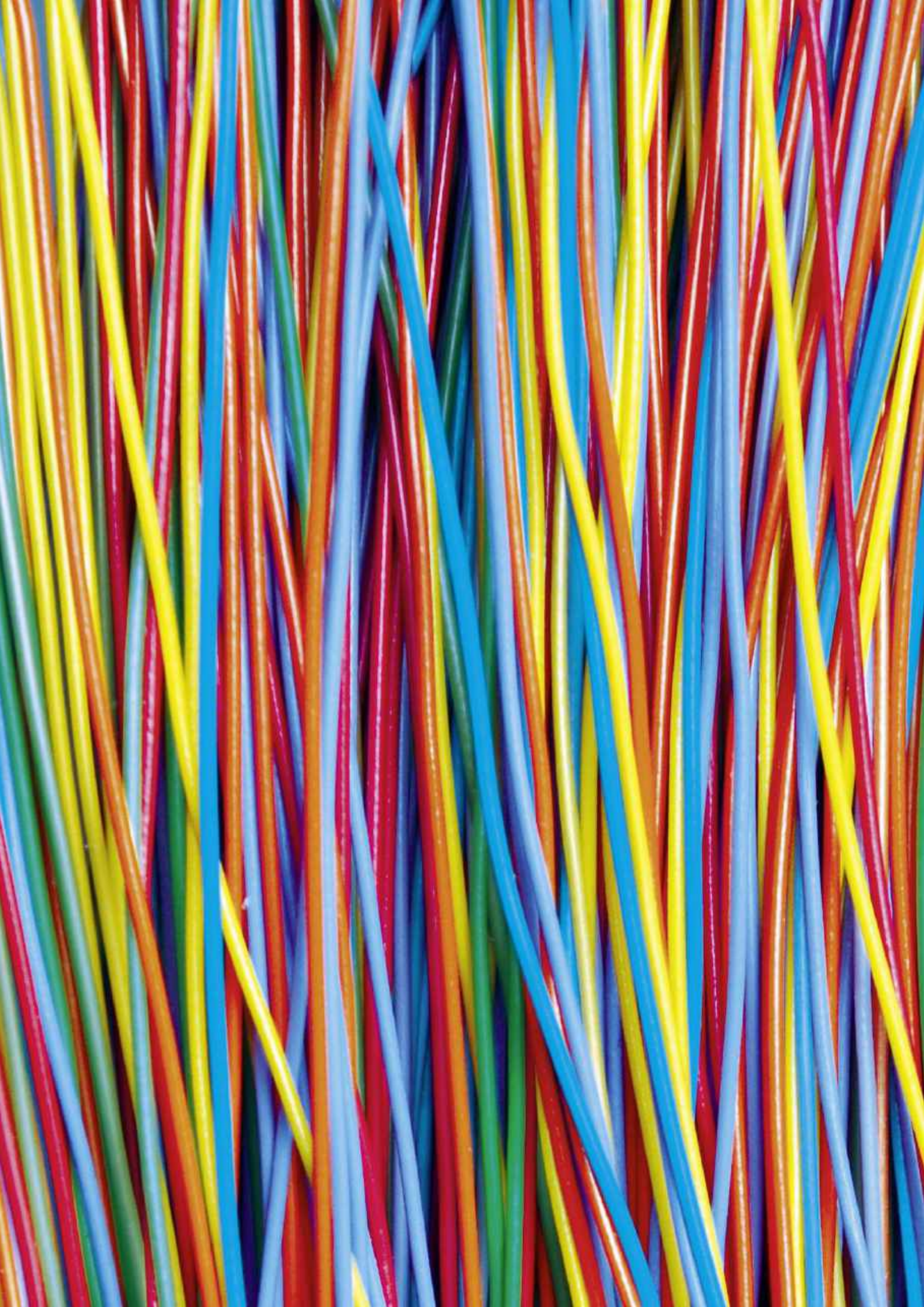
— introducing open banking (certain financial services provides shall get limited access to client information from banks);

— amending licensing and registration of non-banking financial institutions; and

— improving customers security.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020





Electricity

General

Introduction

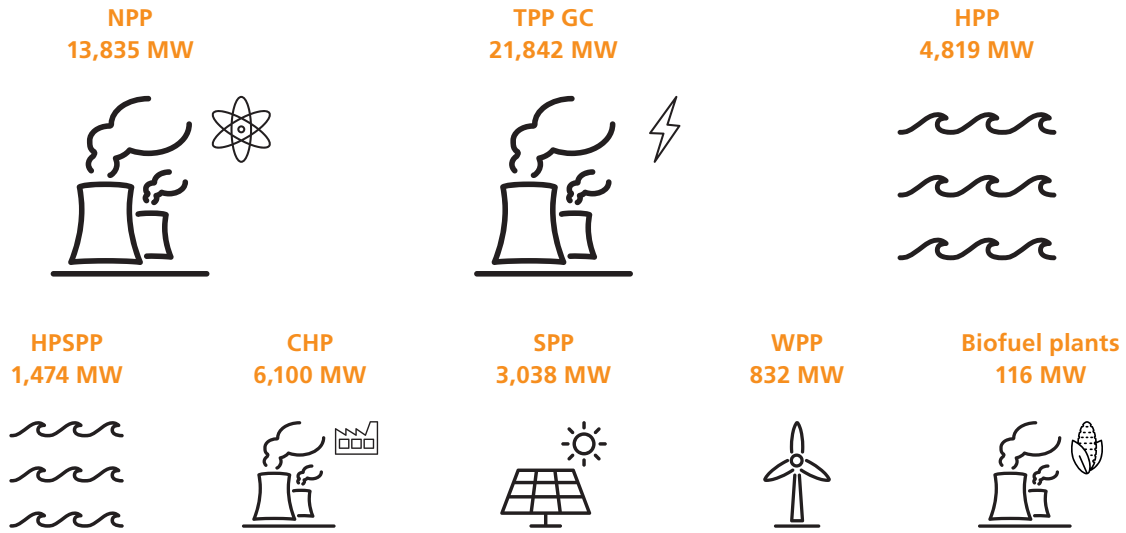
The electricity market in Ukraine has both grown and improved in recent years, with regulatory reforms a gradual transition to full electricity self-sufficiency, and investments in renewable energy.

Of particular note, reforms have moved Ukraine's electricity laws to conform with EU norms.

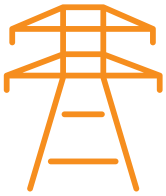
Capacity

As of April 2020 the total installed capacity of Ukrainian power plants was 53,601.80 MW, with renewable capacity still proportionately small.

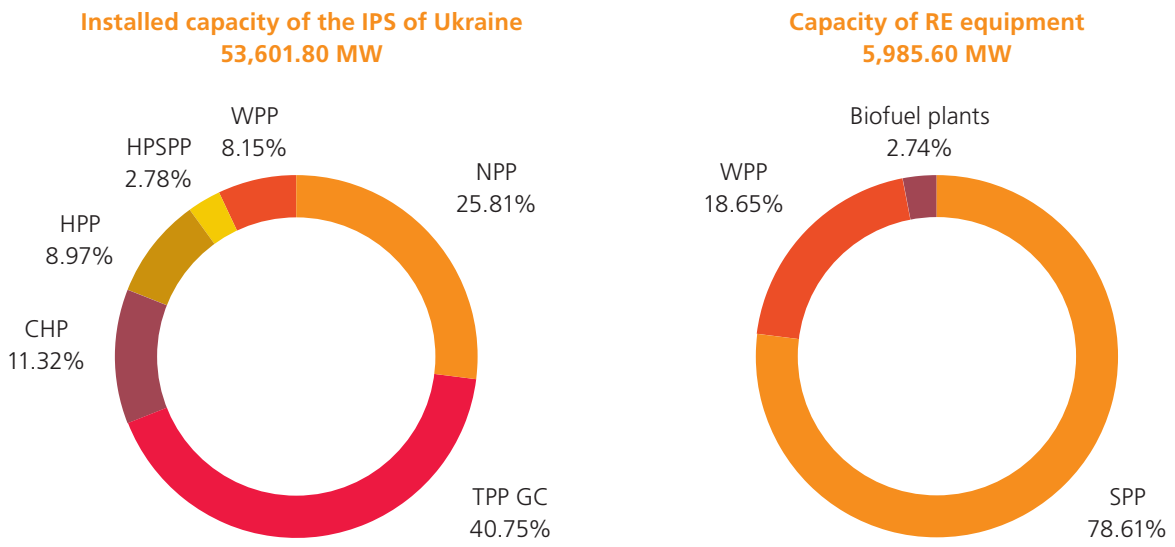
Installed capacity of Ukrainian power plants by types as of April 2020



Source: official website of the National Power Company "Ukrenergo" – https://ua.energy/



Installed capacity of the integration power system (IPS) of Ukraine and capacity



Source: official website of the National Power Company "Ukrenergo" – https://ua.energy/

of RE equipment as of April 2020

Ukraine's location allows it to import and export electricity through Hungary, Slovakia, Poland and Romania, as well as through Russia, Belarus and Moldova. In 2020, the total volume exported was 6,469,290,674 million kWh, of which 5,825,259 million kWh was to the European Union, while the total volume of electricity imported to Ukraine in 2019 was 2,698,552 kWh[20].

Regulatory Framework and Authorities

The electricity sector is mainly governed by the following laws:

— Law of Ukraine "On the Electricity Market" (electricity market law);

— Law of Ukraine "On the National Commission for State Regulation of the Energy and Public Utilities Sector";

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Market Rules";

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Day-ahead and Intraday Markets Rules";

— Law of Ukraine "On Licensing of the Types of Commercial Activity" (licensing law);

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Licensing Conditions for the Performance of Power Generation" (generation licensing conditions);

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Licensing Conditions for the Performance of Commercial Activity on Electricity Supply to End Consumers" (supply licensing conditions);

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving Licensing Conditions for the Performance of Commercial Activity on Electricity Re-sale (Trading)" (trading licensing conditions);

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving the Electricity Commercial Metering Code";

[20] https://ua.energy/activity/dispatch-information/transborder-flows/#1562582282470-1785d2a7-f6d5

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving the Transmission System Code";

— Resolution of the National Commission for State Regulation of the Energy and Public Utilities Sector "On Approving the Distribution Systems Code".

Market Regulation

The electricity market of Ukraine is regulated by the National Commission on State Regulation of Energy and Public Utilities Sectors.

The regulatory commission is an independent public authority with the power to:

— issue mandatory resolutions, orders and regulatory acts;

— establish licensing conditions and grant licences for activities in the electricity and gas markets, as well as in the public utilities sector;

— establish tariffs;

— and supervise, monitor and control the behaviour of market players.

Other regulatory authorities of the industry are:

— Parliament of Ukraine, which passes primary legislation;

— the Cabinet of Ministers of Ukraine, which passes secondary legislation that implements primary legislation; and

— Ministry of Energy, which is responsible for state policy in the electricity sector[21].

New electricity market

On 1 July 2019, the Electricity Market Law launched a full-scale liberalised electricity market in Ukraine. The law enacted Ukraine's commitments to liberalise its electricity market to comply with the Energy Community Treaty and the "Third Energy Package"[22] of the European Union. Specifically, it complies with: (i) Directive 2009/72/EC concerning common rules for the internal market in electricity; (ii) Directive 2005/89/EC concerning measures to safeguard the security of the electricity supply and infrastructure investment; and (iii) Regulation (EC) No. 714/2009 on the conditions for access to the network for cross-border exchanges in electricity.

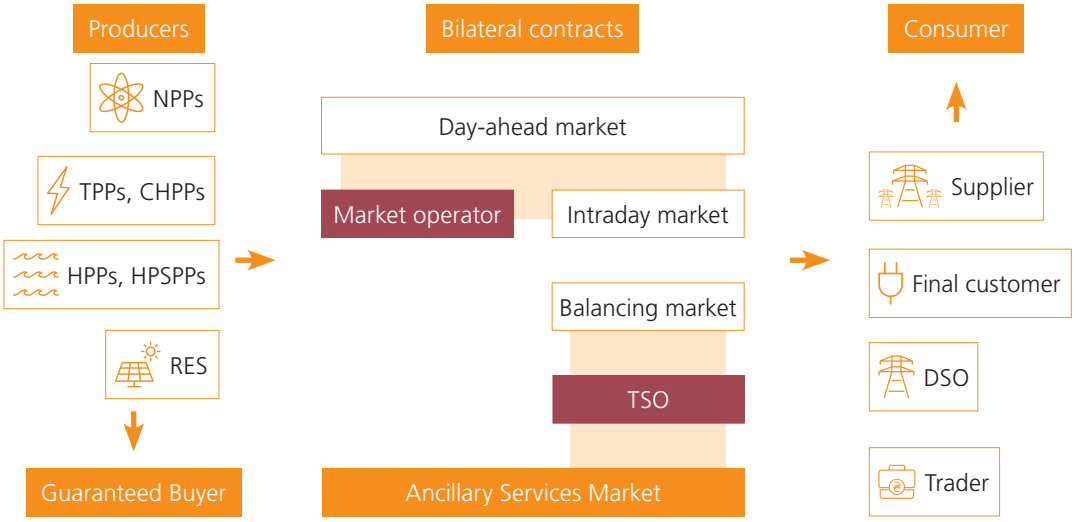
Submarkets

Before July 2019, Ukraine's wholesale electricity market operated on the "single buyer" model, with the national regulatory commission implementing state pricing and tariffs for the industry. As a result of the Electricity Market Law, the wholesale market was reorganised into the following submarkets: (1) a bilateral contracts market; (2) a day-ahead market; (3) an intraday market; (4) a balancing market; (5) a market for ancillary services; and (6) the retail market.

[21] According to the Cabinet of Ministers of Ukraine`s Resolution No. 425 dated 27 May 2020, the Ministry of Energy and Environmental Protection of Ukraine was divided into two separate Ministries, in particular, the Ministry of Energy and the Ministry of Environmental Protection and Natural Resources of Ukraine.

[22] The European Union's Third Energy Package is a legislative package for an internal gas and electricity market in the European Union. Its purpose was to further open the gas and electricity markets in the European Union. The package was proposed by the European Commission in September 2007 and adopted by the European Parliament and the Council of the European Union in July 2009. It entered into force on 3 September 2009. For more information, follow this link: https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation/third-energy-package.

Submarkets of the Ukrainian electricity market



The Bilateral Contracts Market

In the bilateral market, companies buy and sell electricity directly with each other through contracts and are free to negotiate the contract price. The contracts must be valid for at least six months, and the maximum validity period may be set by the regulatory commission.

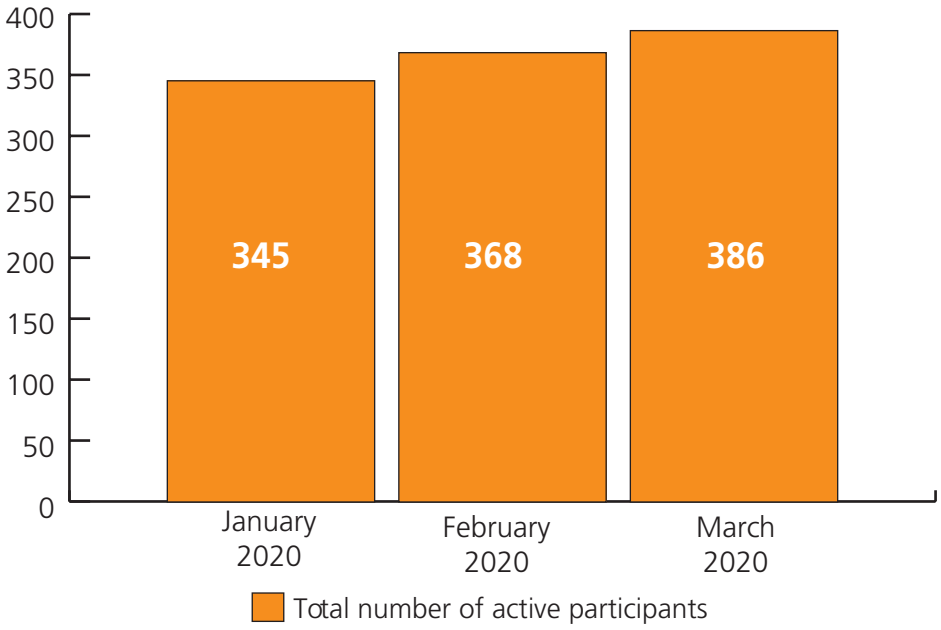
Companies participating in this submarket can freely choose their counterparties and are not required to publicly disclose their contractual arrangements; however, they must report on contractual volumes.

The Day-ahead and Intraday Markets

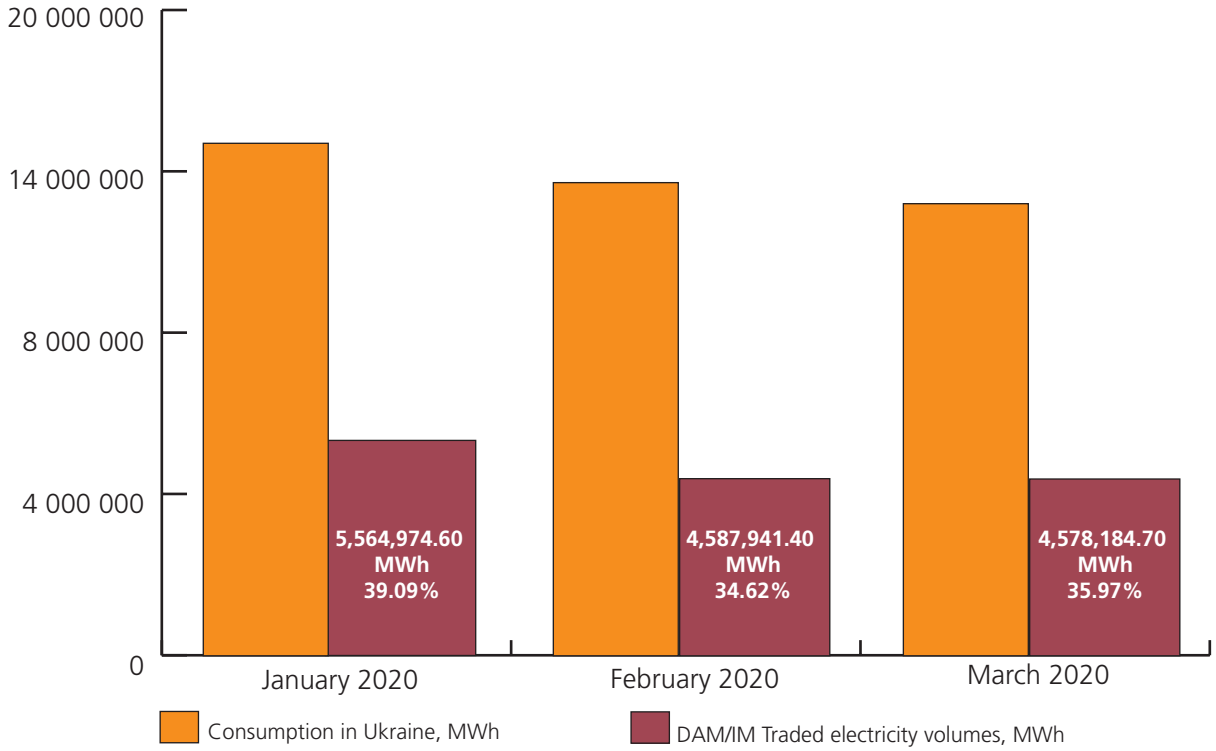
The day-ahead market is an auction market with pricing set by competitive bidding one day before the actual delivery of electricity. The intraday market allows participants to update or cancel their trading positions, particularly the price, in response to supply and demand and other system conditions as they approach real time.

Both the day-ahead and intraday markets are managed by the state market operator, formed under the Electricity Market Law, which accepts bids to sell or buy electricity and holds auctions.

Information on Day-Ahead Market and Intraday Market Participants in January, February, March 2020

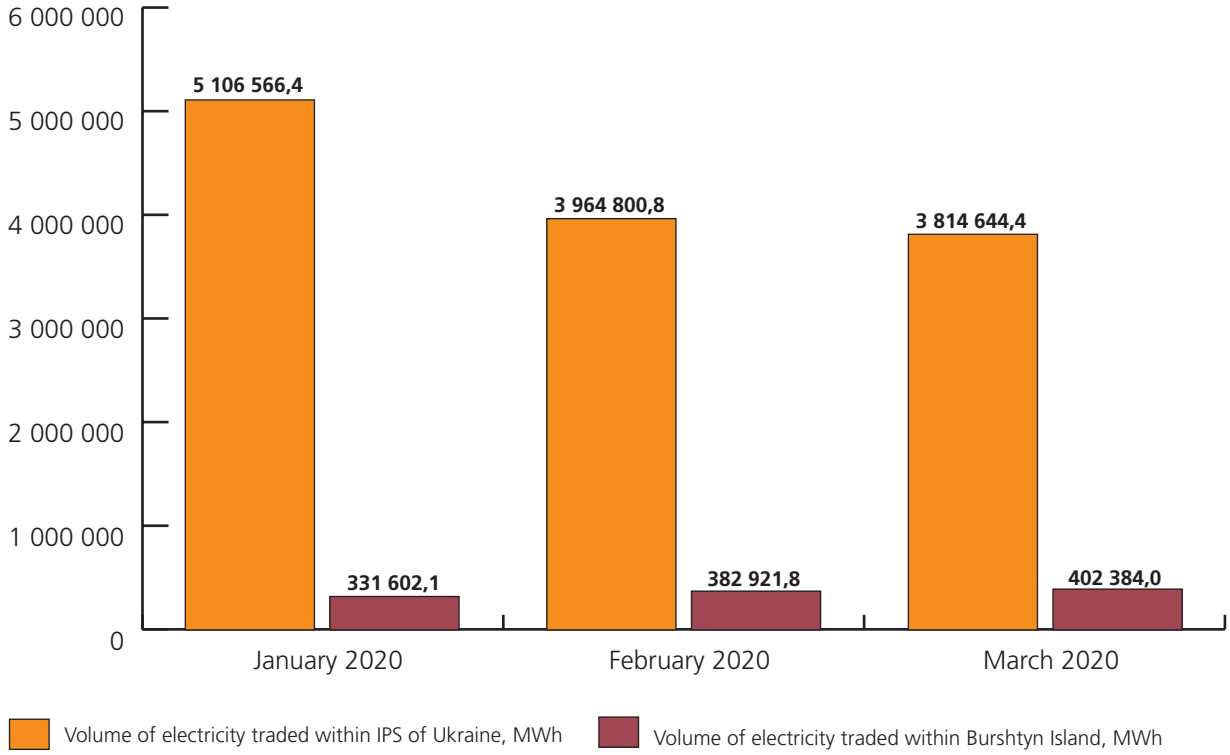


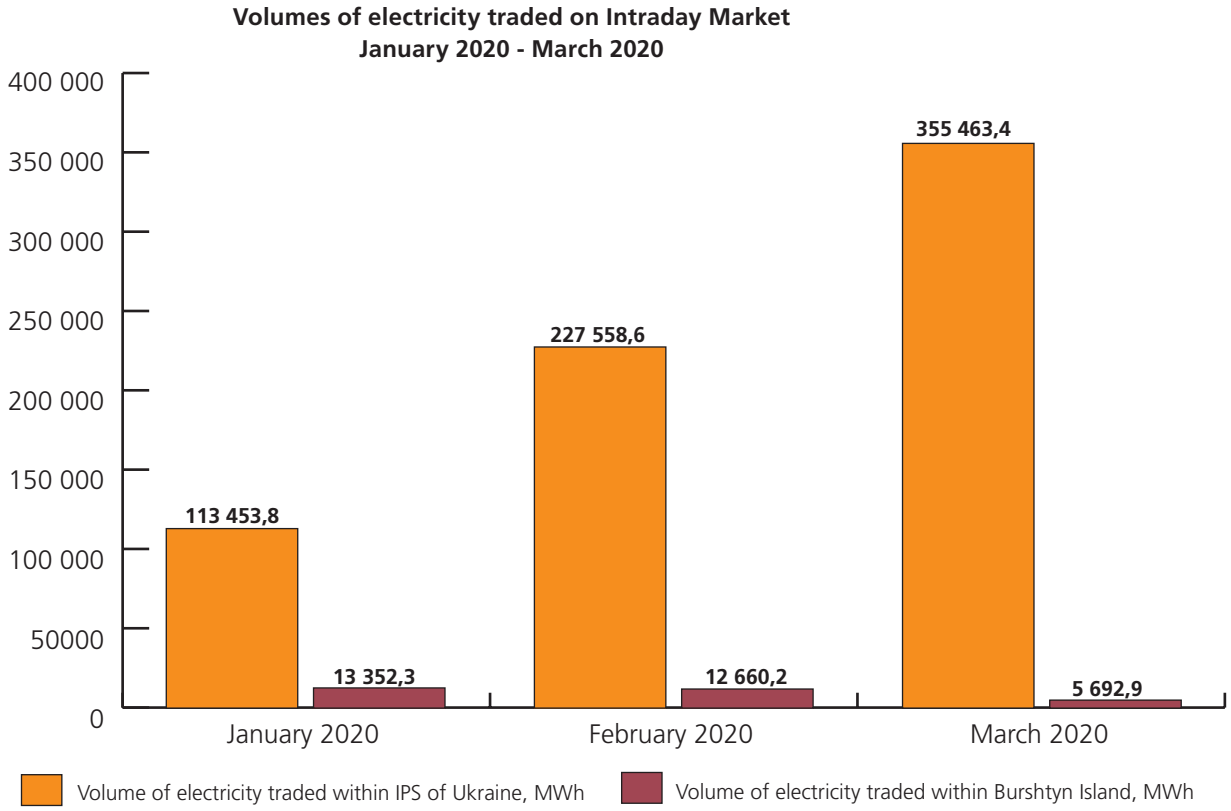
Volumes of electricity traded on Day-Ahead and Intraday Markets ratio Power Consumption in Q1 of 2020



Volumes of electricity traded in January - March 2020

Volumes of electricity traded on Day Ahead Market January - March 2020





The Balancing Market

The balancing market was established (i) to balance supply and demand on a daily basis and (ii) to handle imbalances among market participants. It is operated by NPC Ukrenergo, the transmission system operator, which accepts bids for load increases or decreases. Participants responsible for balancing may join together to operate as a group.

The Retail Market

In the retail market, power suppliers sell electricity to end consumers who buy electricity for their own use with no intention to re-sell. Retail prices are regulated only for (i) suppliers of universal services, such as electricity for private households and small industrial consumers; and for (ii) suppliers of last resort. These are local electricity suppliers that the Cabinet of Ministers of Ukraine requires to enter into supply agreements with consumers in certain circumstances and as determined by applicable law. In practice, this is the state-owned company "Ukrintroenergo". For other categories of consumers, electricity is free.

The Ancillary Services Market

The ancillary services market includes various types of energy and capacity products to meet the market players' reliability requirements. In this market, power generators bid for the right to deliver such services to the transmission system operator.

Licencing requirements

The generation, transmission, distribution, supply to end consumers and re-sale (trading) of electricity are subject to licensing in Ukraine. Licences are issued by the regulatory commission in line with the licensing law and are issued to Ukrainian entities only and may not be transferred to third parties.

Consumers, of course, who purchase electricity for their own consumption do not need a licence or other regulatory authorisation.

Licencing Requirements for Electricity Generation
Electricity generation is subject to licensing if a producer's installed capacity is equal to or more than 5 MW. Renewable power producers who intend to sell the electricity to the guaranteed buyer under the green tariff must also be licensed. (Please see more about renewable energy generation in the next chapter, Renewables.)

Ukraine's generation licensing conditions contain numerous organisational, technological, professional and special requirements.

Licencing Requirements for Supplying Electricity to End Consumers
Suppliers may buy and sell electricity intended for end consumers under bilateral contracts and/or in the day-ahead, intraday, balancing and import markets. Delivering electricity to end consumers requires an agreement with the distribution system operator for transmission.

Licencing Requirements for Trading Electricity
The electricity market law defines trading as buying or selling electricity with an intent to re-sell it under bilateral contracts and in other submarkets, including import and export markets. A trading license does not authorise a company to supply electricity to end consumers.

Electricity Exports and Imports
Companies intending to import or export electricity must bid for access via an online auction platform. The transmission system operator, which operates Ukraine's high-voltage transmission grid, auctions access to its cross-border capacity through an electronic document management system and electronic signatures.

Electricity can be transmitted via cross-border power lines in the directions described below[23].

Cross-border power lines

Cross-border power line	Maximum capacity
From Burshtynska TPP Island to Hungary, Slovakia and Romania	Maximum export capacity: 650 MW
"Directional transmission" via 220 kV Dobrotvirska TPP – Zamość (Poland) power line	Maximum export capacity: 235 MW
Moldova's power system	Maximum flow capacity between the IPS of Ukraine and the IPS of Moldova: 700 MW, but may be limited to zero
Republic of Belarus[24]	Maximum flow capacity between the IPS of Ukraine and the IPS of Belarus: 900 MW
Russian Federation[25]	Maximum flow capacity between the IPS of Ukraine and the IPS of Russia: 3,000 MW

Auctions are held for yearly, monthly and daily capacity.

[23] https://ua.energy/activity/dispatch-information/transborder-flows/#1562582282470-1785d2a7-f6d5
[24] As a result of Covid-19 epidemy and fall of electricity consumption, import of electricity from Russia and Belarus was restricted from 10 April 2020.
[25] As a result of Covid-19 epidemy and fall of electricity consumption, import of electricity from Russia and Belarus was restricted from 10 April 2020.

The transmission system operator offers 35% of the available cross-border capacity for annual and monthly auctions, and 30% for daily auctions. The time schedule for yearly and monthly auctions publishes by the transmission system operator on its official website. Capacity is allocated to the highest bidders until the relevant available cross-border capacity is fully allocated. The minimum that an auction winner must pay, the "marginal price for access", is set by the transmission system operator.

The allocated capacity (except for daily capacity) may be transferred fully or partially from one participant to another subject to the performance of the financial obligations regarding the capacity of the original holder.

An auction winner can lose its right to use its allocated yearly capacity if it uses less than 70% of the relevant capacity per month.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

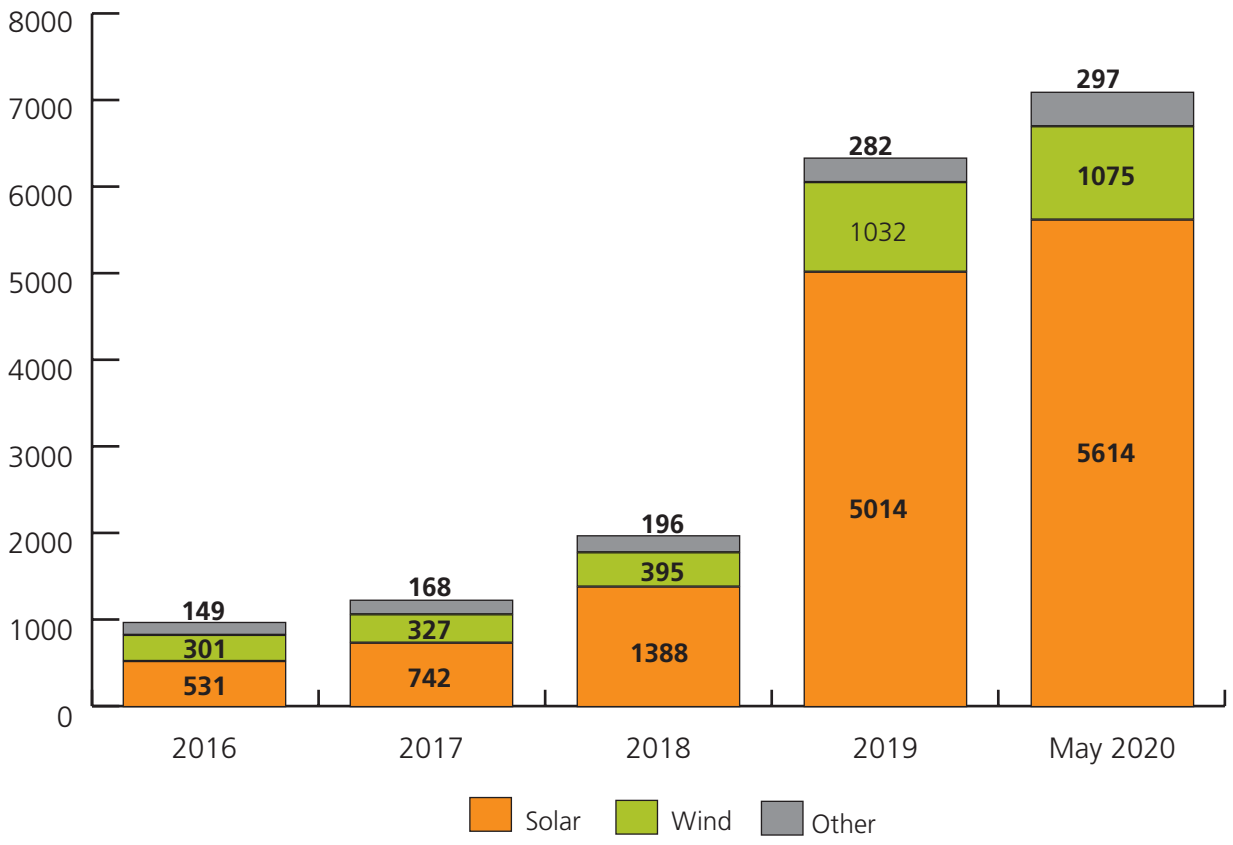
Renewables

General

Statistics

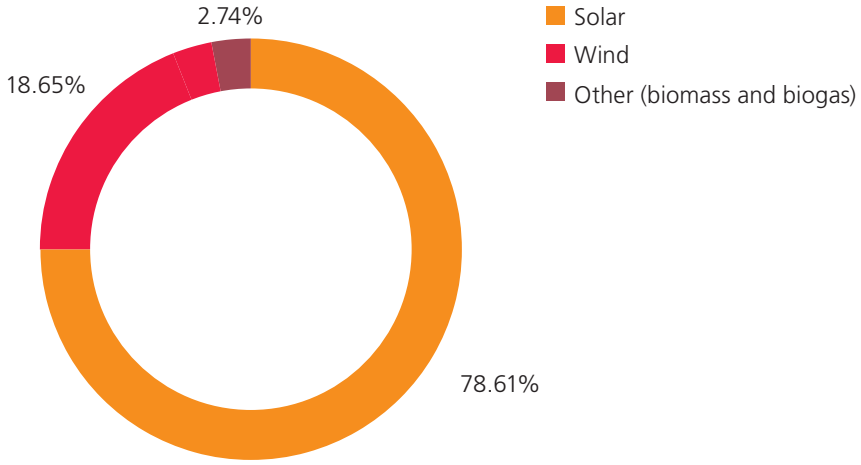
Renewable energy generation is a key priority for both Ukraine's energy sector and the national economy, and it is showing huge growth in installed capacity.

Growth of RES projects installed capacity as of May 2020 (MW)



By June 2020, the share of renewables excluding hydrogeneration projects that exceed 10 MW reached 12.7% of Ukraine's total energy mix. According to the "Energy Strategy of Ukraine until 2035" (Cabinet Resolution No. 605-p, 18 August 2017), the government expects the share of renewable energy to exceed 12% by 2020 and to reach 25% by 2035.

Commissioned renewable energy projects as of May 2020



**Excluding big hydro generation (> 10MW)*

According to the Ministry of Energy of Ukraine, as of May 2020 the total installed capacity of renewable energy projects in operation was 6,986 MW, which is approximately 12.7% of the country's total energy capacity. Almost three-quarters of this capacity (78.61%) comes from solar power plants (5,614 MW), with 18.65% from wind power plants (1,075MW), and the rest (approximately 3%) from biomass and biogas power plants.

More than 60% of all renewable generation is in five regions: Dnipro, Zaporizhia, Mykolaiv, Kherson and Odesa, which, apart from the Crimea, have the best wind resources and the highest insolation.

Regulatory Framework and Authorities

In general, the renewable energy sector is governed by the applicable laws that govern Ukraine's electricity sector, with the notable addition of the Law of Ukraine "On Alternative Energy Sources" (the alternative energy law).

Likewise, the main regulatory authorities for the renewables sector are the same as for the electricity industry, including the National Commission on State Regulation of Energy and Public Utilities Sectors.

Support schemes

The government passed its alternative energy law to stimulate the production and consumption of energy from alternative sources. The law enables economic incentives envisaged by energy efficiency and environmental legislation, and it seeks to create favourable conditions for the construction of alternative energy plants. As a result, a variety of benefits are available to renewable power producers, including a green tariff.

Green Tariff

On 1 April 2009, the Parliament of Ukraine introduced a green tariff to promote power generation from renewable energy sources. The tariff is a special price paid to producers for electricity from renewable sources (except for blast furnace and coke gas). It is awarded separately for each renewable producer, for each renewable source, and each energy generating facility, such as an individual power plant, and will stay in effect until 2030.

Green Tariff Rates

The rate of the green tariff equals the established retail tariff for households (known as "Class 2" consumers) as of January 2009 multiplied by an index that varies depending on the energy source. It also decreases over time, but the decrease applies only to new projects only, and each renewable energy project enjoys a constant rate until 2030.

Due to the rapid growth in renewables installed capacities, the green tariff support scheme became less sustainable and Ukrainian Government initiated discussion regarding further restructuring of the green tariff for renewable power producers ("RPPs") in autumn 2019. As a result of lengthy negotiations between all participants to the Ukrainian renewables market, the Ukrainian Parliament adopted Law of Ukraine No. 810-IX "On amending of certain legislative acts of Ukraine regarding improvement of terms of support of renewable energy producers" on 21 July 2020. This law restructured the green tariff support scheme from 1 August 2020 and this chapter has been prepared in accordance with it.

Green Tariff rates

The rate of the green tariff equals the established retail tariff for households (known as "Class 2" consumers) as of January 2009 multiplied by an index that varies depending on the energy source. It also decreases over time, but the decrease applies only to new renewable power projects (RPPs), and each renewable energy project enjoys a constant rate from its commissioning until 2030.

Green Tariff rates for certain RPPs

<table>
<tr><th colspan="8">Green tariff rates after decrease (Eurocents/KWh)</th></tr>
<tr><th rowspan="2">Type of generation</th><th colspan="7">Mechanical commissioning</th></tr>
<tr><th>Before 31 October 2020</th><th>Before 31 December 2020</th><th>Before 31 March 2021</th><th>Before 31 December 2021</th><th>Before 31 December 2022</th><th>Before 31 December 2024</th><th>Before 31 December 2029</th></tr>
<tr><td rowspan="2">Solar (ground based) ≥ 1MW</td><td rowspan="2">10.98</td><td>4.50 (For RPPs ≥ 75 MW)</td><td colspan="2">4.35 (For RPPs ≥ 75 MW)</td><td colspan="3" rowspan="2">n/a*</td></tr>
<tr><td>7.88 (For RPPs < 75 MW)</td><td>7.62 (For RPPs < 75 MW)</td><td>4.35 (For RPPs < 75 MW)</td></tr>
<tr><td>Solar (roof based) < 1 MW</td><td colspan="2">12.28</td><td colspan="2">11.85</td><td>11.47</td><td>11.04</td><td>10.66</td></tr>
<tr><td>Wind with turbine capacity >2MW</td><td colspan="4">8.82</td><td colspan="3">n/a**</td></tr>
<tr><td>Wind with turbine capacity >2MW and total capacity <5MW</td><td colspan="6">9.05</td><td>7.92</td></tr>
<tr><td>Biomass/biogas</td><td colspan="5">12.39</td><td colspan="2">n/a***</td></tr>
<tr><td>Mini Hydro (0.2-1 MW)</td><td colspan="6">12.55</td><td>11.15</td></tr>
<tr><td>Small Hydro (1-10 MW)</td><td colspan="6">9.42</td><td>8.35</td></tr>
</table>

** Must be commissioned within two years after execution of the Pre-PPA - the latest by the end of 2021.*
*** Must be commissioned within three years after execution of the Pre-PPA - the latest by the end of 2022.*
**** Must be commissioned before 1 January 2023.*

Adjustments for Currency Fluctuations

The green tariff is paid in UAH; however, it is adjusted each quarter based on the EUR exchange rate so that currency fluctuations do not adversely affect pay outs to renewable producers. In addition, it cannot fall below the minimum green tariff, which is fixed in EUR at the exchange rate on 1 January 2009.

Preliminary Power-Purchase Agreements

To ensure that they will be entitled to green tariff support, until 31 December 2019 investors executed a preliminary power-purchase agreement ("PPA") with the state's off taker, the "guaranteed buyer".

The guaranteed buyer was obliged to execute a preliminary PPA with customers who meet the established rules and procedures.

Stabilisation clause

The operating RPPs under the green tariff are regulated by the legislation valid from 1 August 2020, except for instances when newly enacted legislation decreases taxation, simplifies the regulation of business operations or softens legal responsibility. This stabilisation clause does not cover changes to legislation regarding defence, national security, taxation, public order and environmental protection.

The government also guarantees that until 31 December 2029, the green tariff will not be decreased or in other way changed to lower RPPs' lawfully expected income.

Green Tariff Auctions

To create a competitive market for renewable energy sources (RES), Ukraine has implemented an auction scheme for green tariffs. On 25 April 2019, Law No. 2712-VIII "On the Introduction of Certain Changes to the Laws of Ukraine regarding Ensuring Competitive Conditions for the Generation of Electricity from Alternative Energy Sources" established a green tariff auction system to start in 2020.

Despite these legislative changes, the following renewable projects can still benefit from green tariffs:

- **Projects of any capacity and any RES technology commissioned before 31 December 2019**
- **Projects of any capacity and any technology that executed a power purchase agreement (PPA) with the off-taker before 31 December 2019 and comissioned within certain time frames**
- **Wind power plants with a capacity less than 5 MW**
- **Solar power plants with a capacity less than 1 MW**
- **Projects other than wind and solar power plants, irrespective of their capacity**

Quota Auction System

Any renewable energy project can bid for a quota. Auctions are held twice a year, before 1 April and before 1 October. The main provisions of the Auctions Law are as follows.

— *Model of Support.* The off taker guarantees to purchase all electricity produced by the project at the established fixed tariff, within the limits of the quota purchased at auction.

— *Duration.* The project is entitled to the fixed tariff for 20 years after commissioning.

— *Quota Sizes.* The yearly quota for green tariffs is prepared by the Ministry of Energy of Ukraine based on proposals from the transmission system operator and the State Agency on Energy Efficiency and Energy Saving. It is then adopted by a Cabinet decision. The quotas are established yearly by 1 December for the following year with indicative forecasts of the annual quotas for the four years following the year for which the quota was established.

— *Quota Allocation.* The yearly quota is allocated among wind, solar, and other renewable energy sources, with each category receiving at least 10% of the total quota. A category whose share is not allocated during an auction can, by Cabinet decision, be allocated to another category in the next auction. The Cabinet may also decide to have a technology neutral quota or a quota for all technologies except for the solar and wind. The Cabinet can also propose land plots or roof/facades of buildings with specified technical characteristics and grid connection conditions within the yearly quota for certain renewable energy technologies

— *Auction Model.* Bidders submit sealed bids that include a technical proposal (the size of the capacity sought for certain power facilities) and a price proposal (the price the bidder is ready to accept per 1 kWh of generated electricity). The sealed bids are opened simultaneously with the award going to the lowest bidder. The platform for auctions is Ukraine's public procurement platform, Prozorro.

— *Mandatory Auctions.* Auctions are mandatory for:.

- wind generation above 5 MW without Pre-PPA executed before 31 December 2019 and later than 31 December 2022;
- solar above 1 MW without Pre-PPA executed before 31 December 2019 and commissioned later than 31 December 2021; and
- biomass/biogas commissioned after 1 January 2023 irrespective of the installed capacity.

For all other renewable technologies, participation in the auctions is voluntary.

— *Auction Price.* The auction price is fixed in EUR at the official exchange rate of the national bank of Ukraine as of the date of the power-purchase agreement.

— *Ensuring Competition at the Auction.* Competition is a mandatory requirement for the auction. The total capacity to be awarded to the winners cannot exceed 80% of the total capacity that all bidders request for each renewable energy technology.

— *Restrictions on Monopolisation.* The maximum share of the yearly quota awarded to a single bidder, including related parties, cannot exceed 25% of the yearly quota, i.e. in total for two auctions in one year.

— *Ceiling Prices.* For wind and solar, the maximum price is EUR 0.09 per kWh for auctions held until 31 December 2024 and EUR 0.08 for auctions held after 1 January 2025. For other renewable technologies, the ceiling price is EUR 0.12 per kWh.

— *Bank Guarantees*. To participate in an auction, a bidder must obtain a bank guarantee of EUR 20 per 1 kWh of capacity, which comprises: EUR 5 per 1 kWh as a bid bond to participate in the auction; and EUR 15 per 1 kWh to be provided in addition as a performance bond to ensure construction of the project, if the bidder wins the auction.

— *Pre-qualification requirements*. Bidders must demonstrate proof of land ownership or use rights, as well as a grid connection agreement.

Renewable producers may also receive a premium on top of the green tariff or auction tariff if they use Ukrainian equipment, such as PV modules, trackers, rotor blades, nacelles, metal frames, boilers, anaerobic digestion reactors, pumps, etc. Projects that use more than 30% local equipment receive a 5% premium, and projects that use more than 50% receive a 10% premium. The Ukrainian origin of these elements must be certified by the Ukrainian Chamber of Commerce and Industry.

Local content premium

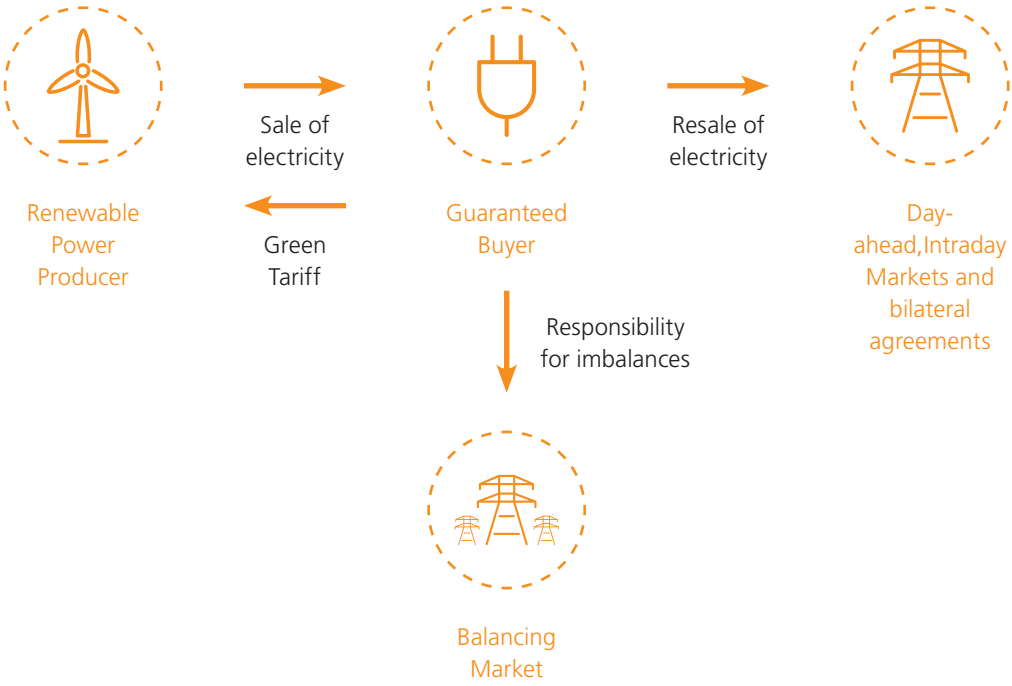
RPPs can also receive a 5% or 10% premium to the green tariff rate or the price of electricity acquired during auctions for distribution of support quota, if it can prove that the proportion of Ukrainian raw materials, consumables, fixed assets in the total construction cost of the RPP exceeds 30% or 50% respectively.

Furthermore, if Ukrainian raw materials, consumables, fixed assets in the total construction cost of the RPP exceeds 70%, such RPP would be eligible for 20% premium (with its decrease to 10% after six years of operation).

The guaranteed buyer

Renewable energy producers who sell electricity under the green tariff must enter into a power-purchase agreement with the guaranteed buyer at the fixed tariff. The latter then resells the electricity on the day-ahead and intraday markets.

General structure of the sale of electricity to the Guaranteed Buyer under the Green Tariff



Renewable producers who sell electricity at the green tariff rate as well as renewable auction winners must also join a special balancing group among whose members the guaranteed buyer settles imbalances. The producers must reimburse the guaranteed buyer a share of the costs associated with settling imbalances, with their share increasing to 100% in 2022.

Share of the settlement of imbalances renewable power producers must reimburse to the guaranteed buyer

Period	Share (%)
between 1 July 2019 and 31 December 2020	0
from 1 January 2021	50
from 1 January 2022	100

Until 31 December 2029, tolerance for imbalances will be 5% for solar RPPs and 10 % for wind RPPs.

Please also note that in the near future, legislation is expected to be adopted that will allow RPPs to leave the balancing group of the guaranteed buyer and freely sell electricity on market with the possibility to receive compensation amounting to the difference between the green tariff rate or auction price established for such RPP and market price (at least the price on the day-ahead market) from the guaranteed buyer.

Connection to the grid

The Electricity Market Law sets out the basic legal framework for connecting renewable power projects to Ukraine's grid. Depending on who owns the grid, either the transmission system operator or a local distribution system operators (known as an "Oblenergo"), is responsible for connecting a power plant.

Legal Framework for Connecting to the Power Network

Ukraine's distribution systems code of 14 March 2018 sets out the legal framework for connection to Oblenergo's network. However, connection to the grid is governed by the transmission system code in the following cases:

— power plants whose installed capacity exceed 20 MW;

— power plants with an installed capacity of 20 MW or less according to the feasibility study;

— electrical installations of distribution systems;

— high-voltage direct current systems (PSVN systems); and

— electrical installations with a voltage level 220 kV and above (objects of power consumption) according to the feasibility study.

Connection Procedure

For a connection to proceed, the transmission system operator or the distribution system operator must first identify the connection point and the ensuring point.

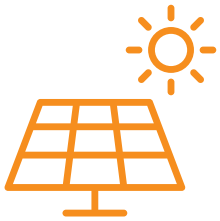
— The connection point is a location on a customer's power lines (existing or designed). This point sets the boundary of the customer's "balance responsibility", i.e. the customer's responsibility to maintain the power infrastructure, such as transmission towers, power lines and other objects, and to keep them on its balance sheet.

— The ensuring point is a location on the power lines of the transmission system operator or the distribution system operator where the relevant operator starts development (construction or modernisation) of the lines needed to connect the customer.

Types of Connection
There are both standard and non-standard connections. A standard connection occurs when the distance between the connection and ensuring points is equal to or less than 300 meters and the voltage at both points is the same or less than 50 kW. A non-standard connection occurs if the voltage at the connection and ensuring points differs, or if the voltage exceeds 50 kW.

Connection Fee
The connection fee is based on the cost of (re)constructing the lines between the connection and ensuring points and is calculated by a methodology approved by Resolution No 1965 (18 December 2018) of the regulatory commission.

Information in this chapter is based on certain aspects of Ukrainian legislation as of August 2020



Natural resources, mining, oil and gas

General

Introduction

Ukraine is rich in mineral resources, and 48% of Ukrainian industrial potential is related to their production and use. Note that Ukrainian legislation includes oil and gas in "mineral reserves". Energy independence is one of Ukraine's main strategic aims, and as a result Ukrainian gas extraction has been increasing steadily for the last five years.

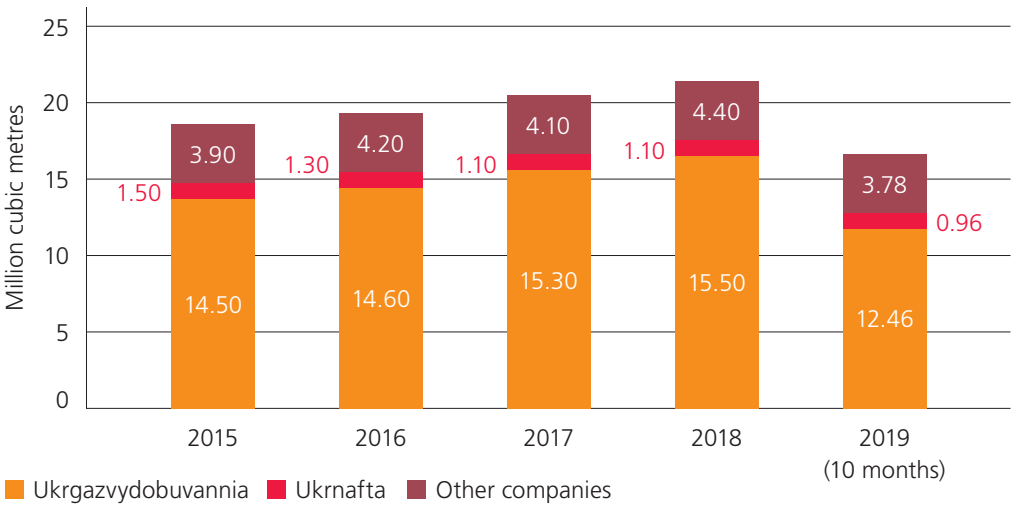
Statistics

The state balance of reserves documents 8,761 oil, gas and mineral deposits of 95 different types, and of these, 3,055 are being developed. Ukraine's gas transmission system is one of the largest in the world, consisting of 37,600 kilometres of pipeline, 73 compressor stations with a capacity of 5,496 MW, and 13 underground gas storage facilities with a volume of 31,950 billion cubic meters.

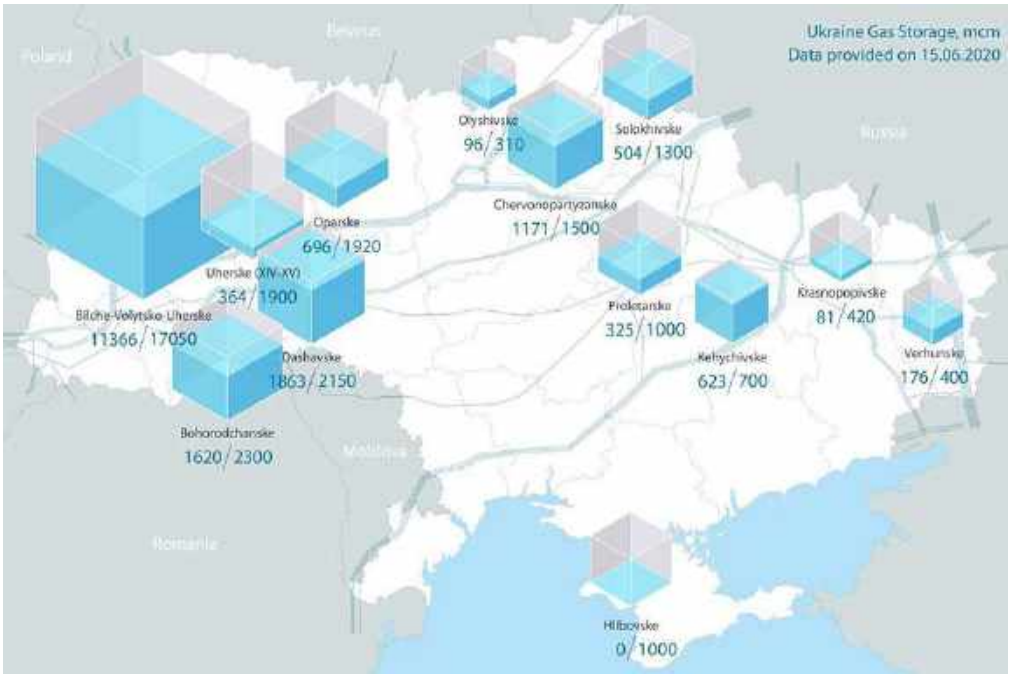
Estimation of reserves

Estimation of Ukrainian mineral reserves in 2019	
Natural Gas	1,499,285 million cubic meters
Oil	182,311,000 tons
Coal	52,636,158,000 tons
Iron ore	26,606,728,800 tons
Manganese ore	2,368,677,780 tons
Aluminium ore	18,885,000 tons
Copper ore	20,488,000 tons
Sulphur	605,276,000 tons

Gas extraction



Ukrainian GTS and natural gas reserves in underground gas storage facilities as of 15 June 2020



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Regulatory Framework and Authorities

The exploration and extraction of mineral resources in Ukraine is governed mainly by the following laws:

— Code of Ukraine on the Subsoil No. 132/94-BP dated 27 July 1994;

— Law of Ukraine No. 1039-XIV "On Production Sharing Agreements" dated 14 September 1999;

— Law of Ukraine No. 2665-III "On Oil and Gas" dated 12 July 2001;

— Mining Law of Ukraine No. 1127-XIV dated 6 October 1999;

— Law of Ukraine No. 1216-XIV "On the State Geological Service of Ukraine" dated 4 November 1999;

— Resolution of the Cabinet of Ministers of Ukraine No. 615 "On Approval of the Procedure for Issuance of the Special Permits for Subsoil Use" dated 30 May 2011;

— CMU Resolution No 594 "On Approval of the Procedure for Holding Auctions for the Sale of the Special Permits for Subsoil Use" dated 30 May 2011; and

— CMU Resolution No 939 "On Certain Questions on the Disposal of Geological Data" dated 7 November 2018.

Ukraine is currently undergoing legislative and regulatory reform to maximise the extraction of its mineral resources and reduce its dependency on imports. This program is described in Law of Ukraine No 3268-VI "State Programme for the Development of Mineral Resources in Ukraine until 2030" (dated 21 April 2011).

The reform program follows Ukraine's national energy strategy, which envisions the further alignment of legislation with EU and Energy Community directives, and prioritises an increase in domestic extraction of natural gas to levels that will allow exports.

Other notable legislation applicable to the mineral resources sector includes:

— Tax Code No. 2755-VI dated 2 December 2010 (taxation of subsoil use activities);

— Land Code No. 2768-III dated 25 October 2001 (allocation of land plots for subsoil use);

— Health and safety laws, including the Law of Ukraine No. 1264-XII "On Environmental Protection" dated 25 June 1991, Water Code of Ukraine No. 213/95-BP dated 6 June 1995, Forest Code of Ukraine No. 3852-XII dated 21 January 1994, the Law of Ukraine No. 2059-VIII "On Environmental Impact Assessment" dated 23 May 2017 (EIA Law) and the Law of Ukraine No. 2245-III "On Objects of High Hazard" dated 18 January 2001; and

— Commercial Code No. 436-IV dated 16 January 2003 and Civil Code No. 435-IV dated 16 January 2003.

The main regulatory authorities of Ukraine's extractive industries are:

— Parliament of Ukraine, which passes primary legislation;

— Cabinet of Ministers of Ukraine, which passes secondary legislation that implements primary legislation;

— Ministry of Environmental Protection[26], which is responsible for state policy in the mineral resources and the state environmental policy, as well as for supervising the rational use of the mineral resources;

— Ministry of Energy, which is responsible for state policy in the oil and gas sector;

— State Labour Service of Ukraine, which is responsible for state policy regarding industrial safety and labour protection; and

— State Service for Geology and Subsoil of Ukraine, which issues subsoil licences, monitors users' compliance with legislation, and imposes penalties for infractions.

Classification of Mineral Resources

Cabinet Resolution No 827 "On Approval of Lists of Mineral Resources of State and Local Importance" (12 December 1994) classifies mineral resources into two groups:

— mineral resources of state importance (for example oil, gas, coal, metallic ores and so on); and

— mineral resources of local importance (for example gypsum, chalk stone, sand and on).

Reserves are also classified by quantity. Cabinet Resolution No. 1257 "On Approval of the Criteria for Identification of Non-Significant Reserves of Mineral Resources" (11 August 2000) identifies deposits (except for oil and gas deposits) as either "significant" or "insignificant" as well as the thresholds needed for particular minerals to be considered significant (five million tons for coal, ten million tons for ore, etc.).

Rights to mineral resources

Subsoil Use Permits

According to Ukraine's constitution, mineral resources belong to the Ukrainian people. Although the people retain ownership, state authorities may dispose of subsoil rights to those minerals on behalf of the people.

The right to use the subsoil is granted via Special Permits from the State Service for Geology and Subsoil of Ukraine (the state geological service). A subsoil user becomes the owner of the mineral resources once the resource reaches the surface. In certain cases, a Special Permit is the basis for obtaining any further permits and authorisations needed to develop the resource. Special Permits differ by type of activity, as follows.

[26] Please note that Ministry of Energy and Environmental Protection was split on 27 May 2020 into Ministry of Energy and Ministry of Environmental Protection.

Types of Special Permits for subsoil use in Ukraine

Activity	Duration
Exploration	Up to three years for mineral resources of local importance, and up to five years for mineral resources of state importance
Exploration, including pilot commercial extraction of deposits of state importance (including hydrocarbons)	Up to five years for onshore operations and up to ten years for offshore hydrocarbons
Extraction	Up to 20 years for onshore operations, and up to 30 years for offshore hydrocarbons
Combined exploration and extraction of hydrocarbons	Up to 20 years for onshore operations, and up to 30 years for offshore operations
Performance of activities under a product sharing agreement	Up to 50 years

In addition to obtaining subsoil rights, a user is generally required to obtain any land-use rights needed to extract the resource from the land owners.

Special Permits are non-disposable; that is, a user cannot sell, lease or pledge the Special Permit, contribute it to the charter capital of other entities or otherwise dispose of it. A minor exemption exists for a corporate reorganisation by way of a spin-off, in which case a Special Permit may be transferred to a subsidiary that will continue the subsoil activities of the parent company.

Each Special Permit is supplemented by a subsoil use agreement which establishes the basic rights and obligations of the subsoil user, including:

— minimum investment commitments;

— the scope and timeframes of the work; and

— the environmental protection requirements.

If a permit holder does not comply with the subsoil use agreement, including the work program, the state geological service may suspend the permit, and if the holder fails to remedy breaches within the prescribed period, may cancel it.

A subsoil user is also liable for the actions of any contractors it engages, who must comply with the Special Permit and use agreement, including in relation to damage to the subsoil, to the environment, or to public health.

Special Permit Auctions

In general, Special Permits are awarded at subsoil auctions held by the state geological service. In some cases, they may also be obtained through a product sharing agreement, a merger or acquisition with an existing permit holder, and other exceptions.

The starting price for a subsoil auction is determined by a special methodology established by Cabinet. Since December 2019, Special Permit auctions are carried out online via the auction platform Prozorro. Fees apply to the renewal of a Special Permit and to its re-issuance in connection with an extensions of the land covered by it.

Product Sharing Agreements

Under a product sharing agreement ("PSA") between an investor and the Cabinet (representing the state), a Special Permit may be issued for the term of the PSA to carry out the activities of the agreement. Under this arrangement, the investor commits to carry out certain extracting activities at its own expense, is entitled to the reimbursement of its expenses for extracting the mineral resource, and is entitled to a certain share of the profit production.

A PSA is signed with the winner of a competitive tender. If the mineral deposit is classified as "insignificant" (see section "Classification of Mineral Resources"), the Cabinet may enter into a PSA without a tender.

The subsoil user must pay a fee for participating in the tender, as well as a PSA signing bonus whose amount is established by Cabinet.

Generally, the PSA regime is more attractive than the licensing regime, as an investor receives significant benefits, including:

— a "stability" clause that protects the investor from any adverse changes in legislation (environmental regulations and legislation on national security and defence and public order are exempt);

— assistance from the state in obtaining the necessary permits and authorisations, including the Special Permit for the relevant subsoil area;

— dispute resolution through international arbitration;

— special terms and exemptions for foreign currency transfers and customs operations, including the export of production;

— the investor's profit for tax purposes is determined as the value of a profitable share of resources allocated to the investor under the PSA. All other types of income received by the investor while implementing the PSA are not subject to corporate income tax; and

— services received by a foreign investor from non-residents within the territory of Ukraine are not subject to VAT.

M&A with Existing Subsoil Users

An investor may also purchase equity in a company that already holds a Special Permit or has executed a PSA, or undertake a joint activity with a subsoil user.

Under a joint activity arrangement, the partners sign an agreement on sharing commitments, profits and expenses. At present, however, joint activities are a less favourable option since they lack stability and proper regulation under Ukrainian law.

Other Options

In a few limited cases, the state geological service may grant Special Permits without an auction, PSA or concession, including:

— where an investor who already holds a Special Permit that allows for exploration in a particular area has performed survey and calculation of the mineral resources (which was approved), and applied for a Special Permit for the extraction of minerals within 3 years after such approval;

— where the permit is for an extension of up to 50% of a subsoil area for exploration purposes, however the extension can be done only once and it must not exceed 50% of the reserves of the original permit; and

— where the permit is for the exploration and extraction of minerals of local importance.

Royalties and payments for subsoil use

Royalty Rates

Subsoil users must pay a royalty per volume of extracted minerals. The amount payable is based on the value of the mineral resources extracted during the reporting period and are established by the tax code for each separate mineral resource.

Royalty rates

Mineral Resource	Rate
Coal	0.75% to 1.5%, depending on the type of coal
Ores	5% to 8%, depending on the type of ore
Amber	10%
Oil	31% for oil extracted from deposits at a depth of up to 5 km 16% for oil extracted from deposits at a depth of more than 5 km
Natural gas	11% for offshore gas 14% for gas extracted from deposits at a depth of more than 5 km 29% for gas extracted from deposits at a depth of up to 5 km 70% for gas extracted under a product sharing agreement
Natural gas from wells drilled after 1 January 2018	6% for wells with a depth more than 5 km; 12% for wells with a depth less than 5 km. A stabilisation clause guarantees that these rates for new wells will remain fixed until 2023.
Other minerals	5%

In certain cases set out in the tax code, such as the extraction of mineral resources exceeding permitted volumes or from certain types of deposits such as a continental shelf, royalty rates may also be adjusted, with indexes varying from 0.01 up to 2.00.

Royalty Payments under PSAs
Under a PSA, the investor pays royalties according to the terms of the PSA.

Exports and imports of mineral resources

Exports
Certain mineral resources are subject to export duties, namely natural gas and scrap metals. Natural gas exported to countries that are not members of the EU or the Energy Community is charged an export duty of 35% on its customs value, with a minimum duty of UAH 400 (approx. EUR 13.37). Gas exported to countries that are members of the Energy Community is not subject to export duty.

Exports of scrap metals (both precious and non-precious) are subject to an export duty of EUR 58 per tonne.

There are also specific regulations and restrictions on the export of precious metals and anthracite, and on the re-export of certain mineral:

— Exports of precious metals (silver and gold, waste or scraps of precious metals or containing precious metals, save for banking metals) are subject to mandatory licensing and quotas; in 2020, the relevant quotas were zero, which indicates that the export of these metals is currently not allowed.

— Licences to export anthracite are issued by the Ministry for Development of Economy, Trade and Agriculture of Ukraine ("MEDT") and are also subject to approval by the Ministry of Energy, although no quotas apply.

— A permit from MEDT must be obtained to re-export oil, gas, aluminium, liquified natural scrap non-precious metals, copper and nickel.

Imports
A variety of customs duties apply on imports of mineral resources.

— Most mineral resources are subject to a 2% duty on their customs value, including:
  - salt, sulphur, sand, quartz, calcium phosphate, pumice, marble, gravel, limestone, asbestos and mica;
  - iron ore, manganese ore, copper ore and uranium ore; and
  - unsorted diamonds, unprocessed precious stones (except for diamonds), silver, gold and platinum.

— Calcined magnesia is subject to a 0.1% import duty on its customs value.

— Unprocessed diamonds are subject to a 5% import duty on their customs value.

— Kaolin, chalk, granite, lime flux, lime carbonate, concrete, and bitumen are subject to a 10% import duty on their customs value.

— Bentonite is subject to 20% import duty on its customs value.

— Majority of types of coal (with certain exception in relation to anthracite and certain other types of coals used in metallurgy) originating from Russian Federation are subject to 65% import duty.

Although oil is currently not subject to import duties, different types of fuels, including aviation gasoline from any country and diesel fuel originating from the Russian Federation, are subject to import duties ranging from 2% to 10% on their customs value and to excise tax in Ukraine.

Imports of mineral resources, including oil and gas, are subject to VAT at a general rate of 20%.

Extraction permits

Environmental Permits
Most extractive operations (including of oil and gas) require an environmental impact assessment ("EIA") to be conducted as a pre-requisite for commencing activities and obtaining the respective permits, including Special Permits, construction permits and various environmental permits. The EIA process is complex and takes a minimum three to four months.

In addition, the following environmental permits are generally needed for exploration and extraction operations, depending on the type of mineral resource, its location and the haracteristics of the site:

— permit for waste disposal, obtained from a local state administrative body;

— an air pollution permit, issued by the Ministry of Environmental Protection or its local body; and

— a permit for special water usage, obtained from local bodies of the State Agency of Water Resources of Ukraine.

Health and Safety Permits
Ukrainian primary and secondary legislation, as well as standards and regulations, provide for numerous health and safety requirements in relation to extracting activities, including minimum qualifications for manpower, protective measures, equipment, and so on.

Extraction activities usually involve hazardous work, such as operating hazardous machinery and high-pressure equipment, work conducted underground or at height, or welding or demolition. As a result, a subsoil user or its contractors must obtain permits from the State Labour Service of Ukraine to perform such hazardous work and operate the respective hazardous equipment.

If carrying out works in which explosives are used, the subsoil user must also obtain the necessary permits for the acquisition and storage of explosive materials.

Gas and oil markets

The Regulator

The natural gas market of Ukraine is regulated by the National Commission on State Regulation of Energy and Public Utilities Sectors, an independent public authority that monitors and controls the energy and public utilities sectors. The commission has the right to:

— issue mandatory resolutions, orders and regulatory acts;

— establish licensing conditions and grant licences activities in the electricity and gas markets, as ell as in the public utilities sector;

— establish tariffs; and

— supervise, monitor and control the behaviour of market players in these sectors.

Natural Gas Market

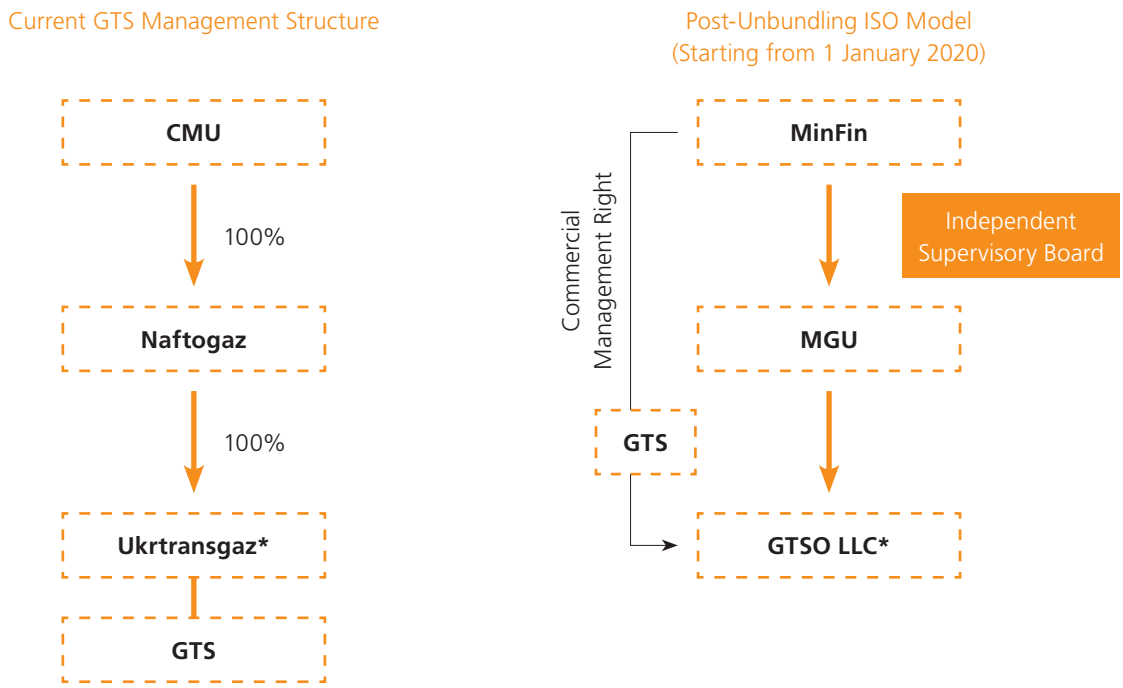
The chief law governing the natural gas market is the Law of Ukraine "On Gas Market" which came into effect on 1 October 2015. Transmission, distribution and storage codes, gas supply rules, and emergency and national action plans also contribute to the legal framework for the natural gas market.

Ukraine's natural gas market is undergoing reform as it moves towards the uniform rules envisaged by the EU's Third Energy Package.[27] Among various other changes, Ukraine's gas transmission system ("GTS") has been unbundled and adopted, and is adopting a coding system recommended by the European Network of Transmission System Operators for Gas ("ENTSOG") .

Unbundling

On 1 January 2020, an unbundling plan that implements an independent transmission system model came into effect (Cabinet Resolution No. 840, 18 September 2019). Under this resolution a new entity, LLC Gas Transmission System Operator, replaced JSC Ukrtransgaz as Ukraine's transmission system operator ("TSO"). JSC Ukrtransgaz continued functioning as a SSO.

Structure of Ukraine's gas transmission system before and after unbundling



[27] The European Union's Third Energy Package is a legislative package for an internal gas and electricity market in the European Union. Its purpose was to further open the gas and electricity markets in the European Union. The package was proposed by the European Commission in September 2007 and adopted by the European Parliament and the Council of the European Union in July 2009. It entered into force on 3 September 2009. For more information, please follow this link: https://ec.europa.eu/energy/en/topics/markets-and-consumers/market-legislation/third-energy-package.

Please note that Ukrtransgaz refers to JSC "Ukrtransgaz", GTSO LLC refers to the LLC "Gas Transmission System Operator", MGU refers to JSC "Main Gas Pipelines of Ukraine", Naftogaz refers to JSC "National Joint Stock Company "Naftogaz of Ukraine" and Minfin refers to Ministry of Finance of Ukraine.

The Market Model and Transportation System

The natural gas market of Ukraine works on the entry-exit tariff model. Network users pay for the transportation of natural gas through the Ukrainian GTS through fees for allocated capacities at entry and exit points on the system, such as interconnection points with neighbouring gas markets, extraction sites, storage facilities, distribution networks, large consumers directly connected to the high-pressure pipeline, and LNG terminals.

The following fees apply:

— *Entry and exit fees*. To transport gas to or from Ukraine, a company must reserve capacity at the entry and exit points on the Ukrainian GTS and pay the respective fees. The TSO allocates capacity for periods of a year, quarter, and month, as well as on a day-ahead basis, taking into account the technical capabilities of the transmission system. The entry fees are paid upfront for the amount due each month.

— *Domestic transmission fees*. GTS customers pay the TSO a transmission fee per 1,000 cubic meters, which varies depending on the exit point to which the gas is transported. Currently, the fee for transporting natural gas to exit points from GTS underground storage facilities is zero.

— *Storage fees*. To store natural gas in Ukrainian underground facilities, the customer pays fees to the storage system operator ("SSO"). The SSO charges separate fees for injection, withdrawal and storage of natural gas in its underground facilities, and each user is required to make a 100% prepayment for these services under the natural gas storage agreement.

To have natural gas transported from the entry point to the exit point, a customer must sign a transportation agreement with LLC Gas Transmission System Operator, which performs the functions of Ukraine's TSO[28], obtain a capacity allocation and submit nominations to the TSO. Customers are also responsible for ensuring the balance between the gas it delivers to and withdraws from the GTS, including for imports and exports and injection into and withdrawal from underground storage, as well as during transportation.

According to the Transmission System Code, when natural gas is sold or traded, the transfer and acceptance of the gas occurs either at physical entry/exit points that are equipped with meters or at virtual entry/exit points in the GTS. The transfer of natural gas at virtual points is executed on the basis of trade notifications submitted to the TSO via an electronic platform by both parties to the transaction.

Distribution to end consumers is done by the distribution system operators directly under distribution agreements with customers. Thus, a gas supplier is not responsible under law for the proper distribution of gas to its consumers.

Short-haul

Capacity with limitations (short-haul) is a new product of TSO which became operational after 1 January 2020 and which provides the possibility to book capacities of certain entry/exit points of Ukrainian GTS with cheaper fees as an alternative to booking of the capacities of Ukrainian GTS under the general procedure.

[28] From 1 January 2020, according to effective unbundling plan, function of TSO will be performed on the basis of agreements with LLC "Gas Transmission System Operator" instead of agreements with JSC "Ukrtransgaz".

Capacity with limitations can be used on monthly or day ahead interruptible basis for (1) transit of natural gas through the territory of Ukraine (currently applicable only on the Western border of Ukraine – short-haul); and (2) transportation of natural gas in and out of the country for its storage in the CWR (more information can be foud in section "Natural Gas in Stored Customs Warehouse" below).

On the next schematicswe provide description of how short-haul may be used.

Entry/exit points of Ukrainian GTS with capacities with limitations

Copyright: Gas Transmission System Operator of Ukraine (https://tsoua.com/)

Natural Gas in Stored Customs Warehouse

Generally, natural gas brought into Ukraine must clear customs either under the free circulation regime or the customs warehouse regime ("CWR"). Gas imported for free circulation is subject to 20% import VAT on the customs value of the gas.

The CWR offers certain benefits for importers. Customs Code No. 4495-VI (13 March 2012) includes CWR as one of the regimes, under which goods may be stored on Ukrainian customs territory and under the control of Ukrainian customs authorities. Placing natural gas under the CWR is exempt from duties and taxes, including the 20% import VAT, and is exempt from non-tariff regulations as well.

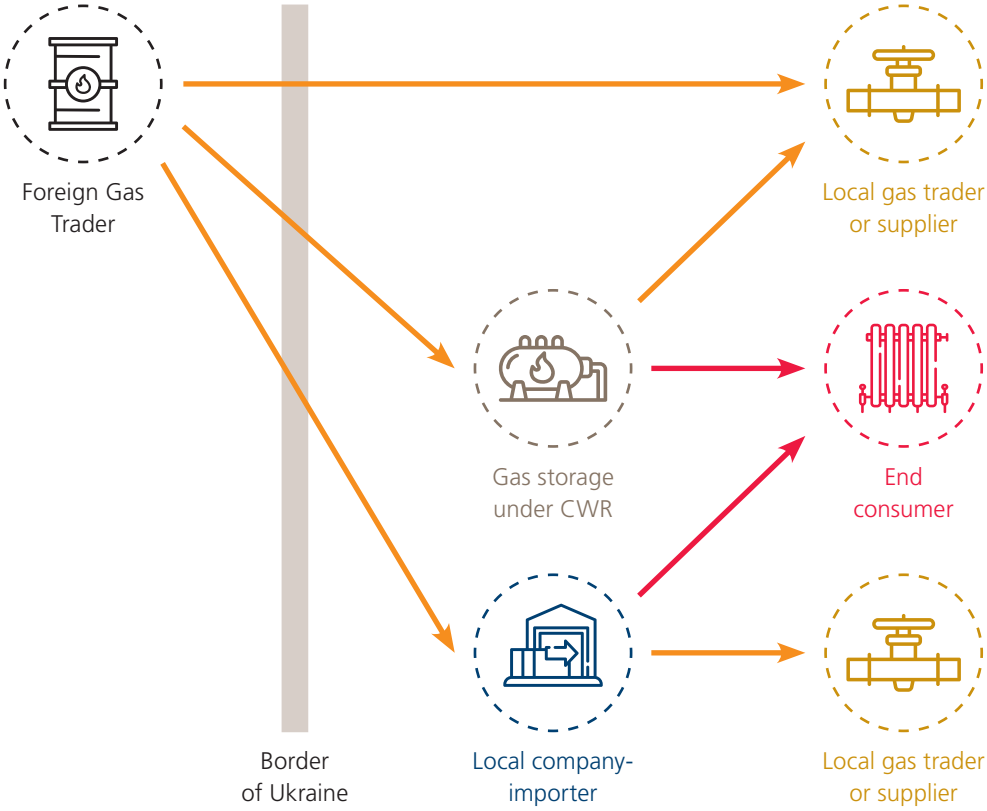
Natural gas imported under the CWR is stored in Ukrainian underground facilities and exempt from the import VAT for 1,095 days after it crosses the Ukrainian border. After 1,095 days, it must be either re-exported outside of Ukraine or declared under a different customs regime.

In addition, as mentioned in above, TSO customers may use short-haul to bring natural gas in Ukraine under CWR.

Licensing Requirements

A gas supply licence is needed only to supply natural gas to end consumers, that is households, industrial consumers, state enterprises and others who acquire natural gas for their own needs or to use as raw material and not for resale.

Transactions that require a licence



As a result, a gas supply licence is not required for gas trading at Ukrainian border points or for gas trading within Ukraine if the natural gas is not delivered to end consumers.

Other Requirements Related to the Ukrainian Gas Market

When trading on the Ukrainian gas market, various other requirements must be taken into consideration, including but not limited to balancing requirements, payments for neutrality, mandatory gas reserve stocks, financial guarantees, and others.

The Oil and Oil Products Market

The wholesale trade of oil is not subject to regulatory restrictions. The prices for oil and oil products are market-driven and the law establishes no limitations such as price caps.
At the same time, specific requirements pertain to the transportation, storage, measurement, and approbation of oil and oil products, but these correspond to normal business practice in the downstream sector.

Producing, storing, and selling oil products, liquified gas and other fuels (both retail and wholesale) is subject to licensing. Law No. 481/95-BP "On State Regulation of Production of ethanol, cognac and fruit spirits, alcoholic beverages, tobacco products and fuels" (19 December 1995) regulates the issuing of these licences.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Public-private partnerships

Introduction

General Regulatory Framework

The legal framework for public–private partnerships ("PPPs") in Ukraine is set out in the Law of Ukraine "On Public-Private Partnership". Other specialised laws also regulate certain types of PPP (such as concessions, described below), and secondary legislation provides more detailed rules for how PPPs function.

According to the PPP law, a PPP is cooperation between, on one side, the state of Ukraine, local communities, local self-government authorities or the National Academy of Science of Ukraine (public partners) and one or more legal entities on the other side (private partners). Note that state and communal owned enterprises, institutions and organisations cannot act as a private partner. Both public and private partners can form consortiums to participate in a PPP, with the procedure set out in the PPP Law.

A PPP can be created through a concession, a property management agreement, a joint-venture agreement; or another agreement, but must have the following features:

— the new construction, reconstruction, restoration, repair or technical retrofitting of aproperty or asset and/or its management (usage, operation and technical maintenance);

— substantial duration of the partnership (from 5 to 50 years);

— investment by the private partner in the relevant property or asset; and

— the partial transfer of risks that may arise during the PPP to the private partner.

Areas for PPP

Ukraine allows PPPs in the following areas:

— the production, transportation and supply of heating oil or the distribution and supply of natural gas;

— the construction and/or operation of highways, roads, railways, landing strips within airports, bridges, tunnels, subways, sea and river ports and their infrastructure;

— machine manufacturing;

— gathering, cleaning and distributing water;

— healthcare;

— tourism, recreation, culture and sport;

— the maintenance of irrigation and watering systems;

— waste treatment (except its collection and transportation);

— the generation, distribution and supply of electricity;

— providing social services and managing social institutions;

— the manufacture and implementation of energy-saving technologies;

— the construction and repair of housing that was partially of fully destroyed by military action in regions affected by antiterrorist operation;

— the installation and construction of temporary housing for internally displaced people;

— educational services; and

— managing architectural monuments and objects of architectural heritage.

The above list is not exhaustive, and public partners are free to enter into PPPs in other areas in order to provide socially important services. PPPs are restricted to commercial activities that can be performed only by state enterprises, institutions and organisations.

A PPP can be formed in relation to properties and assets owned by the state, local communities or the Autonomous Republic of Crimea, or by enterprises which they fully own. It may also be formed to build a new property or asset.

PPP Tender

The private partner for a PPP is selected through a tender process, as follows:

— Initiation of PPP tender. Prospective private or public partners can initiate a PPP by submitting a proposal to the responsible state or local authority, which must decide on the feasibility of the proposal within three months.

— Commencement of the tender. Within six months of the decision on the proposal, the responsible state and local authorities establish a tender commission with at least seven members. The tender commission approves the tender conditions and documentation, and the PPP tender is announced.

— Pre-selection of candidates and submission of qualified proposals. After the tender is announced, prospective partners have at least one month to submit their applications. The tender commission verifies that applicants meet the qualifications and invites those that qualify to submit proposals on the terms established by the tender conditions.

— Assessment of the proposals. The tender commission assesses the proposals against (a) technical and engineering, (b) financing and commercial, and (c) ecological and social requirements and determines a winner. They record their decision which the responsible state or local authority must approve within one month.

— Execution of the PPP agreement. The PPP agreement with the winner of the tender is executed within the timeframe established by the tender conditions.

Other Aspects of PPPs

A number of other aspects of PPPs in Ukraine are worth considering:

— State support. Tender conditions can allow for aid to the private partner in the form of: (1) state and local guarantees; (2) financing through state and local budgets; (3) payment of fees to the private partner; (4) the acquisition or sale of goods and services; and (5) the construction of neighbouring infrastructure necessary for the PPP project.

— Ownership. Property and assets transferred to the private partner remain in state or communal property, and assets created under the PPP and in accordance with the PPP agreement are jointly owned by the private partner and state or local community. The private partner, however, remains the owner of all movable property that was acquired for the project (unless otherwise provided for in the PPP agreement). If allowed under the PPP agreement, the private partner may also lease part of the property that is the object of the PPP.

— Dispute resolution. The parties to a PPP agreement may choose international commercial arbitration for resolving their disputes. Furthermore, the state can waive its immunity under the PPP agreement.

— Guarantees of private partner rights. PPP law envisages a stabilisation clause that, if included in the PPP agreement, ensures that the laws in effect on the date of the agreement will stay in force its the duration (with certain exceptions). Furthermore, if a PPP agreement is terminated due to a breach by the public partner, it must reimburse the private partner for all its investments not yet recuperated during the project and for damages caused by its early termination.

— Direct agreement and pledge of proprietary rights under the PPP agreement. The PPP law specifically protects the rights of the creditors of PPP projects by allowing: (1) the execution of a direct agreement with creditors that enables the replacement of a failed private partner; and (2) a pledge by the private partner of its proprietary rights under the PPP agreement which may be enforced only through the replacement of the private partner.

Concessions law

Regulatory Framework

On 20 October 2019, the long-awaited Law of Ukraine "On Concession" entered into force introducing important improvements to how concessions operate in practice and to encourage their use. Although the overall regulation of concessions remains conceptually the same, the new law on concessions brings them into line with the latest changes to the PPP regulatory framework. These include, among others, improving the concession tender procedure, lifting restrictions on property and assets that can be transferred into a concession, enabling investors to initiate a concession, allowing leases of state property to be transferred into a concession, a stabilisation clause, the introduction of mechanisms for protection of creditors' rights, and more.

The new concessions law replaced all previous legislation governing concessions and applies in all areas and sectors and to all types of property and assets, both state and municipal. It also introduced a common approach to concessions that will, hopefully, ensure consistent application and implementation.

The Law of Ukraine "On Concession" is a key part of Ukraine's national transportation strategy, which foresees UAH 10.1 billion (approx. EUR 374 million) invested in transportation by 2030 and new foreign investment in Ukraine.

One month before the new law came into force, the Ministry of Infrastructure of Ukraine announced two pilot concession tenders: one in the port "Olvia" and in the port "Kherson". The respective consession tenders were performed in accordance with the old legislation in January 2020. However, execution of the concession agrements was delayed due to the court proceedings challenging the results of the concession tender in relation to the port "Kherson". The Ministry of Infrastructure plans to execute both concessions agreements in relation to ports "Olvia" and "Kherson" simultaneously in the near future. The draft of the concession agreement in relation to port "Kherson" has now been approved by the Ministry of Infrastructure. Although these concessions tenders were run under the old legislation, the new concessions law envisages aligning the respective concession agreements with provisions of the new law.

Concessions vs. PPPs

Although concessions are a type of public–private partnership, there are differences. The main differences are as follows:

— Almost no limitations on objects that can be transferred in concession. The new concessions law removes most restrictions on assets that can be subject to a concession. All objects of state, communal property, and the property of enterprises fully owned by the state that are fully owned by another fully owned state entity can be provided in a concession. Only already leased assets, except those whose lessees wish to transfer into concession and which comply with certain requirements described below, and assets or property used by the Ukrainian army for the production or repair of armaments cannot be subject to a concession.

— Alternatives to the tender process. The concessions law also envisages two alternatives to awarding concessions by tender. One of them is through a competitive dialogue, which may be used to implement innovative or complex infrastructure projects. The other is by direct negotiations with the lessee of state property, which is allowed under the following conditions: (1) a lease agreement was executed before the new concessions law came into force; (2) the lessee intends to use the property with additional investments for the project;

(3) the lessee meets the lease agreement; (4) the lessee complies with the pre-selection requirements in the concession tender; (5) the concession agreement will not decrease the investment obligations of the lessee under the lease agreement; and (6) the duration of the concession agreement is no longer than the remaining duration of the lease agreement.

— Mandatory land leases. The concessions law allows the concession grantor (public partner) to allocate the land necessary for the concession project, and state and local authorities are obliged to lease the necessary land. Moreover, if the required land is not leased to the concessionaire (private partner) within one year due to the fault of the concession grantor, the concessionaire can unilaterally terminate the concession agreement.

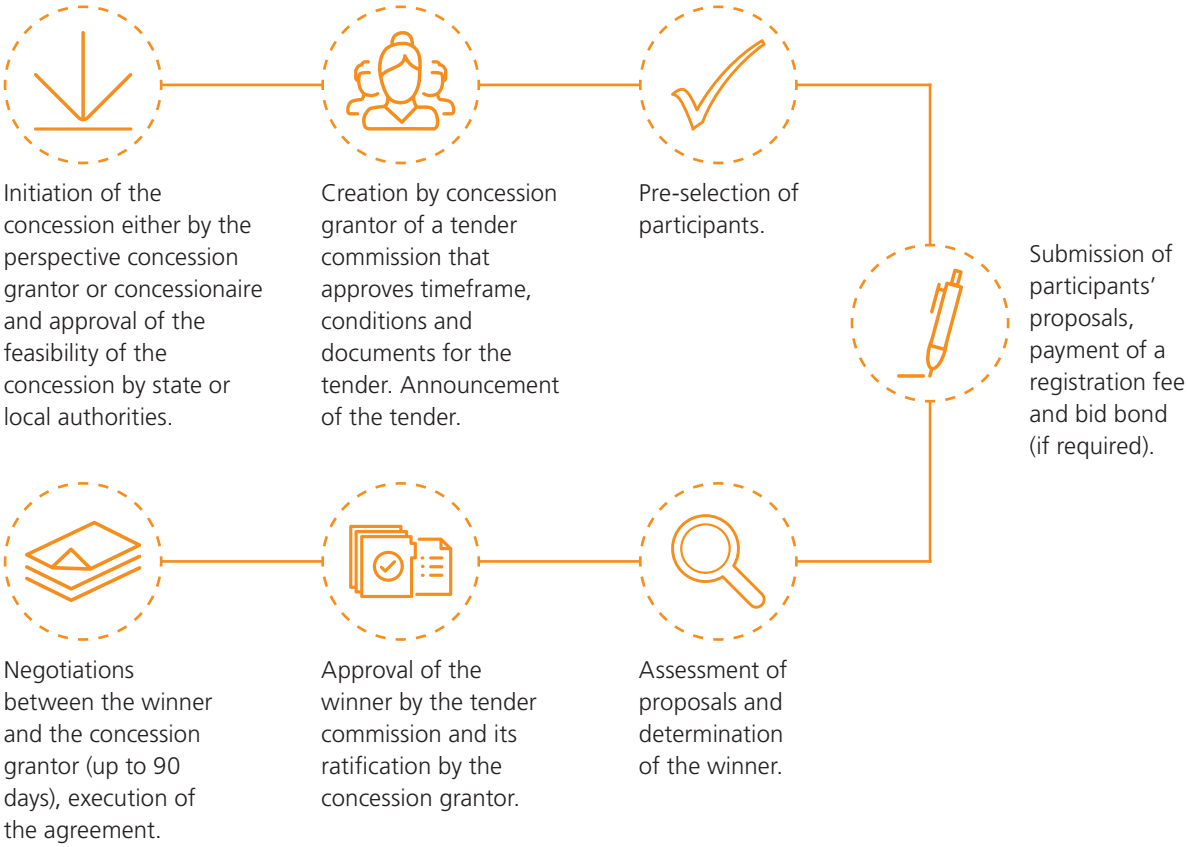
— Term of concessions for roads. The minimum term of a concession for automobile roads is ten years instead of five years.

— Different types of state support. State support for concessions can be provided in the form of: (1) payments for operational readiness; (2) the acquisition or sale of goods and services; and (3) the construction of neighbouring infrastructure necessary for the project.

— Counsels. For assets worth more than UAH 250 million (approx. EUR 9 million), the concession tender must be prepared with the involvement of outside counsels.

Concession Tender Procedure

The new concessions law clarifies the procedure for tendering a concession by precisely defining its main stages.



By aligning concession tenders with other PPPs, the concessions law also provides some important improvements to how concessions are awarded:

- The involvement of independent experts to advise a tender commission, financed from the registration fees paid by the tender participants.
- Tender commissions of varying size, from 7 to 25.
- Publication of tender announcements in English and Ukrainian.
- The ability to hold concession tenders through an electronic trading system, usually Prozorro, an e-platform used for all public procurement.
- Clear and concise criteria for pre-selecting participants. Compliance with the following is checked:

  (1) facilities and equipment;

  (2) the professional and technical qualifications of employees;

  (3) experience performing similar projects and agreements;

  (4) financial resources; and

  (5) other criterion the tender commission considers relevant. Applicants must be allowed at least 60 days after receiving notice of passing pre-selection to submit their proposal.
- Limits on who may participate. The following, among others, will not pass pre-selection: (1) entities whose beneficiaries or whose main investors (holding 10% or more shares) include a resident of an aggressor country (as established by the Ukrainian Parliament) or entities related to them; (2) entities registered in an offshore zone, as established by Cabinet, or whose direct or indirect owners of 50% or more shares are registered in such zones; and (3) entities registered in countries that are recognised by the FATF as non-cooperative jurisdictions.
- Payment of registration fees and the execution of NDAs. In order to qualify for the tender, an applicant must pay a non-refundable registration fee of up to UAH 417,300 (approx. EUR 15,600) and execute an NDA within five business days of receiving notice that it passed pre-selection.
- Bid bonds. At its discretion, the concession grantor may require applicants to pay a bid bond. The bid bond cannot exceed 1% of the total amount of capital investment in the prospective project.
- Two-stage assessment. Tender proposals must include a technical part and a financial-economic part. The technical part is evaluated according to the tender conditions (including against performance indicators), and only those proposals that pass the technical evaluation are evaluated on their financial-economic part. The financial evaluation considers: (1) the project's internal rate of return; (2) the net present value of all cashflows; (3) the net present value of capital investments; (4) the net present value of concession payments; (5) the duration of the concession; (6) the reliability of the project's financing mechanism; and/or (7) the amount of possible state support.
- Time limits for awarding the concession. The concession grantor has 90 days, which may be extended to a maximum of 180 days, to execute the concession agreement with the winner of the tender. If an agreement is not executed, the applicant with the next best proposal will be invited to execute the concession agreement.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Insolvency & bankruptcy rules

General

On 21 October 2019 the Code of Bankruptcy Proceedings, adopted by the Parliament of Ukraine on 18 October 2018, came into force. The code introduced a set of changes to strengthen the transparency and efficiency of insolvency proceedings. It limits the scope for appeals during bankruptcy proceedings and establishes specific deadlines for these procedures. Moreover, it improves the legal status of secured creditors, making them parties to the bankruptcy proceedings and allowing them to challenge rulings, request the invalidation of a debtor's transactions, and more, including initiate the proceedings themselves. One of the most significant changes is the introduction of consumer insolvency; that is the insolvency of individuals who are not registered as private entrepreneurs.

The bankruptcy code also simplifies the grounds for bankruptcy proceedings since corporate bankruptcy no longer requires a minimum amount of outstanding claims. The commercial court may now start insolvency proceedings based on documents and/or evidence submitted by either the debtor or creditors, and courts can refuse to start bankruptcy proceedings only if a creditor's claims are disputable and must be resolved in court, or if a debtor has already satisfied the creditors' claims before the preliminary hearing.

Consumer involvency procedures

The Code of Bankruptcy Proceedings allows insolvency proceedings for an individual to be initiated only by the debtor. He or she may apply to a commercial court to start insolvency proceedings if at least one of the following conditions is in place:

— the value of the debtor's overdue obligations is greater than the minimum statutory wage for 30 months;

— during enforcement proceedings, it was declared that the debtor has no property against which creditors can enforce their claims;

— within the last two months, the debtor failed to make loan or other scheduled payments of at least 50% of the monthly amount due; or

— the risk of insolvency exists.

The moment that insolvency proceedings begin, it is declared that:

— the creditors' claims can be satisfied only within the framework of the insolvency proceedings;

— the debtor's property can be seized only by the commercial court and previously existing seizures may be cancelled by the court;

— penalties, fines, and interest being charged on the debts are terminated;

— a moratorium is imposed on the satisfaction of the creditors' claims;

— all monetary obligations of the debtor are considered due immediately; and

— any alienation and disposal of the debtor's property can be carried out solely in accordance with the bankruptcy code.

No later than 60 days from the start of insolvency proceedings, a preliminary hearing should be conducted. The commercial court requires the restructuring manager to arrange a meeting of the creditors to consider a restructuring plan. As a rule, the restructuring plan will identify which outstanding claims of the creditors will be forgiven. At the meeting, the creditors must decide:

— to approve the restructuring plan;

— to reject the restructuring plan and request the court to launch the debt repayment procedure; or

— to ask the court to close the insolvency proceedings.

If the restructuring plan is approved, the restructuring manager asks the commercial court to confirm it within three days. The court, however, will not confirm the plan if the debtor has outstanding debts that are non-dischargeable, such as alimony payments or compensation due for causing an injury. On the plan's confirmation, the debtor then proceeds to satisfy the creditors' claims in accordance with the plan. Upon the successful completion of the plan, the insolvency proceedings are closed, and the claims that were agreed to be forgiven cease to exist.

If the restructuring plan is not completed, the debtor is declared insolvent and the debt repayment procedure begins. In this case, creditors file their claims against the debtor, including those that were supposed to be forgiven. All of the debtor's property is realised. The claims of secured creditors are satisfied from the proceeds of property used to secure those debts, and the claims of unsecured creditors are satisfied from the remaining proceeds in the order of priority set out in the bankruptcy code (see section "Creditors' Priority"). Remaining claims that cannot be satisfied due to a lack of assets are discharged.

The following types of debt are non-dischargeable:

— alimony payments;

— compensation due for causing injury to the health or the death of an individual;

— lump-sum payments owed to the compulsory state social insurance; and

— other obligatory payments for the compulsory state social insurance.

At the end of the debt repayment procedure, the commercial court closes the insolvency proceedings and makes a decision to release the debtor from his or her debts, except for non-dischargeable debts.

Moratorium on mortgage enforcement

The bankruptcy code ends a moratorium on enforcing mortgages against residential property used to secure foreign currency loans. Starting from 21 October 2020, foreign creditors are able to enforce the collection of debts secured by residential property.

Moreover, until 18 October 2023 (five years from the adoption of the bankruptcy code), an individual debtor may restructure any of his or her foreign currency loans that were granted by Ukrainian banks. The terms for a restructuring plan are as follows.

For an apartment whose area is less than 60 sq. meters or less than 13.65 sq. meters per family member and for a house whose area is less than 120 sq. meters:

— the repayment term is 15 years; and

— the interest rate is the Ukrainian index of rates for twelve-month deposits, plus 1%;

For larger apartments and houses:

— the repayment term is ten years;

— the interest rate is the Ukrainian index of rates for twelve-month deposits, plus 3%.

An individual debtor may also restructure his loans with the bank by another mutually agreed method.

The moratorium does not compensate foreign creditors for removing their ability to enforce their rights against mortgaged property. A mortgagee can still obtain a court decision or notarial writ, but these cannot be enforced by enforcement officers, and while out-of-court enforcement is still an option, court practice has been to view agreements on enforcement between a creditor and debtor as voluntary. Which means that the mortgagee cannot exercise its right to enforcement if the debtor disputes its voluntary nature.

Corporate insolvency

A company is insolvent when it is unable:

— to meet its pecuniary obligations to its creditors when they fall due (including unpaid salaries), or

— to pay its compulsory contributions to the state pension insurance or other types of compulsory state social insurance, taxes, and dues.

Bankruptcy is dealt with by the commercial court, which will declare a company bankrupt if it is unable to recover its solvency and satisfy creditor's claims other than by liquidation.

Proceedings are initiated within 5 days of the court receiving a petition from:

— the debtor, or

— creditors, including banks and tax authorities.

Creditors must register their claims with the insolvency officer within 30 days of the notice of proceedings being published on the website of Ukrainian Judiciary (https://supreme.court.gov.ua/supreme/pro_sud/og_pov/). Creditors should monitor the website for such notices to protect their full set of rights during all stages of insolvency proceedings.

Three types of bankruptcy procedures may be commenced, depending on the company's circumstances:

— asset management;

— sanation (e.g., rehabilitation); or

— liquidation.

Asset management is broadly analogous to receivership in other jurisdictions. To secure the creditors' property interests, the commercial court introduces asset management over the debtor's property. An asset manager is appointed and conducts an analysis of the debtor's financial state and all claims filed against it. The asset manager then implements measures to supervise and control the debtor's property by restricting the debtor's right to dispose of its assets. During asset management, the commercial court approves a list of creditors and their demands as well as the composition of the committee of creditors.

Asset management lasts up to 170 days from the date the commercial court starts insolvency proceedings. Depending on its results, the asset management period may be followed by:

— sanation (rehabilitation);

— liquidation; or

— a return to solvency, payment of debts by the debtor, and termination of the insolvency proceedings.

Sanation is broadly analogous to a rehabilitation procedure in other jurisdictions and includes a system of measures aimed at restoring the debtor's solvency and discharging its outstanding debts. The commercial court starts the sanation procedure at the request of the committee of creditors. It may include measures such as borrowing, rescheduled debt payments, restructuring of the debtor or its business, closure of unprofitable manufacturing facilities, sale of the debtor's property, employee layoffs, etc.

During sanation, the debtor's directors are suspended and its governing bodies are terminated. All powers are transferred to a certified sanation manager. The bankruptcy code does not limit the term of the sanation period, enabling the parties to implement long-term restructuring programs and restore the debtor's solvency.

Sanation is followed by:

— liquidation; or

— a return to solvency, payment of debts by the debtor, and termination of the insolvency proceedings.

Liquidation begins when the commercial court declares the debtor insolvent. Insolvency occurs if:

— no settlements have been made with creditors within the timeframe envisaged by the sanation plan and the committee of creditors has not filed a petition to extend it; or

— funds from the sale of the debtor's property during the sanation period do not satisfy all the demands of the creditors;

The liquidation procedure focuses on realising and distributing the debtor's assets. A standard liquidation procedure may not exceed 12 months. Overall, the winding-up of the debtor is organised and carried out by a liquidator (or a liquidation commission) appointed by the court.

The commercial court may terminate bankruptcy proceedings, in particular, when:

— the debtor has completely discharged all its liabilities to its creditors;

— the court approves the sanation manager's report certifying that all the demands of registered creditors have been satisfied and the debtor has returned to solvency; or

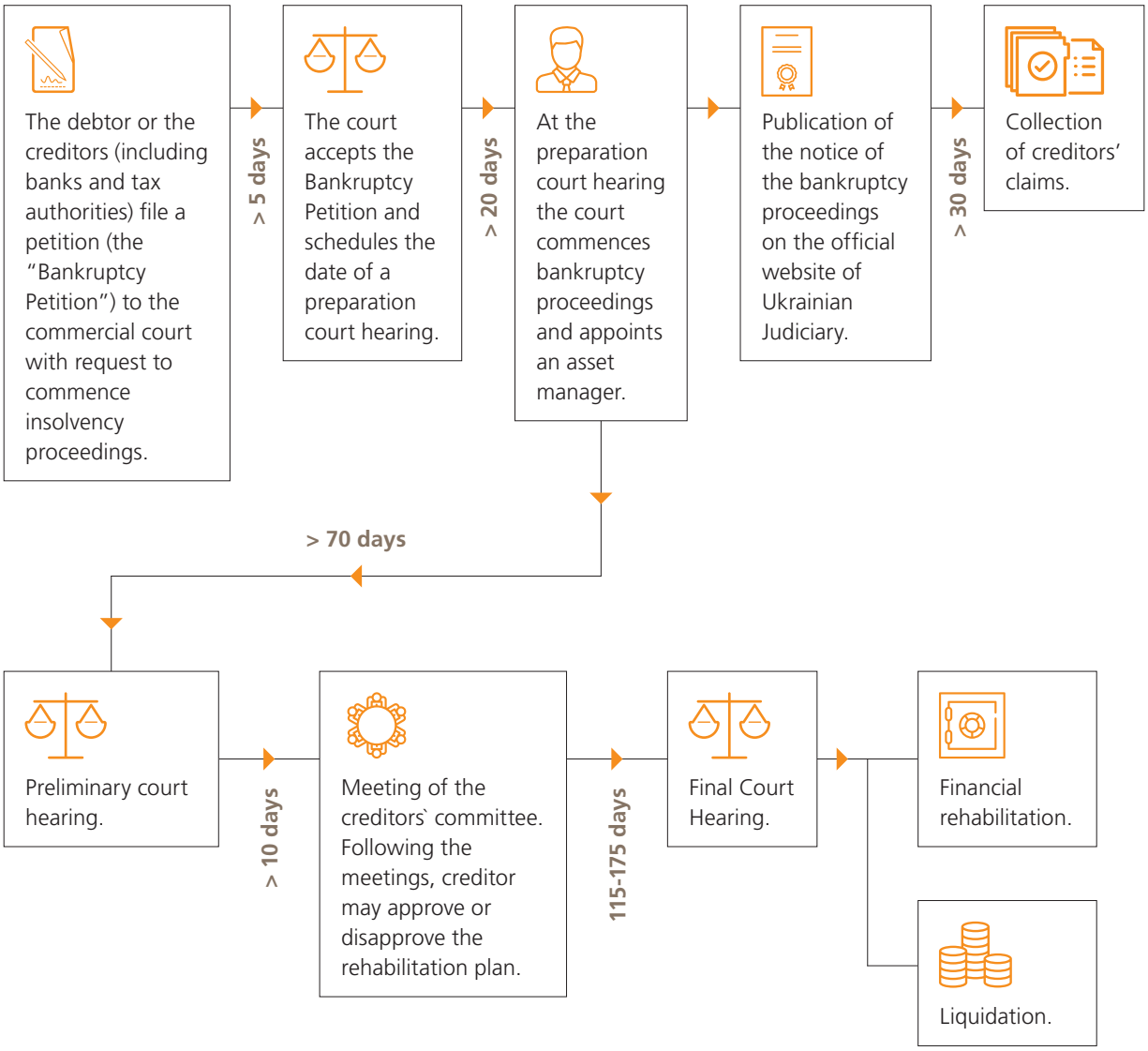
— the court approves the liquidator's report certifying that the claims of registered creditors have been discharged.

Note that the bankruptcy code does not contain provisions for amicable settlements. These provisions were intentionally deleted in order to emphasize the sanation procedure.

Moreover, state-owned enterprises with special status ("*kazenni pidpryiemstva*") are absolutely immune to bankruptcy procedures. Certain other categories of debtors also have a limited immunity, such as state companies and companies, like Naftogas or Ukrenergo, that are at least 50% owned by the state. There is also a moratorium on the mandatory disposal of assets during bankruptcy proceedings of companies that are 50% state owned.

The insolvency process in Ukraine is summarised in the chart below:

The Insolvency Process in Ukraine



Creditors' priority

Once a debtor enters liquidation, the claims of creditors are satisfied according to the order of priority defined in the bankruptcy code. The sequence is as follows:

— first priority:

- salary arrears owed to current and dismissed employees of the bankrupt;
- pecuniary compensation owed to employees for unused vacation days, including additional vacation days to employees with children;
- guarantees for the time of performance of public or social obligations, guarantees and compensations for business trips, guarantees for employees sent to develop their vocational competence, guarantees for donors, guarantees for employees sent for examination at medical facility;
- compensation for dismissal owed to employees in connection with termination of labour relations including the reimbursement of loan received for these purposes;
- payments due under insurance agreements;
- expenses relating to insolvency proceedings in the commercial court;

— second priority: compensation due for causing death or injury to individuals;

— third priority: tax payments;

— fourth priority: unsecured claims of creditors;

— fifth priority: reimbursement of employees' contributions to the authorised fund of an enterprise;

— sixth priority: all other creditors' claims.

The claims of secured creditors are satisfied outside the priority sequence from the proceeds of the property used to secure those debts.

Clawback and "cherry-picking"

The bankruptcy code allows the trustee to claim that certain contracts and actions of the debtor, going back three years before the proceedings started, are invalid. The grounds for claiming invalidity are:

— the early performance of an obligation;

— the undertaking of an obligation that led to bankruptcy or full or partial insolvency;

— the purchase or sale of assets at a non-market price, provided that when the sale or purchase occurred, the debtor did not have, or ceased to have, enough assets to satisfy its creditors' claims;

— the purchase of assets from a creditor (or the acceptance of assets from a creditor in exchange for discharging the debtor's claims against that creditor) on a day when the total sum of the creditors' claims against the debtor exceeded the value of those assets; and/or

— the granting of a pledge to secure monetary claims.

If the trustee successfully invalidates a contract or action of the debtor, the relevant creditor must return the debtor's assets or compensate their value at a fair market price.

In addition, within three months of the commercial court deciding to start sanation, the trustee has a so-called "cherry-picking" right. That is, the trustee can refuse to fulfil agreements of the debtor that were undertaken before insolvency proceedings started, provided that:

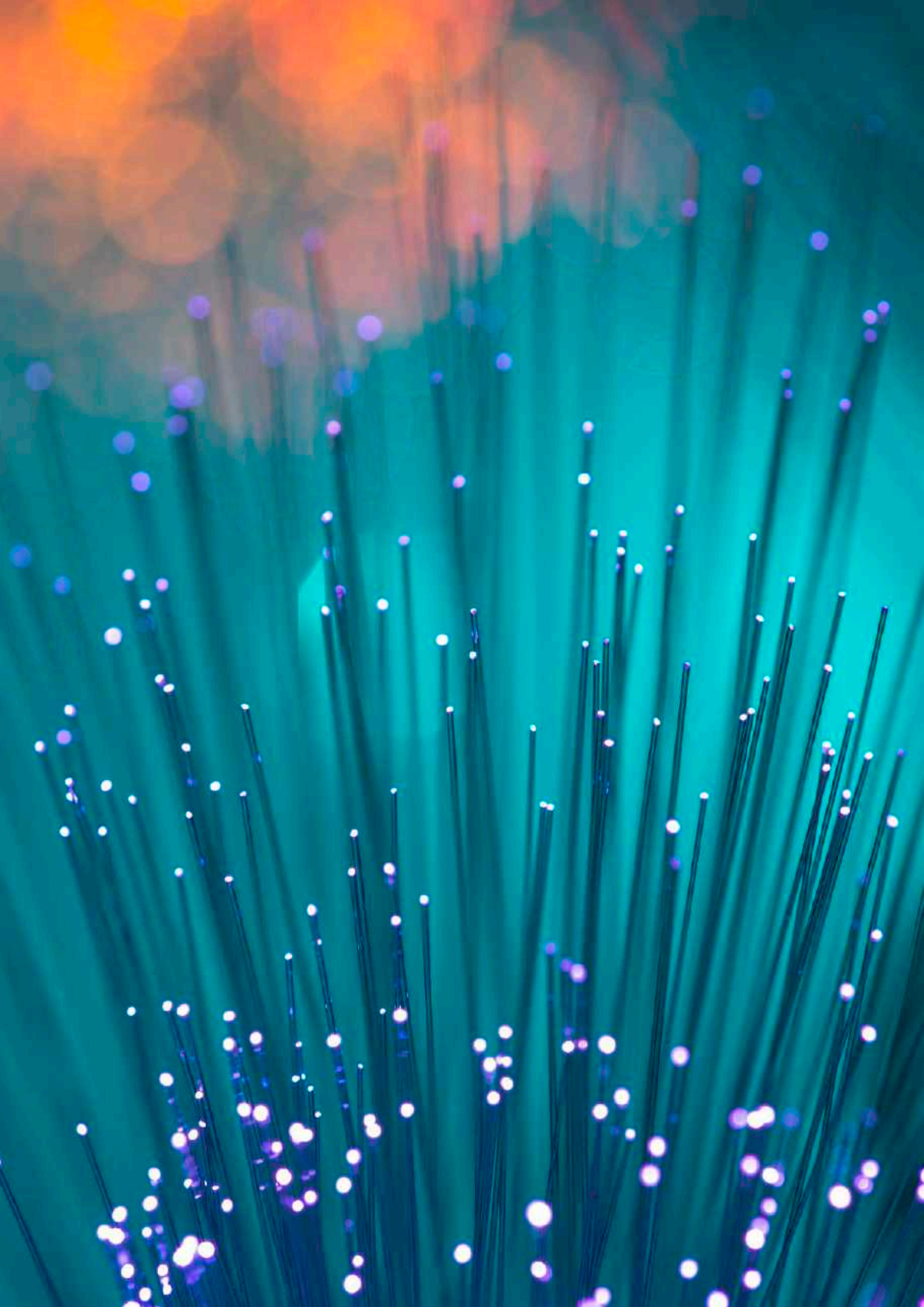
— the obligations under the agreement damages the debtor;

— the obligations (agreements) are long-term (more than 1 year) or envisage benefits for the debtor only in a long-term perspective; or

— fulfilling the agreement prevents the rehabilitation of the debtor.

If the trustee enforces its "cherry-picking" rights, the affected creditor can claim damages in court, which will be reimbursed when the debtor is declared bankrupt, but only according to the established priority for claims.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020



Big data, AI, Blockchain, Fake news, IT revolution and other new words

Big data

The world has become a vast digital space. Today we manage, share and store all aspects of our lives online.

An interesting fact: if we collected all the information that humanity has accumulated since the beginning of time to the year 2000, it would be less than what we produce now in just one minute. This phenomenon completely changes how we understand the world and our place in it. It is the world of big data.

Although the term "big data" is relatively new, the act of gathering and storing vast amounts of information for analysis is not. The concept gained momentum at the beginning of this century, when industry analyst Doug Laney formulated the widely used notion of the tree Vs of big data: volume, velocity, and variety.

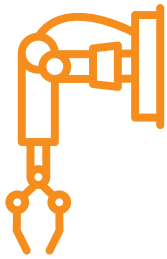
In the past, storing all the information from business transactions, social media and sensors or machine-to-machine data would have been a problem, but new technologies have eased the burden and made it practical ("Volume"). Data streams pass at unprecedented speeds and need to be dealt with on time ("Velocity"). Information can be encrypted in all possible file formats, from structured numeric data to text documents, emails, video- and audio-files, stock-ticker data and financial transactions ("Variety").

Now, as the technology develops, the list of Vs is expanding, with veracity, viability, value, visualisation, and more.

AI

The vast majority of data is unstructured, so state-of-the-art technologies are used to transform it into human-readable forms. These technologies include artificial intelligence ("AI") and machine learning.

But AI does mean not robots or creatures from science fiction. It is simpler than that; you probably interact with AI much more than you know—for example whenever you've clicked on a YouTube "Home" button or ordered a taxi via a mobile app. And that is the point. The AI interface is designed so that you do not realise that computers are behind the process.



Blockchain

A blockchain is a system of storing transactions on a computer network so that all participants in the network share a complete record of the "chain" of transactions.

First, a transaction like a purchase, is made. Then that purchase must be verified. With other public information records, like a local library, someone is in charge of creating and verifying new data entries. With blockchains, however, that job is left to a network of computers around the world. When you make a purchase using a blockchain like Bitcoin, for example, the computer network of 5 million Bitcoin users rushes to verify that your transaction happened the way you said it did; they confirm the transaction's exact time, the currency amount, and the participants. Then, after your transaction gets the green light, its data is stored in a block where it will most likely join hundreds or even thousands of others like it. Finally, once all of a block's transactions have been verified, it is given a unique ID code called a hash. When hashed, the block is added to the blockchain.

Since all computers in the network have the full blockchain, fraudulent transactions are easily prevented, all without the need for a central authority.

Fake news

In our digital age, "yellow journalism" and propaganda are not in the papers much; today it comes in a different form. Much that you read on the internet, especially on social media, may appear to be true, but sadly it often is not. This is fake news – news stories and hoaxes created to deliberately mislead readers. These stories are usually fabricated to influence people's views, push a political agenda or cause confusion, and can often be profitable for online publishers.

Fake-news stories can deceive people by appearing to come from trustworthy websites or by using names and web addresses similar to reputable news organisations.
Another tactic of fake news is called clickbait. These are headlines designed to grab readers' attention and drive click-throughs to the publisher's website, normally at the expense of truth or accuracy. Clickbait headlines are often misleading, distorting generally truthful stories with ambiguous or sensationalist titles. These types of news stories can spread quickly on social media where only headlines and small snippets of the full article are displayed in a feed. In addition, many people are drawn to news stories that confirm their own beliefs, and fake news preys on these biases. Search engines tend to display news and articles that they expect us to like based on our previous searches.

IT Revolution

No one can doubt that we have access to incomparably more information than we did 50 or even ten years ago. But when did it all start? Probably in the 1970s with the invention of microprocessor technology and the personal computer. And the emergence of a worldwide network – the internet – was the icing on the cake.

The IT revolution consequently served as a catalyst for electronic connectivity, gave rise to new production methods, enhanced productivity, facilitated the collection of data, spearheaded the transmission of ideas, and extended the reach of economic and social interactions.

A simple measure of the impact of the IT revolution on society is the new words that we use without even noticing: self-driving cars, renewable energy, cloud storage, virtual reality...
And the list is set to continue growing.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Telecommunications, media, technologies

Telecommunications

Regulatory Framework and Authorities

The Law of Ukraine "On Telecommunications" is the key legal instrument in the sphere of telecommunications. It covers most issues related to accessing the telecommunications market, licensing certain types of services, interconnection rules, numbering capacity allocation, and more.

Another key telecommunications law is the Law of Ukraine "On Radio Frequency Resource of Ukraine", which provides rules for the allocation and use of radio-frequency resources, licensing of users of radio frequencies, and other relevant issues.

On 25 December 2019, significant amendments to the telecommunications law came into force. The key changes end the licensing of telecommunications services.

Several authorities are responsible for enforcing telecommunication laws and regulations in Ukraine:

— the Cabinet of Ministers of Ukraine, which is responsible for the state policy for telecommunications and its implementation;

— the National Commission for the State Regulation of Communications and Informatisation ("NCCR"), which is the main regulatory authority responsible for, among others, allocating radio frequencies and numbering resources, regulating telecommunications charges and establishing settlement procedures between telecommunications operators.

— the Administration of the State Service of Special Communication and Information Protection of Ukraine, which is mainly responsible for developing draft laws, national standards and other requirements in the telecommunication sphere.

Telecommunication Services

Telecommunications operators and providers may offer telecommunication services subject to being included into the Register of Operators and Providers of Telecommunications. While a company does not need a license to provide telecommunication services, it must submit a notification to the NCCR on its commencement of services. In addition, certain permits may be required in order to use a limited radio frequency or a numbering resource.

Foreign Ownership in Telecommunications

There are no restrictions on foreign ownership of telecommunication companies in Ukraine. Except for the restrictions of international sanctions, foreign entities of any country may establish and own a telecommunications company.

Under the telecommunications law, however, title to telecommunications networks can only be held by Ukrainian residents.

Interconnection Rules

Connecting networks among operators is carried out through interconnection agreements, which must conform to rules adopted by the NCCR. Some additional interconnection rules apply to operators that hold a dominant position or have a significant market advantage.

State-regulated Charges

Telecommunication operators and providers are free to establish the prices and tariffs they charge to their customers.

However, certain tariffs are subject to state regulations that establish a maximum or fixed rate. These include, for example, maximum tariffs for public (universal) telecommunications services, and tariffs for leasing communication circuits from operators that hold a dominant market position.

Network Technologies

In the past several years, Ukraine has auctioned spectrum licences to mobile operators: in 2014 for launching 3G, and in 2015 for 4G. In May 2019, the president signed a decree to launch 5G technology in Ukraine. Under this decree, the government and the NCCR must adopt a step-by-step plan for rolling out 5G technology in 2020.

Media

TV and Radio Broadcasting

The Law of Ukraine "On Television and Radio Broadcasting" is the fundamental legislative act regulating the radio and TV market in Ukraine. The radio and TV law sets out the procedure of the establishment of Ukraine's radio and TV broadcasting companies, licensing for radio and TV broadcasting, and the procedure of broadcasting.

The national regulatory authority for radio and TV broadcasting is the National Council of Ukraine for Television and Broadcasting ("NTRBC"), which acts pursuant to separate legislation. The Law of Ukraine "On NTRBC" establishes the legal grounds for the activity of the regulator.

Radio and TV broadcasting in Ukraine are subject to licensing. Under the radio and TV law, broadcasting is licensed on a competitive basis (for on-air and multi-programme broadcasting) or, where the law permits, on a non-competitive basis (for satellite, wired and cable broadcasting).

The minimum term of a broadcasting license is 7 years in the case of on-air and multi-programme broadcasting via multi-channel networks; and 10 years for satellite, wired and cable broadcasting. Regarding foreign ownership, only legal entities or citizens of Ukraine may establish broadcasting organisations, whether radio or TV, in Ukraine. Further, the radio and TV law limits the involvement of foreign citizens and entities from aggressor states and offshore zones in Ukrainian broadcasting organisations.

Service providers in Ukraine may transmit only foreign TV channels and programmes that comply with the laws of Ukraine and the European Convention on Transfrontier Television. The NTRBC maintains a list of foreign programmes whose content complies (available on its website).

Printed Mass Media and Information Agencies

Printed mass media is regulated by both the Law of Ukraine "On Information" and the Law of Ukraine "On Printed Mass Media (the "Press") in Ukraine", while information agencies fall under the Law of Ukraine "On Information Agencies" and some other legal acts.

State registration is required for all printed media published in Ukraine, irrespective of its sphere of distribution, circulation or method of manufacture.

Any legal entity, national or foreign, and any capable person, including foreigners, may establish a printed mass media company or organisation in Ukraine. Thus, there are no foreign ownership limitations. However, monopolisation of national and regional public, political news is forbidden. Any single person or legal entity may not control more than 5% of such media.

With respect to Ukrainian information agencies, a foreign legal entity or foreign national may be a co-founder only, and their share in the charter capital of the agency may not exceed 35%.

Technologies

The information technology industry in Ukraine is continually growing, with the largest and fastest-growing number of IT professionals in Europe.

No law specifically regulates the IT industry in Ukraine. A variety of laws and regulations, however, are relevant to conducting an IT business depending on the kind of business and technology.

Over the past several years, Ukraine has taken significant steps to simplify running a business in Ukraine, including in the IT sphere. With the adoption of the Law of Ukraine "On Amending Certain Laws of Ukraine regarding Elimination of Administrative Barriers to Export of Services" and the Law of Ukraine "On Currency and Currency Operations" many administrative barriers and regulatory restrictions, including certain currency controls, were removed. As a result, it is now easier for Ukrainian businesses and IT specialists to render services to foreign clients.

An e-commerce law adopted several years ago introduced rules for online marketplaces and for conducting electronic commerce transactions. The recent law "On Electronic Trusted Services" also harmonises Ukrainian legislation with European standards in the sphere of electronic signatures.

In addition, in 2017 the Ukrainian parliament passed a law on cybersecurity which mostly affects state and private "critical infrastructure" companies and creates a legal framework for managing security in cyber space.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

Competition

Introduction

The main law regulating competition in Ukraine is the Law of Ukraine "On the Protection of Economic Competition" (2001). Special laws and regulations also cover unfair competition, mergers, dominancy and monopoly abuse, concerted practices, etc.

In recent years, Ukraine's antitrust regulator, the Anti-Monopoly Committee of Ukraine ("AMC"), has been actively bringing local competition regimes into line with EU directives in many areas. Among others, the AMC has produced guidelines on vertical agreements ("Vertical Block Exemptions Guidelines"), joint ventures that incorporate the EU concept of a full-functional joint venture, control and joint control matters, calculation of penalties for breaches of the competition law, etc.

The AMC is quite active in detecting and investigating cases related to abuse of dominance[29], cartel agreements, and other types of anticompetitive concerted actions, both among competitors (horizontally) and in supply-like relations (vertically). Both are considered to be hard-core breaches of Ukrainian competition law and can trigger fines of up to 10% of the infringing group's annual global turnover.

Merger control

A change of control over a business, e.g., through an acquisition of 50% or more of its shares, the establishment of a joint venture by two or more founders, or an acquisition of 25% or more shares in a company requires approval from the AMC if the parties to the transaction meet the financial thresholds described in the chart below.

Foreign-to-foreign transactions are subject to prior clearance from the AMC if the filing thresholds are met and the transaction has or may have an impact on competition in Ukraine. The AMC rarely takes the latter criterion into account as it primarily looks at the filing thresholds when deciding on whether a transaction requires merger control clearance. The above rule applies irrespective of whether the parties have any subsidiaries in Ukraine.

From the merger control perspective, most joint ventures are treated the same way as other business entities in Ukraine, unless they are non-incorporated (contractual) ones.
The establishment of a non-incorporated (contractual) joint venture and, in some cases a joint venture in the form of a legal entity, may require "concerted actions" clearance from the AMC if it results in the coordination of competition between its founders, including in particular, the incorporation of non-compete clauses. A failure to obtain the required approval from the AMC triggers a fine of up to 5% of the parties' worldwide group turnover for the fiscal year preceding the year in which the fine is imposed. In practice, however, if the transaction had no adverse effect on the market, the actual fines for a failure to notify are considerably lower. The payment of the fine does not release parties from the obligation to get the necessary clearance.

If a non-filed transaction results in the monopolisation of a market or a significant restriction on competition, the AMC may apply to the court with a request to invalidate the transaction.

[29] The general dominance market share threshold in Ukraine is 35%. In some cases, a company may be considered to hold a dominant position in the market even if it has less than 35% but does not experience significant competition on the market.

The following chart gives an overview of the filing thresholds and merger review procedure.

Financial Thresholds	**Test 1:** (i) the aggregate worldwide value of assets or turnover[30] of all the participants'[31] global groups exceeds EUR 30m; and (ii) the aggregate Ukrainian value of assets or turnover of each of at least two of the participants' global groups exceeds EUR 4m[32]; or **Test 2:** (i) the aggregate value of assets or turnover of the target[33] or founding entity's global group in Ukraine exceeds EUR 8m; and (ii) the worldwide turnover[34] of at least one other[35] participant's global group exceeds EUR 150m. The asset and turnover indicators are taken for the financial year immediately preceding the transaction.
Deadline Phase I.	Forty-five calendar days following the submission of the notification, provided there are no rejections due to a lack of formal compliance. Phase I consists of two stages: (i) 15 calendar days for a formal review of the notification – the period during which the notification can be rejected due to a lack of formal compliance; and (ii) 30 calendar days, starting on the expiration of the initial 15-calendar-day period of review, for substantive evaluation.
Deadline Phase II.	Up to 135 calendar days, starting on the day that the Phase II notice is sent to the parties.
When to notify	Before the transaction is completed or control is otherwise acquired. Filing based on the final/pre-final draft transaction document is allowed.
Simplified procedure	Available if: (i) only one party to a transaction is active in Ukraine; or (ii) the aggregate market share of all parties to a transaction in one and the same market does not exceed 15%; or (iii) the market shares or aggregate market shares of parties to a transaction active in a market that is downstream or upstream to the market in which any other party to a transaction is active, do not exceed 20%. Duration: 25 calendar days from the day of submission.
Notes	The method for calculating the value of assets and turnover for commercial banks and insurance companies is different.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020

[30] The value of the assets and turnover may not be totalled for the purposes of this threshold. For example, if a participant's asset value is below EUR 30m and so is the turnover, then this threshold is not met.
[31] The identity of each participant to a concentration should be verified on a case-to-case basis. For example, purchasers and managers of shares/assets and the founders of a legal entity could be seen as participants.
[32] Ukrainian turnover in calculating this threshold includes both direct and indirect sales in and into Ukraine made by the participant's local and other group entities, including via distributors.
[33] The target entity's global group here includes controlling seller(s) and all other companies controlled by, or exercising control over, the controlling seller(s).
[34] Please note that the value of assets is not taken into account in this particular threshold; only the turnover should be assessed.
[35] Such other participant excludes the target's group, as defined in footnote 4 above.

Intellectual property rights

General

Ukraine is one of many countries that has problems with protecting and enforcing intellectual property rights, but in the Ukraine–European Union Association Agreement, the country undertook to harmonise its national intellectual property regulations with EU standards. The government is especially focused today on the scale of trade in counterfeit goods in Ukraine and on strengthening measures to fight piracy.

The functions of the national authority for intellectual property have been transferred from the State Intellectual Property Service of Ukraine to the Ministry for Development of Economy, Trade and Agriculture of Ukraine ("MEDT"). Further, they are expected to be transferred to a new national agency for intellectual property, which is expected to be established in the future. In addition, the ongoing judicial reform that started in 2015 anticipates the establishment of a high court for intellectual property.

Regulator

The Ministry for Development of Economy, Trade and Agriculture of Ukraine ("MEDT") is the current authority that regulates intellectual property. Its main responsibilities are enforcing the state policy on intellectual property rights issues and providing services for registering copyright, trademarks, patents, and other intellectual property.

Copyright

Any work of authorship, including musical, literary and audio-visual works, as well as and database or software, is protected by copyright. Copyright protection does not apply to ideas, theories, principles, methods, procedures, processes, systems, conceptions and discoveries.

A person who creates a work is considered its author and enjoys all rights that belong to the author. These consist of proprietary rights, like the right to use or sell the work, and to prohibit use of the work, and of moral rights, which include the right to be named as the work's author and to protect the integrity of the work.

Copyright protection arises automatically from the moment the work is created in a fixed form, and protection lasts for the life of the author plus an additional 70 years. No registration, filing or other formalities are necessary in Ukraine. However, a rights holder may at his or her discretion file a registration of copyright or register a copyright transfer agreement. This, however, gives no essential benefits to the rights holder.

A rights holder may optionally include a copyright notice on the work to inform the public that the work is protected by copyright. The notice should contain the following elements: (1) the symbol © (letter C in a circle); (2) the name of the copyright owner, and (3) the year of first publication.

While moral rights are not transferable, an author's proprietary rights may be licensed, assigned or transferred in other ways to third parties, like employers or other companies and individuals, by way of an agreement with the author or as per applicable laws.

The licence agreement should contain the type of a licence, the specific rights granted under the agreement, conditions on the use of the work, payments, applicable territories and terms for which the rights are granted, etc. Proprietary rights may be licenced under an exclusive or non-exclusive licence. The term of the licence must not exceed the term of copyright in the work.

Any unauthorised use of a copyrighted work is considered an infringement. Civil, administrative, and criminal actions may be brought against the infringer. Note that an out-of-court procedure exists for settling online copyright infringements.

Trademarks

A trademark enjoys legal protection in Ukraine if it is registered with the MEDT or falls under an international treaty to which Ukraine is a party. Ukraine is a signatory to the Paris Convention for Protection of Industrial Property ("Paris Convention") and the Madrid Agreement Concerning the International Registration of Marks, as well as other agreements.

Well-known trademarks are protected in Ukraine under the Paris Convention and by national legislation in the same way as if the mark were registered in Ukraine. A trademark may be recognised as well-known by the Chamber of Appeal of MEDT or by a court.

A trademark registration certificate is valid for 10 years from the day the application is filed, and may be renewed every 10 years by the trademark owner. When an application for a trademark is filed, any third party may oppose it by claiming that it does not conform with registrability requirements.

Trademark rights may be licenced or assigned. While registering a trademark licence agreement with the MEDT is optional, a trademark assignment agreement is subject to mandatory registration.

Patents

Inventions or utility models can be legally protected in Ukraine if they do not contradict the public order, the principles of humanity and morality, and are patentable. The following inventions or utility models are patentable:

— products (such as devices, substances, strains and cell cultures of a plant or an animal);

— processes (methods), as well as new applications of known products or processes.

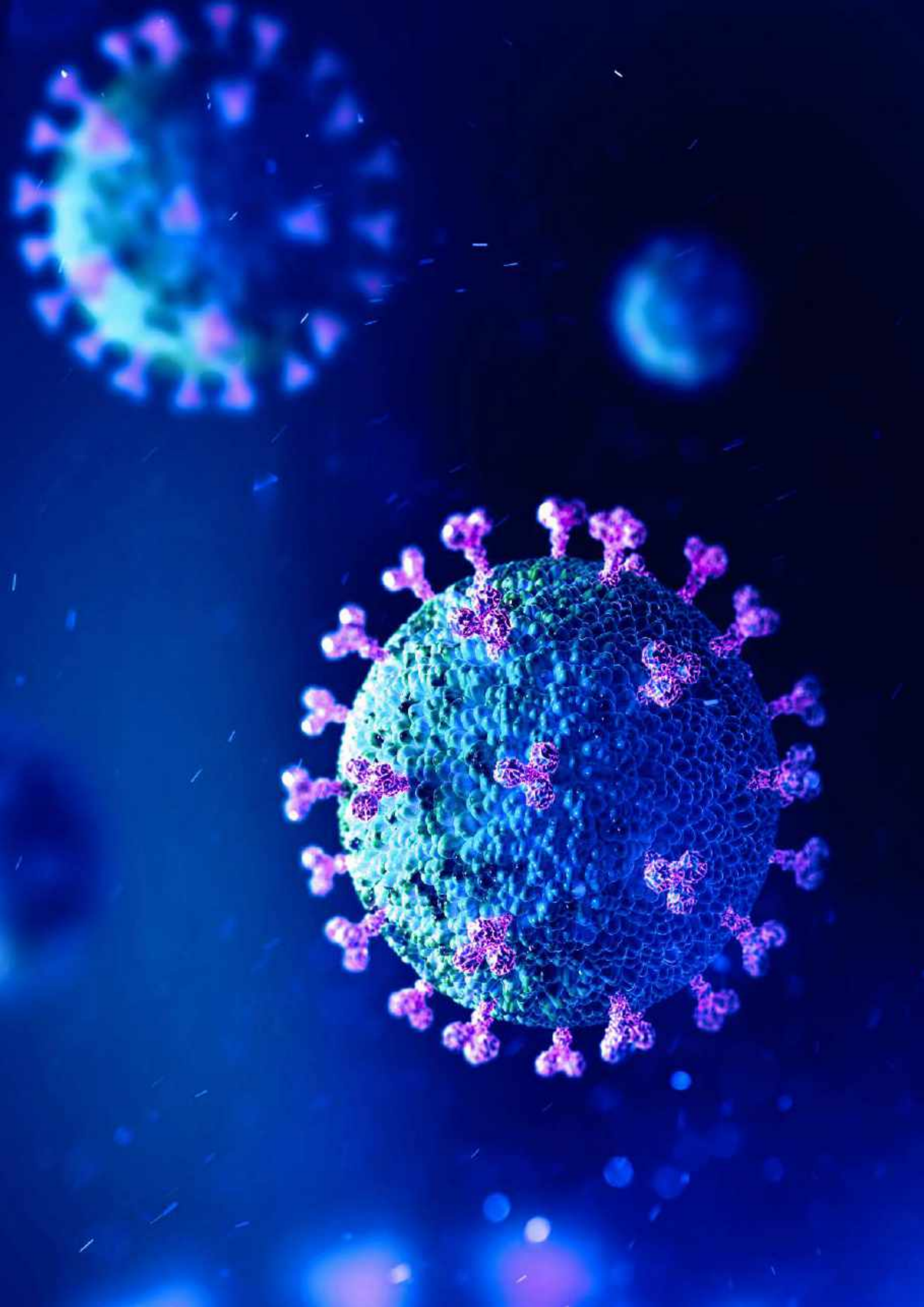
The following categories are excluded from patent protection: (i) plants cultures and breeds of animals; (ii) processes that are biological in nature and that relate to plant and animal reproduction, other than non-biological or microbiological processes, (iii) topologies of integrated circuits, and (iv) industrial designs.

To be granted patent protection, an invention must meet the requirements of (i) novelty, (ii) industrial applicability, and (iii) non-obviousness. A utility model must meet only the first two requirements.

Patent protection begins on the day the grant of the patent is published, and it lasts for 20 years from the application filing date.

Ukraine is a party to many international agreements in the field of patents such as the Paris Convention, the Patent Cooperation Treaty ("PCT"), the Patent Law Treaty ("PLT"), the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), and others.

Information in this chapter is based on certain aspects of Ukrainian legislation as of June 2020



COVID-19

Having the largest geographical coverage in Europe – with 17 full service offices, we can service even the most complex multijurisdictional projects in a seamless manner. Below we present only a very selective experience demonstrating the kind of work we do from our office in Kyiv.

The coronavirus SARS-CoV-2 (COVID-19) is, as in many other countries, having a significant impact on every aspect of our lives in Ukraine. Declared as a pandemic by the World Health Organisation in March 2020, everyone's primary concern is to minimise the spread of the virus in order to mitigate its effects.

Businesses and organisations have a role to play in the fight against COVID-19 and a responsibility to their own people. At the same, they find themselves confronted by a wide range of practical, commercial and legal challenges associated with the spread of the virus.

CMS is here to help you stay up to date with all the latest legal developments in relation to COVID-19 so that you can make informed decisions in relation to your business and investments during this challenging time. As the situation continues to evolve within and outside of Ukraine, please visit Law-Now to sign up for the latest real-time updates from our Law-Now service (https://www.cms-lawnow.com/subscription).

Our specialised CMS teams have published a number of publications on burning issues.

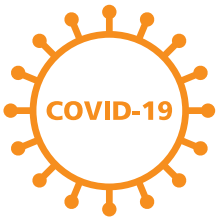
Corporate, Tax, Banking & Finance — Ukraine passes a range of measures in response to the coronavirus crisis (https://www.cms-lawnow.com/ealerts/2020/04/ukraine-passes--a-range-of-measures-in-response-to-the-coronavirus-crisis?cc_lang=en)

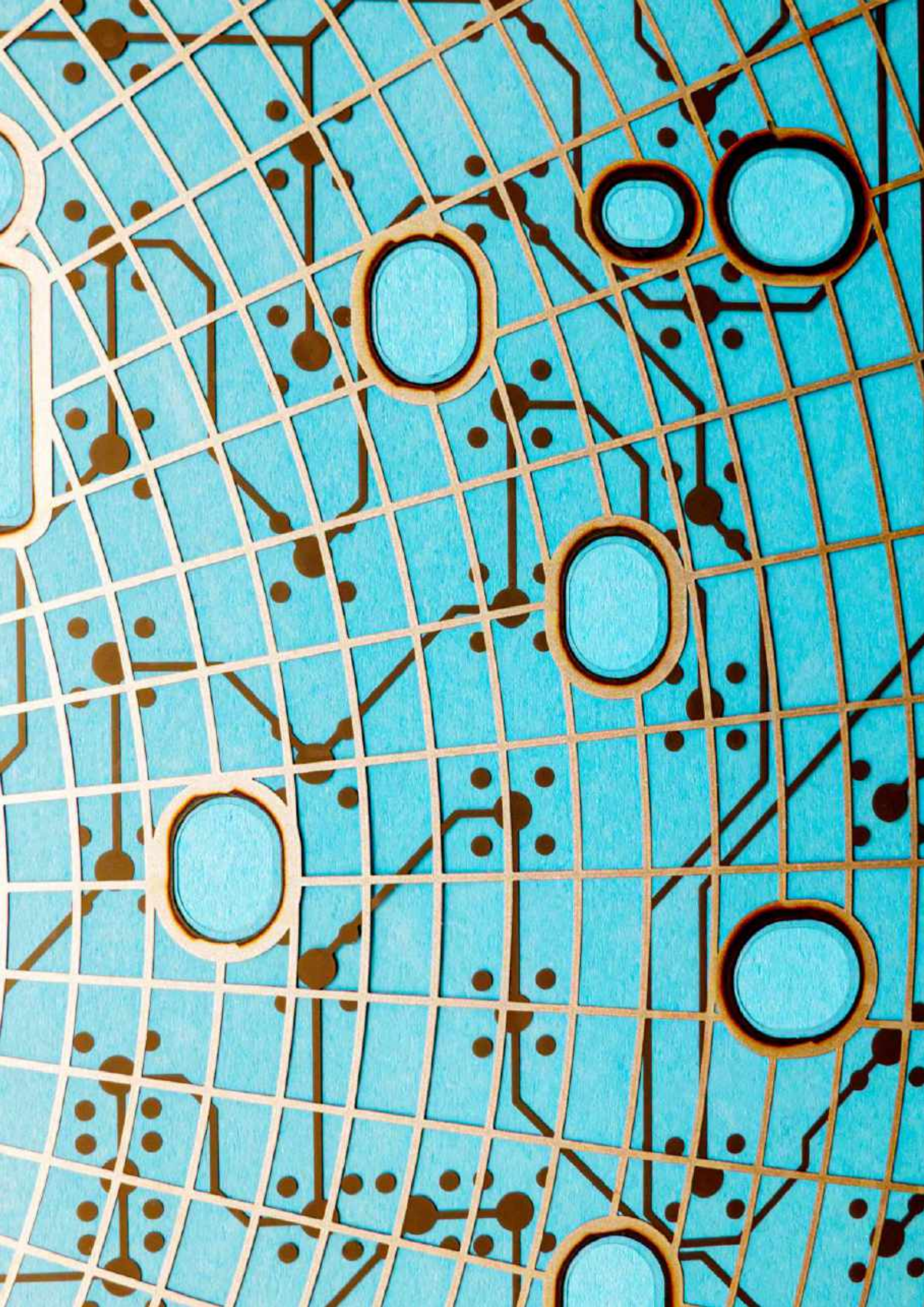
Corporate/M&A — Ukraine amends requirements for general shareholder meetings and disclosures due to COVID-19 (https://www.cms-lawnow.com/ealerts/2020/04/ukraine-amends-requirements-for-general-shareholder-meetings-and-disclosures-due-to-covid19?cc_lang=en)

Dispute Resolution, Legislation, Corporate — Ukrainian judiciary continues flexible operations during quarantine (https://www.cms-lawnow.com/ealerts/2020/04/ukrainian-judiciary-continues-flexible-operations-during-quarantine?cc_lang=en)

In addition, you can access another useful data prepared by CMS in relation to COVID-19:

- CMS Expert Guide to COVID-19 Corporate Crime & Regulatory Issues (https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-corporate-crime-regulatory-issues?fbclid=IwAR2Prnr-j6Lsz7tz1LZnSgHqbCTmGY8MDqDTxBYsx9FzQp96yaDfHEc6KDk)
- CMS Expert Guide to Government Support for Employers and Workers (https://cms.law/en/int/expert-guides/cms-expert-guide-to-government-support-for-employers-and-workers)
- CMS Expert Guide to Coronavirus Related Loan Moratoriums (https://cms.law/en/int/expert-guides/cms-expert-guide-to-coronavirus-related-loan-moratoriums)
- CMS Expert Guide to COVID-19 Impact on Construction Industry (https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-impact-on-construction-industry)
- CMS Expert Guide to Competition Law During Coronavirus Crisis (https://cms.law/en/int/expert-guides/cms-expert-guide-to-competition-law-during-coronavirus-crisis)
- CMS Expert Guide to COVID-19 impact on lease agreements (https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-impact-on-lease-agreements)
- CMS Overview of COVID-19's impact on deadlines and procedural timetables (https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-s-impact-on-ip-legal-timings)
- CMS Expert Guide to Stabilisation and Restructuring (https://cms.law/en/int/expert-guides/cms-expert-guide-to-stabilisation-and-restructuring-initiative)
- CMS Expert Guide to Force Majeure (https://cms.law/en/int/expert-guides/cms-expert-guide-to-force-majeure)
- CMS Expert Guide to COVID-19 Tax Measures (https://cms.law/en/int/expert-guides/cms-expert-guide-to-covid-19-tax-relief-measures)
- Joint activities with other FMCG suppliers during Coronavirus (https://cms.law/en/int/publication/joint-activities-with-other-fmcg-suppliers-during-coronavirus)





Twenty most important inventions by Ukrainians

From the Cossacks of the sixteenth century to the young wunderkinds of modern Ukraine who continue to advance technology, a surprising number of inventions were made by Ukrainians. Here are the top twenty.

The first submarine

The undecked, flat-bottomed boat called Chaika was built by Zaporizhian Cossacks at the turn of the seventeenth century. The boat could be deliberately capsized, trapping air inside so that the crew could walk along the river bed holding it above their heads. Reed belts were fixed to the gunwales to submerge the boat and operate it underwater. Chaika could maintain a speed of about 15 knots, which allowed the Cossacks to easily bypass the Turkish fleet.

The gas lamp

Probably one of the best-known Ukrainian inventions is the gas lamp, whose manufacture became possible thanks to Ignatius Lukasevich and Jan Zeh, assistants at a Lviv pharmacy, who developed a method for purifying and distilling oil. The first oil lamps were made by famous Lviv lamp artisan Adam Bratkovsky.

On 31 July 1853, the first surgical operation performed at night was lit with the newly made lamp. Thereafter gas lamps were used for lighting the whole world[36 37].

The first tram

In 1880, the world's first electric tram line, designed by engineer Fedir Pirotsky (born in Lokhvitsa in the Poltava region), went into operation in Sestroretsk near St. Petersburg. The Siemens electric tram line in the city of Lichterfeld near Berlin began one year later, while Pirotsky's invention was abolished and did not return to use until 1892, when an electric tram line was built in Kyiv, the first city in the Russian Empire (at the time) to switch to electric trams[38].

X-ray

In 1881, 14 years before Wilhelm Röntgen's work on X-rays[39], Ukrainian Ivan Pulyuy constructed a tube that became the world's first X-ray emitting lamp. Pulyuy analysed the nature and behaviour of the origin of the rays much more thoroughly than the German Röntgen and demonstrated their usefulness[40].

The kinescope

Together with physicist Nikolai Lyubimov, Joseph Timchenko developed the "snail" jumping mechanism two years before the Lumiere brothers came up with their invention. The principle action of the mechanism served as the basis for the creation of a kinescope. Two films made with the first kinescope were shown in Odesa in 1893. Despite Joseph Timchenko being ahead of Western inventors of the cinematograph, his device was not patented[41].

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[36] www.uk.wikipedia.org/wiki/Козацький_підводний_човен
[37] www.fgl-energy.com/en/fgl_history.html
[38] www.en.wikipedia.org/wiki/Fyodor_Pirotsky
[39] www.en.wikipedia.org/wiki/Wilhelm_Röntgen
[40] www.uk.wikipedia.org/wiki/Пулюй_Іван_Павлович
[41] www.medium.com/@m.a.kostuk/joseph-yosep-timchenko-1895–1924-odessa-ukraine-a128a5e6d795

The helicopter

The first design of a "miracle flying machine", now known as the helicopter, was developed by Ukrainian-born Igor Sikorsky. The Kyiv aircraft designer, an alumni of Kyiv Polytechnic Institute (1907–1911), patented his invention in 1931. Sikorsky emigrated to the United States, and the U.S. army was the first to order one of his machines. Sikorsky soon became the owner of a large business. In total, Sikorsky Aircraft manufactured 17 different aircraft models and 18 helicopters[42].

Postal codes

A unique system of marking letters, modern postal codes, was created in Kharkiv in 1932. Initially, it used numbers from 1 to 10, and later the format was changed to number-letter-number. With the onset of World War II, this indexation system was abolished, but versions of it continue to be used in many countries around the world[43].

The first kidney transplant

Yuri Voronyi conducted the world's first kidney transplant in 1933. He proved in clinical conditions that "the kidneys of fresh corpses are able to revive and function when transplanted to another person", and that such organs transplanted into live bodies did not lead to any specific complications[44].

Astronautics

Zhytomyr-born Serhiy Korolyov is regarded by many as the father of practical astronautics. It was under his leadership that the first intercontinental ballistic missile was developed in 1953, the first artificial satellite launched, and the first human space flight took place. It all began when Korolyov and Friedrich Zander formed a public body to study the effects of jet engines, which later became a research and development laboratory to develop airborne missiles.

The light emitting diode

Nicholas Holonyak is credited for the design of a light emitting diode in 1962. The son of Ukrainian immigrants from the Transcarpathian region, Holonyak was an employee at General Electric in the 1960s. Now LEDs are used as controlled sources of light in CD and DVD players, Blu-Ray devices and cell phones, as well as in printers and during surgeries. One of their most common uses today is scanning product ID numbers in the supermarket.

Antithrombotic prosthetic heart valves

In 1965, the world's first antithrombotic artificial heart valves were created and implanted into patients by Mykola Amosov. Amosov was one of the world's best-known heart surgeons, a talented scientist, and founder of biocybernetics in Ukraine. The Cardiac Surgery Center was founded under his leadership and became a global centre of innovation in the field. In 2008 Mykola Amosov was ranked second after Yaroslav I the Wise in a poll on "Great Ukrainians".

The compact disk (CD)

At the end of the 1960s, a postgraduate of the Kyiv Institute of Cybernetics named Viacheslav Petrov invented the first prototype CD. Incredibly, at that time the innovation had exclusively scientific implications and had nothing to do with the music industry. The first CD only had storage space of 2500 Mbit[45].

The world's largest aircraft

The Antonov-225 "Mriya" ("Dream") is the world's largest commercial airplane. Not only the heaviest aircraft in the world, it is the heaviest aircraft ever built. It runs on six turbofan engines and has a maximum take-off weight of 640 tonnes.

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[42] www.uk.wikipedia.org/wiki/Сікорський_Ігор_Іванович
[43] www.en.wikipedia.org/wiki/Postal_code#History
[44] www.welcometoukraine.info/15-ukrainian-inventions-that-changed-the-world/
[45] www.slavorum.org/ukrainians-who-changed-the-world-for-the-better-with-their-work/

In March 1989, a flight with a take-off weight of more than 500,000 kg set 106 world records, as well as records for aircraft of its class. The Antonov-225 was built between 1985 and 1988 by Oleh Antonov Aircraft Design Bureau in Kyiv. Since 2002, it has been used for commercial transportation.

Paypal

PayPal is the most common internet payment service in the world. It is used by more than 230 million people in 190 countries. It was founded in 1998 by American programmers Peter Thiel, Luc Nosekom, and Luke Nosek, and Kyiv-born Max Levchin. In 2004, the service was purchased by eBay for USD 1.5 billion. Afterwards, Max Levchyn created a start-up called Slide, a service for displaying a large number of photos, which paired with the MySpace social network. Later, Slide switched to creating social services for MySpace and Facebook, and in 2010 it was acquired by Google for USD 182 million[46 47 48].

A life-saving capsule

Volodymyr Taranenko developed a capsule that separates the passenger section from the rest of the plane in seconds, allowing passengers to be saved. The capsule system is simple: a small parachute is ejected from the aircraft, which pulls out a large parachute, which then pulls out the capsule. This whole process takes just 2 to 3 seconds. The cost of this invention is currently prohibitively high, although Taranenko has patented it and continues to improve the capsule while trying to have it introduced to mass production[49].

WhatsApp

Everyone knows WhatsApp—but if you don't, it's an instant messenger for smartphones. It was founded by Brian Acton and Jan Koum, the latter being born in 1976 in Kyiv. In January 2009, Koum bought an iPhone and realised that Apple's then seven-month-old app store was about to spawn a whole new industry of apps. He visited his friend and the two talked for hours about Koum's idea of an app. Jan chose the title "WhatsApp" instantly because it sounded like "what's up?", and then, a week later on his birthday, 24 February 2009, Koum incorporated WhatsApp Inc. in California[50]. In 2018, the audience of active WhatsApp users reached 1.5 billion.

A wrist glucose meter

The lives of people suffering from diabetes are difficult, but Transcarpathian scientist Petro Bobonich found a way to help them. In the 2010s he invented a device for measuring blood sugar levels that can be worn like a wristwatch and that does not require taking blood samples. With this glucose meter diabetics can know their blood sugar level at any time. In addition, the device can be used to insert insulin with a pump programmed through the meter[51].

The no-blood blood test

This invention is by a Ukrainian scientist named Anatoly Malikhin. In the middle of the 2000s, Malikhin created a unique device called "BioPromin" which can check more than 100 blood parameters at once. To conduct a test, five sensors are attached to the body: two on the neck near the carotid artery, two under the armpits, and one on the abdomen. Data accuracy is up to 98%.

This Ukrainian invention is now actively used in China, Saudi Arabia, Germany, Egypt and Mexico[52].

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[46] www.fgl-energy.com/en/fgl_history.html
[47] www.en.wikipedia.org/wiki/Max_Levchin
[48] www.secondfloor.gallery/en/works/paypal/
[49] www.welcometoukraine.info/15-ukrainian-inventions-that-changed-the-world/
[50] www.forbes.com/sites/parmyolson/2014/02/19/exclusive-inside-story-how-jan-koum-built-whatsapp-into-facebooks-new-19-billion-baby/#13ed688c2fa[51] www.welcometoukraine.info/15-ukrainian-inventions-that-changed-the-world/
[51] www.uk.wikipedia.org/wiki/Бобонич_Петро_Петрович
[52] www.www.slavorum.org/10-ukrainian-inventors-who-changed-the-world/

Vaccines against plague and cholera

Volodymyr Havkin (originally Waldemar Haffkine) was the first person in history to create vaccines against both plague and cholera. Born in Zaporizhzhia Oblast in 1860, he studied and worked first in Odesa, but Havkin was a political opponent of the former Moscow empire and the tsarist government refused to use his invention. When a number of European countries also refused to use his anti-cholera vaccine, Havkin moved to India where he continued to work, conducting most of the tests on his own body. Later more than 4 million people in India were vaccinated[53]. This outstanding scientist was appointed chief bacteriologist of the country and director of the Bombay Anti-Plague Laboratory (later renamed the Haffkine Institute)[54].

The liquid scalpel

Scientists at the Ukrainian National Aviation University and Aerospace Institute have produced an invention called the "liquid scalpel". This tool allows malignant tumours to be removed without damaging the vascular system and has been successfully tested on animals.
Now, with minimum blood loss a person can be operated on with a convenient, reliable and reusable inkjet scalpel which is unique in the world[55].

[53] www.ncbi.nlm.nih.gov/pmc/articles/PMC2763662/
[54] www.whonamedit.com/doctor.cfm/3306.html
[55] www.welcometoukraine.info/15-ukrainian-inventions-that-changed-the-world/

Disclaimer

This guide contains an overview of certain aspects of Ukrainian legislation as of 1 June 2020.

The results of the overview, the contents of this report and the conclusions which they present do not necessarily reflect the views of any member of CMS, the lawyers or the support staff who ssisted with their preparation. The information held in this guide is for general purposes and guidance only. It does not constitute legal or professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. Anyone relying on the conclusion drawn in this guide does so at their own risk, and CMS and its members expressly exclude any liability which may arise from such reliance.

Ukrainian legislation is changing rapidly and, although this guide describes the laws as of 1 June 2020, please contact us to check that it remains up-to-date. We would also recommend that you subscribe to our free online service CMS Law-Now at cms-lawnow.com through which you will receive our legal alerts.

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