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Conducting Business in the Ukraine 2016

Baker & McKenzie

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Abstract

[Excerpt] Since gaining independence in 1991, Ukraine remains a country in transition and its legal system continues to develop. Many changes occur these days, after the country signed an Association Agreement with the European Union. Conducting Business in Ukraine is intended to be a general guide for companies operating in or considering investment in Ukraine. It presents an overview of the key aspects of the Ukrainian legal system and the regulation of business activities in this country.

Keywords

Baker & McKenzie, Ukraine, business, legal system, regulation

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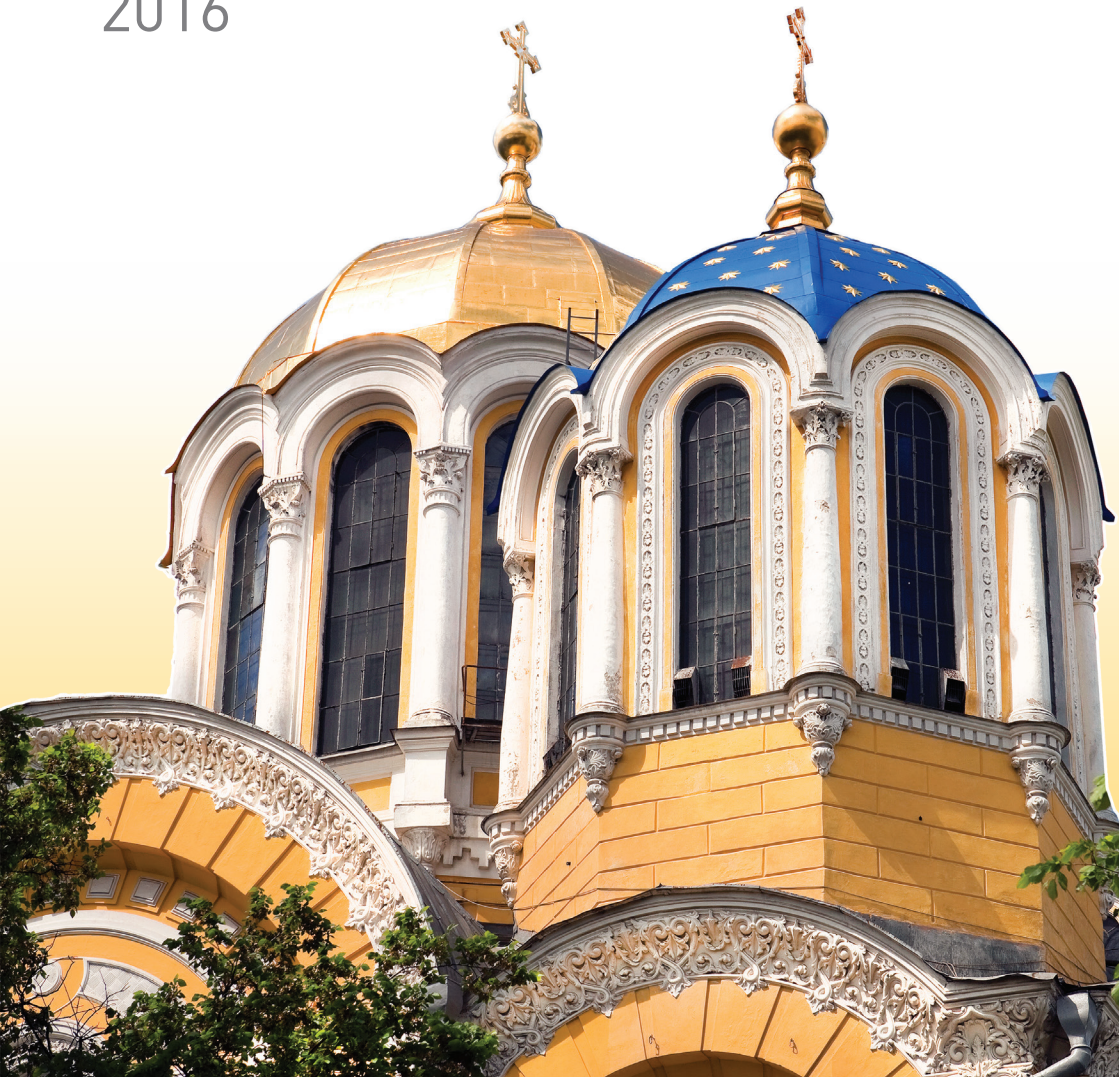

Conducting Business in Ukraine

2016

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Preface

Baker & McKenzie is providing sophisticated legal services to the world's most dynamic businesses for over 65 years now.

With a network of more than 5600 locally qualified, internationally experienced lawyers in 77 offices across 47 countries, we have the knowledge and resources to deliver the broad scope of quality services required to respond effectively to both international and local needs - consistently, with confidence and with sensitivity to cultural, social and legal differences.

In close cooperation with our offices worldwide we offer expertise on all aspects of investment in the region including corporate law, banking and finance, securities and capital markets, venture capital, competition law, tax and customs, real estate and construction, labor and employment, intellectual property, international trade and dispute resolution.

One of the first international law firms to open an office in Kyiv in 1992, we currently advise multinational companies, financial institutions, and large Ukrainian enterprises throughout the country.

Since gaining independence in 1991, Ukraine remains a country in transition and its legal system continues to develop. Many changes occur these days, after the country signed an Association Agreement with the European Union. *Conducting Business in Ukraine* is intended to be a general guide for companies operating in or considering investment in Ukraine. It presents an overview of the key aspects of the Ukrainian legal system and the regulation of business activities in this country.

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

Baker & McKenzie, Kyiv office

1. Ukraine - An Overview

1.1 Geography and Topography

Ukraine is located in the best part of Europe and covers a land area of 603,700 sq. kilometers with a coastline of 2,782 kilometers, making it the largest country in Europe. It is bordered by the Russian Federation to the east, Belarus to the north, Poland, Slovakia, Hungary, Moldova and Romania to the west, and the Black Sea and the Sea of Azov to the south.

1.2 Population

The population of Ukraine is approximately 42.9 million (as of 1 January 2015), with a population density of about 75.6 people per sq. kilometer. Approximately 78% of the population are ethnic Ukrainians and 17% ethnic Russians. The remaining 5% include ethnic Byelorussians, Moldovans, Poles, Jews, Bulgarians, Tatars, Hungarians, Romanians, Greeks, and other nationalities.

1.3 Government, Political and Legal Systems

Ukraine follows a civil law system, under which the *Constitution of Ukraine* (the *Constitution*) provides the framework for its legislative system. The principal body of legislation consists of laws adopted by the Verkhovna Rada (Parliament) of Ukraine and international agreements of Ukraine duly ratified or acceded to by the Verkhovna Rada. Laws are implemented through various normative acts, which are adopted by the relevant government bodies (*i.e.,* the President, the Cabinet of Ministers, Ministries, and State Committees).

The current *Constitution* was adopted on 28 June 1996, and heralded a new period in the development of the Ukrainian legislative system. The *Constitution* established general guidelines for national policy and established a foundation for the development of a democratic state. Apart from its political significance, the *Constitution* has enormous value as a legislative act. The provisions of the *Constitution* apply directly and entitle any individual to seek the protection of his/her

rights within the judicial system. In general all laws and normative acts are adopted on the basis of, and in strict compliance with, the *Constitution*. The *Constitution* itself mandates the preparation and implementation of a comprehensive program of legislative developments by providing for the adoption of new laws and, as deemed necessary, amendment of existing laws.

The legal system of Ukraine contains three major layers of normative acts: the *Constitution*; laws adopted by the Verkhovna Rada and international agreements of Ukraine duly ratified or acceded to by the Verkhovna Rada; and other normative acts. The Verkhovna Rada ratifies or accedes to international agreements in the form of laws of Ukraine.

Pursuant to the *Constitution*, Ukraine has three branches of state power: the legislative branch, represented by the Verkhovna Rada; the executive branch, represented by the Cabinet of Ministers of Ukraine (the Cabinet of Ministers) and headed by the Prime Minister; and the judicial branch, represented by a multilevel system of courts, with the Supreme Court of Ukraine at the highest level. In addition there is the Constitutional Court of Ukraine, which is the only body authorized to exercise control over compliance with the *Constitution* and the laws of Ukraine, its international agreements, and acts of the President, the Cabinet of Ministers, and other governmental agencies.

The President is the head of state and the commander-in-chief of the armed forces, and has significant authority over the executive branch. Presidential elections are held every five years.

Under constitutional reforms dated 8 December 2004, adopted by the Verkhovna Rada during the course of the Orange Revolution and entering into force on 1 January 2006, the distribution of executive powers among the President and the Cabinet of Ministers of Ukraine was shifted in favor of the Cabinet of Ministers of Ukraine. Some of the key constitutional rights of the President (e.g., the right to appoint the Prime Minister pending approval by the Verkhovna Rada) were transferred to the Verkhovna Rada. At that time, the constitutional

reform transformed Ukraine's political system from a presidential-parliamentary republic to a parliamentary-presidential republic.

The Verkhovna Rada is the supreme legislative body in Ukraine, with the power to adopt laws and resolutions and the state budget of Ukraine, approve candidates for Prime Minister, appoint the Chairman of the National Bank of Ukraine, the General Prosecutor and several other senior government officers. The Verkhovna Rada is comprised of 450 deputies, elected for five-year terms. Half of the body is elected under proportional representation, and the other half is elected directly and individually by a majority vote in each voting district.

The Cabinet of Ministers, led by the Prime Minister, is the highest body within the executive branch. It is responsible to the President and accountable to the Verkhovna Rada. The Prime Minister is appointed by the President after the agreement of more than half of the Verkhovna Rada. The appointed Prime Minister has the right to nominate members of the Cabinet of Ministers for the President's approval.

In Ukraine a bill becomes a law once it gains a majority (226 deputies) of the votes in the Verkhovna Rada (except for certain types of laws requiring a supermajority of 300 votes), and is signed into law by the President. The Cabinet of Ministers implements laws once they are adopted. The various Ministries, State Committees, and other authorized bodies of the executive branch are responsible for the direct implementation of the resolutions passed by the Cabinet of Ministers.

The court system, consisting of the courts of general jurisdiction and the Constitutional Court of Ukraine, exercises independent judicial power in Ukraine. The Supreme Court of Ukraine is the highest judicial body within the system of the courts of general jurisdiction. On 30 July 2010 a new Law of Ukraine "On the Court System and Status of Judges" entered into force. The new law provides for the establishment of a High Specialized Court of Ukraine on Civil and Criminal Matters, which will have the status of a cassation court

together with the High Administrative Court of Ukraine and High Commercial Court of Ukraine, and limits the powers of the Supreme Court of Ukraine.

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

- The Supreme Court of Ukraine;
- The high specialized courts;
- The appellate courts; and
- The local courts.

Ukraine is currently in the process of reforming almost all major areas of legislation. Numerous legislative acts have already been adopted in the banking sector, regulatory and tax areas. It is expected that many changes will occur in 2016.

1.4 Economy

Ukraine benefits from a consumer market of approximately 42.9 million people and enjoys an opportune geographical location, a mild climate, fertile land, a rich natural resource base, a highly educated labor force, a well-developed transport infrastructure, and a long-established tradition of scientific research and development. Despite the fact that Ukraine has experienced steady economic growth over the past five years, the country faced serious challenges from the negative consequences of the world economic crisis and remains in need of investment in all sectors of industry, with many industrial plants unable to meet current consumer demand.

Following independence in 1991, the export restrictions have been significantly reduced on various categories of products produced in Ukraine. The core export categories include ferrous and non-ferrous

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

The Ukrainian financial sector has undergone substantial changes and improvements in the past several years with an effective regulatory framework being progressively created and a modern financial system, based on market principles, steadily emerging. However, as in other economies, the Ukrainian financial sector is experiencing the negative effects of the world financial crisis. The National Bank of Ukraine and the government are implementing a number of measures in order to combat the negative consequences of the world financial crisis. Such measures include recapitalization of Ukrainian banks, limitation of the outflow of capital from Ukraine and facilitation of the performance of debt obligations by Ukrainian borrowers.

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

1.5 Foreign Relations

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

Ukraine has also ratified the *Agreement on the Common Economic Space* (CES). The CES establishes a free-trade zone among Ukraine,

Russia, Belarus, and Kazakhstan to promote the strengthening of economic cooperation among these member-states.

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

The AA establishes major rules for political dialogue and cooperation in numerous areas such as energy, transport, public finance management. The Deep and Comprehensive Free Trade Agreement significantly integrates the EU and Ukrainian markets by banning trade restrictions. The economic part of the AA entered into force on 1 January 2016.

1.6 Regional Structure

Ukraine is a unitary state divided into 24 oblasts (regions), the Autonomous Republic of Crimea (illegally and temporarily annexed by the Russian Federation in 2014), and the cities of Kyiv and Sevastopol (each of which is deemed a separate administrative unit, Sevastopol was illegally and temporarily annexed by the Russian Federation in 2014). Every oblast and each of the cities of Kyiv and Sevastopol has a governor, who is appointed by the President. Although illegally and temporarily annexed by the Russian Federation, the Autonomous Republic of Crimea has its own constitution, Verkhovna Rada (Parliament), and government, but remains subordinate to the central Government of Ukraine. It is anticipated that major administrative and territorial reforms will take place in Ukraine in the medium term.

Following the Russian annexation of Crimea and the City of Sevastopol in March 2014, a special Law of Ukraine assigned the status of temporarily occupied territories to these regions of Ukraine and established a special regime for conducting business transactions in these regions and between these regions and mainland Ukraine.

With effect from September 2014 and for the following 10-year period, Crimea and the City of Sevastopol were declared a Free Economic Zone with a special tax and customs clearance regime and a number of other features aimed at protecting the businesses affected by the annexation and the future economic development of these regions upon the termination of the occupation.

2. Foreign Investment in Ukraine

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

2.1 Laws on Foreign Investment

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

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

Foreign investors are entitled to certain privileges and guarantees under the *Foreign Investment Law*, provided that their investments have been duly registered with the appropriate local state authorities.

Such privileges and guarantees include, *inter alia,* the following:

- **Protection Against Changes in Legislation:** foreign investors are guaranteed protection against changes in the foreign investment legislation for a period of ten years, although certain changes in other areas of Ukrainian legislation and their implementation have, in fact, limited the

applicability of the above guarantee to changes in Ukrainian legislation on matters relating to nationalization, expropriation, and similar matters;

- **Protection Against Nationalization:** foreign investments may not be nationalized. State bodies may not expropriate foreign investments, with the exception of emergency measures (such as national disasters, accidents, epidemics, *etc.*) and then only on the basis of decisions of bodies authorized to that effect by the Cabinet of Ministers of Ukraine;

- **Guarantee for Compensation and Reimbursement of Losses:** foreign investors have the right to be reimbursed for their losses, including lost profits and moral damages incurred as a result of the action, the failure to act, or the improper performance on the part of state or municipal bodies of Ukraine or their officials with regard to their obligations owed to foreign investors or enterprises with foreign investment as required by law. All expenses and losses of foreign investors must be reimbursed at the current market rate and/or on the basis of a well-founded valuation certified by an independent auditor or auditing firm;

- **Guarantee in the Event of the Termination of Investment Activity:** foreign investors are guaranteed the right to remit their revenues and to withdraw their investments from Ukraine free from export duties within six months from the termination of their investment activity; and

- **Guarantee of Repatriation of Profits:** after the payment of taxes, duties, and other mandatory payments, foreign investors are guaranteed the right to the unimpeded and immediate transfer abroad of all profits and other proceeds in foreign currency legally earned as a result of their investment activity (subject to applicable currency exchange regulations).

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

Two categories of restrictions apply to foreign investment activity in Ukraine. The first relates to general restrictions on investment activity, which are applied both to foreign and domestic investors. Pursuant to the applicable Ukrainian legislation, certain types of business activity may be pursued only by state-owned enterprises (*e.g.*, the rocketry industry, banknotes, certain blank forms of securities certificates, *etc.*).

The second category relates to certain restrictions applicable only to foreign investors. Principally, such restrictions represent the legally established threshold on the maximum permissible percentage of foreign investment in the charter capital of a Ukrainian enterprise doing business in a particular industry. The number of such restricted industries is extremely limited and is expected to decrease even further. For instance, such restrictions currently apply to the publishing business. Certain indirect limitations apply to banking and auditing activities. In addition, foreign citizens and legal entities are prohibited from owning agricultural land in Ukraine, and are authorized to own only land designated for non-agricultural use, under the current version of the *Land Code of Ukraine*.

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

2.2 Investment and Registration Procedure

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

Generally, investors have the following options when making both portfolio and direct investments in Ukraine:

- To open an investment bank account in Ukraine and to transfer funds in foreign currency from abroad to this investment account;
- To transfer funds in foreign currency from abroad directly to an account of a resident in Ukraine;
- To convert funds in foreign currency kept in an investment account at a Ukrainian commercial bank into Ukrainian currency for further investment; and
- To transfer funds in Ukrainian and foreign currency from their investment account to an account of a resident in Ukraine or an investment account of another foreign investor.

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

Foreign investors are entitled to certain privileges and guarantees under the *Foreign Investment Law*, provided that their investments have been duly registered with the appropriate state authorities. Depending on where the foreign investment activity may be deemed to be economically concentrated, the foreign investment should be registered with the regional (oblast) state administration or the state administration of the City of Kyiv. The state registration of a foreign investment must be effected in the course of seven days following the submission of the required set of registration documents. The procedure for the registration of a foreign investment is established in the Order on State Registration (Re-Registration) of Foreign Investments and Its Annulment, approved by the Cabinet of Ministers of Ukraine on 06 March 2013.

In order for a foreign investment to be registered, an investor or its authorized representative is required to submit the following documents to the relevant registration body: an informational notification of the foreign investment confirmed by the local state tax administration; documents certifying the form of the foreign investment (*e.g.,* copies of the constituent documents of the Ukrainian company into which the foreign investment is made, a copy of a joint activity agreement, a concession agreement); documents evidencing the value of the foreign investment; and documents evidencing the payment of the state registration fee.

The Order of 06 March 2013 introduced the procedure for re-registration of foreign investments. Re-registration is necessary whenever the owners of an earlier registered foreign investment change. In this event the former state registration is cancelled and the re-registration of the same investments must be carried out by the new owner.

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

2.3 Divestiture

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

2.4 Investment Incentives

All enterprises with foreign investment are taxed on their profits on a par with other Ukrainian domestic enterprises, with the exception of certain state guarantees for foreign investments (see Section 2.1 above), and the duty-free import of in-kind contributions to charter capitals of enterprises with foreign investment (see Section 2.1 above). The *Foreign Investment Law* also contemplates the possibility of the establishment of a priority regime with respect to certain projects with the participation of foreign investors, which will be implemented pursuant to state programs promoting key sectors of the economy, the social sphere, and territories.

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

2.5 Dispute Resolution

In the event of a dispute arising with respect to a foreign investment, a foreign investor may seek recourse through a number of institutions. As a general matter, the *Foreign Investment Law* provides that a

dispute arising between a foreign investor and the state of Ukraine must be settled in the Ukrainian courts, unless otherwise provided by international treaties, while all other disputes involving a foreign investor must be settled in the Ukrainian courts or in courts of arbitration (including international arbitration courts).

Furthermore, the *Law of Ukraine On Foreign Economic Activity* (the *LFEA*), adopted on 16 April 1991, allows the parties to a commercial dispute to select a forum for its resolution. In accordance with Article 38 of the *LFEA*, disputes between parties regarding foreign economic activity may be resolved by the Ukrainian courts, the International Commercial Arbitration Court or the Maritime Arbitration Commission of the Chamber of Commerce and Industry of Ukraine, or by other dispute resolution bodies chosen by the parties to the dispute. In addition, the *Law of Ukraine On the International Commercial Arbitration Court* (the *Law on International Arbitration*), adopted on 24 February 1994, specifically provides that both foreign investors and Ukrainian enterprises with foreign investment have the right to resolve disputes between themselves and third parties in international commercial arbitration courts.

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

2.6 Investment Treaties

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

Albania, Argentina, Armenia, Austria, Azerbaijan, Belarus, the Belgium - Luxembourg Economic Union, Bosnia and Herzegovina, Brunei, Bulgaria, Canada, Chile, China, Croatia, Cuba, the Czech Republic, Denmark, Egypt, Equatorial Guinea, Estonia, Finland, France, Gambia, Georgia, Germany, Greece, Hungary, India,

Indonesia, Iran, Israel, Italy, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Macedonia, Moldova, Mongolia, Morocco, the Netherlands, Oman, Panama, Poland, Portugal, the Russian Federation, San Marino, Saudi Arabia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Tajikistan, Turkey, Turkmenistan, the United Arab Emirates, The United Kingdom, the United States of America, Uzbekistan, Vietnam, Yemen, and Yugoslavia.

Ukraine also signed the *Treaty on Partnership and Cooperation* between Ukraine and the European Union in 1994.

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

3. Establishing a Legal Presence

Ukrainian legislation provides for a large variety of potential investment and business vehicles, all of which can be grouped into the following two principal categories: corporate and contractual. Corporate investment and business vehicles encompass a variety of legal entities through which investors may do business in Ukraine. Contractual investment vehicles encompass joint venture agreements, joint cooperation agreements, and other agreements of a similar nature. In addition, Ukrainian legislation provides for special investment vehicles for portfolio, institutional, and/or private investors.

3.1 Companies

The basic rules governing the establishment, maintenance and liquidation of business legal entities in Ukraine are provided in the *Civil Code of Ukraine* (the *Civil Code*) and the *Commercial Code of Ukraine* (the *Commercial Code*), both adopted on 16 January 2003 and effective from 1 January 2004. Apart from the *Civil Code* and the *Commercial Code*, the *Law of Ukraine On Companies* (the *Company Law*) dated 19 September 1991, and the *Law of Ukraine on Joint Stock Companies* (the *JSC Law)*, dated 17 September 2008, govern various issues related to establishing, maintaining and liquidating companies in Ukraine. *The Law of Ukraine On the State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations* became effective on 13 December 2015.

Under the *Civil Code*, legal entities that carry out entrepreneurial activities in order to earn profits must be established in the form of companies. The following types of companies may be established in Ukraine: general partnership; limited partnership; additional liability company; limited liability company; and joint stock company. Of these, the most common vehicles for conducting business activities in Ukraine are joint stock companies (JSCs) and limited liability companies (LLCs), both of which embody the concept of limited liability for investors.

3.1.1 Joint Stock Companies

JSCs are very similar in form and operation to US corporations, German *AGs*, and French *sociétés anonymes (SAs)*. A JSC is a company whose charter capital is divided into shares of equal par value. Shareholders of a JSC are liable for the latter's obligations only to the extent of their respective equity contributions to its charter capital.

Below is a brief overview of the main provisions of the *JSC Law*.

JSCs may exist in the form of either a public or private company (the rough equivalents of open and closed JSCs under the former legislation). The number of shareholders in a private JSC may not be more than 100. The first issuance of shares upon the establishment of either a public or a private JSC must be made exclusively by means of a private placement of shares among the founders of the JSC.

A public JSC may issue additional shares by means of public and private placements of shares. Further, a public JSC is obliged to include its shares into the list of at least one of the Ukrainian stock exchanges. A private JSC may issue additional shares only by means of a private placement of shares. If a shareholders' meeting of a private JSC adopts a decision to carry out a public placement of its shares, then the charter of such JSC must be amended; in particular, the type of JSC must be changed from private to public. Changing a JSC's type from private to public and *vice versa* is not considered to be a transformation of the JSC.

A JSC may be established either by a single founder or by a group of founders. At the same time, the following statutory restrictions apply to the establishment and operation of a JSC: (a) a wholly-owned subsidiary in the legal form of a JSC may not be established by another wholly-owned subsidiary (either foreign or Ukrainian); (b) a JSC may not have among its shareholders only legal entities that are wholly-owned by the same person; and (c) a subsidiary in the legal form of a JSC that is wholly-owned by a foreign company may not own agricultural land in Ukraine under the current version of the *Land*

Code of Ukraine (the *Land Code*). The minimum capitalization of 1,250 times the officially established minimum monthly salary as of the date of the formation of the JSC is required to establish a JSC (*i.e.*, as of 1 May 2016 till 30 November 2016, UAH 1,812,500 or approximately USD 69,726[1] / EUR 61,271[2]).

An issuance of shares by both a private and a public JSC must be registered with the Ukrainian National Commission on Securities and the Stock Market (the *Securities Commission*) with the registration of a share issue and an offering prospectus, as well as a report on the results of the placement of the shares and the issuance of a certificate on the registration of the shares issue. In the event that a JSC fails to officially register any issue of its shares with the Securities Commission, any and all of the share purchase agreements entered into with respect to such share issue, as well as with respect to any subsequent share issuances, will be deemed void.

The meeting of shareholders is the highest governing body and is responsible for policy decisions of the JSC. Shareholders' voting rights are based on the principle of "one share one vote", except for cases of cumulative voting. Shareholders' meetings require a quorum of more than 50% of all voting shares for proper convocation (as opposed to 60%+1 share pursuant to the *Company Law*). The period for issuing a prior notice for convening a meeting of shareholders and communicating the agenda thereof is only 30 days. Further, the *JSC Law* provides that (a) JSCs (both public and private) that have 25 shareholders or less may approve shareholders' decisions by written polling, as opposed to voting in person at a shareholders' meeting; and (b) a wholly-owned JSC is exempt from the requirement to convene and hold shareholders' meetings; instead, the powers vested in the meeting of shareholders are to be exercised by the sole shareholder.

According to the *JSC Law*, a supermajority vote, consisting of ¾ of the total number of votes of the shareholders registered for the

[1] An exchange rate of UAH 25.994632 per USD1 is taken for these calculations.

[2] An exchange rate of UAH 29.581891 per EUR1 is taken for these calculations.

particular shareholders' meeting, is required to pass resolutions on: (a) amendments to the charter; (b) cancellations of "treasury shares" (shares bought out by the JSC); (c) changes of the JSC's type; (d) placements of shares; (e) increases/decreases of the charter capital; and (f) terminations and spin-offs, save for some cases stipulated by the *JSC Law*. In addition, the charter of a private JSC may establish an additional list of matters, with some exceptions, which require a supermajority vote or even a unanimous vote. All other resolutions may be adopted by a simple majority of the votes of those shareholders registered for the relevant meeting and holding shares allowing them to cast their votes regarding certain issues.

The *JSC Law* provides for cumulative voting, which is a new voting mechanism in Ukrainian legislation. Cumulative voting must be used for the appointment of the members of the supervisory council and/or the audit commission. Depending on the type of JSC and the number of shareholders, the use of cumulative voting is either mandatory or voluntary.

The requirement to appoint a supervisory council applies to a JSC which has 10 or more shareholders. According to the *JSC Law*, a shareholder that is an individual or a legal entity may be elected as a member of the supervisory council. The supervisory council represents the interests of the shareholders between the shareholders' meetings and it exercises control over the JSC's management to the extent indicated by the JSC's charter. Members of the supervisory council of a JSC may not be members of its management or of its audit commission. The *JSC Law* establishes a list of matters that fall under the exclusive competence of the supervisory council. The supervisory council may establish permanent or temporary committees and elect a corporate secretary who is responsible for the JSC's relationships with its shareholders and/or investors.

The management of the JSC's day-to-day business activities may take either of two forms: a "management board" (collective management) or a "director" (individual management). The management generally

reports to the shareholders' meeting, as well as to the supervisory council.

According to the *JSC Law*, a JSC with less than 100 shareholders must either establish the position of auditor or elect an audit commission and a JSC with more than 100 shareholders must elect an audit commission. The corporate secretary and the members of the other bodies of the JSC may not be elected as members of the audit commission (the auditor). The audit commission may be elected either for carrying out a special audit of the financial-and-commercial activity of the JSC or for a definite term. Individual or legal entity shareholders of the JSC may be elected as members of the audit commission.

Depending on the correlation between the market value of a particular asset or service, which is the subject matter of a particular transaction, and the total assets of the JSC, certain (i.e., material) transactions will require approval by either the supervisory council or the shareholders' meeting. Additionally, transactions with "*interested parties*" will also require approval by either the supervisory council or the shareholders' meeting. A shareholder who has voted at a shareholders' meeting against certain issues that were adopted will be entitled to request the mandatory buy-out of its shares by the JSC.

Both private and public JSCs are subject to "regular" and "special" reporting and disclosure requirements. Regular reporting is the disclosure on an annual basis (for private JSCs) and a quarterly and annual basis (for public JSCs) of information on the results of the financial and business activities of the JSC. Special reporting is the *ad hoc* disclosure of information about any actions that may influence the financial or business activities of the JSC and lead to a significant change in the value of its securities. In addition, the *JSC Law* has established the following publication requirements: (a) an entity intending to purchase a significant shareholding in a JSC (10% or more) must notify the JSC in advance about its intention in writing and must disclose its intention in the official press; and (b) a person who has acquired a controlling shareholding in a JSC (50% or more)

must make an offer to all of the other shareholders to purchase their shares at a price not less than the market price, and must notify the *Securities Commission* and the stock exchange (for a public JSC) about such offer.

3.1.2 Limited Liability Companies

The legal nature of an LLC is similar to that of a German *GmbH* and a French *société à responsibilité limitée (SARL)*. Investors in the LLC, *i.e.,* its interest-holders or participants, are liable for the LLC's commitments only to the extent of their capital contributions to its charter capital. Their participatory (*i.e.,* ownership) interests in the LLC are expressed in the form of the respective percentages of the LLC's charter capital owned by them. Participatory interests in an LLC do not qualify as "securities" for purposes of the applicable Ukrainian legislation and, therefore, are not subject to registration with the Securities Commission.

Similarly to a JSC, an LLC may be established either by a single founder or by a group of founders. Ukrainian law imposes certain restrictions on the establishment and operations of an LLC. In particular, (a) a wholly-owned subsidiary in the legal form of an LLC (the same as with a JSC) may not be established by another wholly-owned subsidiary (either foreign or Ukrainian); (b) an individual or a legal entity (either foreign or Ukrainian) may not be the sole founder of and/or the sole participant in more than one LLC in Ukraine; (c) a subsidiary in the legal form of an LLC (the same as with a JSC) that is wholly-owned by a foreign company may not own agricultural land in Ukraine under the current version of the *Land Code*; and (d) the maximum number of founders/participants of an LLC may not exceed 100 legal entities or individuals. Those LLCs which are established by less than 100 founders and later expand to more than 100 participants are subject to mandatory reorganization into a public JSC within one year. Failure to comply with this reorganization requirement or decrease the number of participants to 100 may result in termination of an LLC upon a court decision.

There are no legal restrictions on how the participatory interests of an LLC may be distributed; this issue remains entirely within the discretion of the founders of the LLC. Currently there is no minimum capitalization requirement for an LLC.

The participants' meeting (assembly) consists of the participants (*i.e.*, the interest-holders) of the LLC. Each participant has a number of votes proportionate to the percentage of its interest in the LLC's charter capital. Meetings of the participants require a quorum of more than 50% of the votes. Resolutions are approved by a simple majority of the votes present at a duly convened meeting of the participants; however the following three resolutions require the approval of a simple majority of the votes of all of the participants (and not only the votes of those participants present at the meeting of the participants): amendment of the charter and changes to the charter capital of the LLC; determination of the principal activities of the LLC; and the expulsion of a participant from the LLC.

Under the applicable legislation, the management of an LLC may take either of two forms: a "directorate" (collective management) or a "director" (individual management). The form of the LLC's management and the number of its members may be decided at the discretion of the participants as specified in the LLC's charter. The directorate/director is responsible for the day-to-day operations of the LLC. The director or the directorate's members are appointed and removed by the participants' assembly.

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

In choosing between an LLC and a private JSC in establishing a wholly-owned subsidiary, LLCs appears to be more popular than private JSCs, due to the various establishment and operational considerations discussed above. Generally speaking, the main general

corporate benefit of an LLC in comparison with a JSC is that the procedure for establishment and operation of an LLC is significantly less burdensome and time-consuming, since an LLC does not have to issue shares or perform the procedural steps required for a share issue. The absence of shares in an LLC makes this form of legal entity more mobile and flexible when it is necessary for the participants of the LLC to change (increase or decrease) the charter capital of the company.

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

3.1.3 Representative Offices/Branches

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

The establishment in Ukraine of a representative office of a Ukrainian legal entity does not require separate registration. The Ukrainian legal entity simply needs to notify the appropriate registration authority of

the opening of its representative office. The registration authority will then enter such additional information into the existing registration card of the legal entity.

A foreign legal entity may establish its representative office in Ukraine in order to carry out marketing, promotional, and other auxiliary functions on behalf of the foreign legal entity. It is less clear whether a foreign legal entity may also conduct trade or business through a representative office, although "commercial" representative offices (in effect, the equivalent of "branches" in most other countries) are quite common in Ukraine. Recent practice has been to permit a representative office to carry out a wide range of commercial activities (including the signing of contracts and the implementation of import, export, and other transactions). Normally, such practices result in the creation of a permanent establishment for such foreign companies in Ukraine for the purposes of the Ukrainian corporate income tax legislation and, thus, the commercial representative office's activities become taxable in Ukraine on a general basis (whereas, generally speaking, the activities of a representative office are non-taxable). In some cases it is required either as a matter of law or as a matter of practice to establish a legal entity rather than a representative office (e.g., for conducting telecommunications activities or for conducting activities subject to licensing, etc.).

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

3.2 Joint Venture/Cooperation Agreements

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

3.3 Investment Funds/Mutual Funds

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

The *Investment Funds Law* provides that an investment fund may be either open, closed, or a combination between the two (an "interval" investment fund). An investment fund is deemed to be open to the extent that it remains legally liable at all times to purchase back the securities issued by such fund from any investor holding such securities at any given moment. Correspondingly, an investment fund is deemed to be closed to the extent that it does not remain legally liable to purchase back the securities issued by such fund from any investor holding such securities at any given moment. An "interval"

investment fund remains liable to purchase back the securities issued by such fund from any investor holding such securities during the time period prescribed in the prospectus. The *Investment Funds Law* prohibits open and "interval" investment funds from paying dividends to their investors.

Any investment fund may be established either for a fixed period of time or for an indefinite period of time. Closed investment funds may be established only for a fixed period of time.

Investment funds may be of (i) diversified , (ii) non-diversified,(iii) specialized or (iv) qualification type. Investment funds of the diversified type are required to comply with a number of rigid thresholds and restrictions on their investment activity for the diversification of risks associated with portfolio investment activity, while non-diversified investment funds are not subject to such thresholds and/or restrictions. A specialized investment fund can investment only in the assets defined by the *Investment Funds Law*. Specialized investment funds include funds of the following classes: monetary market funds; state securities funds; bond funds; shares funds etc. A qualification investment fund in turn must invest assets exclusively into one of the qualification classes, including: the united class of shares; real property class; credit assets class, other classes as defined by the Securities Commission.

The *Investment Funds Law* provides that venture investment funds may be established by legal entities and individuals, provided that the minimum purchase of securities in such fund is the equivalent of not less than 1,500 times the minimum monthly salary (*i.e.*, as of 1 May 2016 till 30 November 2016, UAH 1,812,500 or approximately USD 69,726[3] / EUR 61,271[4]). Such venture investment funds enjoy the status of non-diversified closed investment funds, which carry out only private (closed) placements of securities.

[3] An exchange rate of UAH 25.994632 per USD 1 is taken for these calculations.

[4] An exchange rate of UAH 29.581891 per EUR 1 is taken for these calculations.

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

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

Investment funds are authorized to replace their current asset management companies with the latter's competitors. Corporate investment funds are authorized to do so at any given moment and for any reason upon the decision of their supervisory councils as approved by the general meeting of shareholders. Unit investment funds may replace their asset management companies with the latter's competitors only under the specific circumstances listed in the *Investment Funds Law*.

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

Corporate investment funds issue shares to their investors. Unit investment funds issue investment certificates to their investors. The issuer of the former will be the corporate investment fund itself, while the issuer of the latter will be the unit investment fund's asset

management company. Both instruments are subject to mandatory registration with the Securities Commission.

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

Corporate investment funds terminate their activities by means of their reorganization (merger, acquisition, split-off or transformation) or liquidation. A corporate investment fund is obliged to commence liquidation proceedings in the event that the net value of its assets decreases to a level below the value of its charter capital; or its supervisory council fails to engage the services of an asset management company for three consecutive months. A unit investment fund is subject to liquidation in the event that: it fails to engage the services of an asset management company; the relevant period of its activity expires; or the license of the custodian of its investment certificates is revoked and the investment fund fails to secure the services of an alternative custodian within 30 business days of such event. Mergers and accessions of unit investment funds may be made only when they are of the same type and form, and they are managed by one asset management company and upon the agreement of all participants. Spin-offs, split-offs and transformations of unit investment funds are expressly prohibited.

Investment funds remain under the following disclosure obligations: to fully disclose their activities to the Securities Commission and to have the information specified by the Securities Commission published for the public at large in the official publications of the Securities Commission.

4. Compliance with Anti-Corruption Legislation of Ukraine

4.1 General

Compliance issues are currently high on the list of priorities for all multinational companies doing business in Ukraine and for the Ukrainian government, for a number of reasons. First, there is a clear perception that the problem of corruption in Ukraine is significant, a fact borne out by the 2014 Transparency International Corruption Perceptions Index which ranks Ukraine 142 (out of 175 countries). Secondly because, in an effort to address Ukraine's corruption problem, new anti-corruption legislation was introduced in Ukraine in October 2014, which made it necessary for multinational companies to take another look at their compliance policies and procedures. Lastly, all of the above developments have been occurring against the backdrop of the introduction of the United Kingdom's Bribery Act, the enhanced enforcement in the USA of the Foreign Corrupt Practices Act and the increasing level of cooperation between enforcement authorities across the USA and Western Europe in terms of the oversight and regulation of the business conduct of their companies overseas, particularly in high risk emerging markets.

4.2 Ukrainian Anti-Corruption Legislation

Applicable Anti-Corruption Legislation

On 26 April 2015, the new Law of Ukraine *"On Prevention of and Counteraction against Corrupt Practices in Ukraine"* (the "**Anti-Corruption Law**") entered into force. The Anti-Corruption Law sets forth the main principles for combating corruption, criteria for the in-house Anti-Corruption Officer and establishes certain obligations for the owners and managers of companies in preventing and combatting corruption. In addition, relevant amendments to the Criminal, Administrative Violations, and Criminal Procedural Codes of Ukraine entered into effect at the same time as the Anti-Corruption Law and many additional changes to these statutes were adopted in 2015. It is

expected that further laws and regulations aimed at combatting corruption will be adopted in 2016.

Corruption Misconduct

The Anti-Corruption Law defines corruption misconduct as an intentional act which has the features of corruption, and is performed by a covered person (as defined below) who is subject to criminal, administrative, civil, and/or disciplinary liability. Corruption itself is defined as (i) the use of the authority and the relevant possibilities related thereto granted to a covered person due to his/her occupying a certain position, in order to receive improper benefits, or to accept an offer/promise of such improper benefits for himself/herself or for other persons; as well as (ii) an offer/promise, or the actual granting, of improper benefits to the above-mentioned covered person or, upon the request of such covered person, to other persons in order to facilitate improper use by such covered person of his/her authority and the relevant possibilities related thereto.

Covered Persons

The following persons, among others, are now subject to liability for corruption: (i) Ukrainian civil servants, (ii) foreign civil servants, (iii) officers of international organizations, (iv) officers of legal entities, and (iv) "public service providers", i.e., the persons who provide public services even though they are not civil servants, such as auditors, notaries, experts, evaluators, arbitrators, and other persons who provide public services.

Although the Anti-Corruption Law covers the corruption misconduct of officials of legal entities (i.e., commercial bribery), it does not make legal entities subjects of liability. Nevertheless, as of 1 September 2014, legal entities may face sanctions for the corruption offenses of their officers and employees, in accordance with the Criminal Code of Ukraine.

Gifts

The Anti-Corruption Law prohibits a covered person from receiving any gifts other than in accordance with the generally recognized principles of hospitality and within the expressly allowed limits. Such limits are calculated based on the rate of the official minimum monthly salary. At any one time, the value of a gift may not exceed one times the amount of the statutory minimum monthly salary (approximately US$ 52 at the current exchange rate) at the time when the gift is given. Within a calendar year, a covered person is not allowed to receive gifts from one source with a value of more than twice the amount of the monthly subsistence level for a working person, which is established on the first of January of the calendar year in which the gift is given. Because the amount of the statutory monthly salary and of the subsistence level are regularly changed, updates as to its currently applicable level should be obtained before any decision regarding the gift is made.

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

Transparency Requirements

The Anti-Corruption Law provides for certain types of information which cannot be classified as information with limited access (confidential), and to which access, therefore, cannot be limited by its owner. Such information covers, in particular, the data regarding any types of remuneration and/or charitable assistance received by a civil servant.

Financial Control and Limitations on State Officials' Activities

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

In addition, information about a state official's property, income, expenses, and financial obligations must be declared and is subject to public disclosure.

State officials are not allowed to have any income in addition to their salaries, apart from the income received from medical or sports judging practice, teaching or artistic or scientific activity. Also, for one year after the resignation, former state officials are prohibited from occupying positions within, consulting or representation of interests of the companies which they have monitored within 12 months prior to their resignations.

Liability

Any losses and/or damages caused by corruption misconduct must be duly compensated to the state and/or to another injured party, including an individual or company. Moreover, decisions of a state body adopted as a result of corruption offense must be cancelled by a superior body. Transactions made with violations of the Anti-Corruption Law may be challenged in court.

4.3 Elements to Ensure Compliance

(i) The Anti-Corruption Law does not indicate any mandatory actions that could reduce the risk of violations or would mitigate the sanctions or other negative consequences. However, the precautions that would protect a company from being penalized under the U.S. or European anti-corruption legislation (e.g., adoption of policies, monitoring and investigation, etc.) can be implemented in Ukraine, too. The adoption of the Anti-Corruption Program is mandatory for fully or partially state (or municipal) owned companies and for private companies that wish to participate in state or municipal tenders.

(ii) The Anti-Corruption Law contains a list of the subjects that need to be addressed in the Anti-Corruption Program, describes the duties of the Anti-Corruption Officer and

establishes how often the officer should communicate/report to the management and owners of the company on the measures and issues related to corruption prevention. However, legal entities can add their own chapters to their anti-corruption programs and, thus, tailor them to their specific needs. In order to be enforceable in Ukraine, any Anti-Corruption Program (compliance policy) that may have been developed by the company's foreign headquarters needs to be localized, translated into Ukrainian (or, at minimum, into Russian) and communicated to employees according to a specific procedure.

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

(iv) Similarly, although conducting an "anti-corruption due diligence investigation" of potential business partners and intermediaries before engaging in business activity with them is certainly recommended in order to confirm that Ukrainian laws are not being violated.

5. Taxation

5.1 General

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

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

5.2 Corporate Income Tax

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

The following persons and entities are subject to Corporate Income Tax ("**CIT**"):

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

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

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

State authorities, public organizations, political parties, religious and charity organizations are not viewed as CIT payers if they are included in the Register of Non-Profit Institutions and Organizations.

CIT in Ukraine is levied at a rate of 18%. Effective 1 January 2015 the CIT is levied on the financial results of taxpayers, calculated according to Ukrainian and international accounting rules, adjusted for certain differences derived from: (i) depreciation of fixed assets; (ii) creation of reserves; and (iii) conducting financial transactions. The *Tax Code* also establishes special taxation rules for certain activities and transactions (*e.g.* insurance activity).

Business entities whose annual income for the preceding financial year does not exceed UAH20 mln (approximately USD800,000), may declare their financial result for CIT purposes without any adjustments.

5.3 Taxation of Foreign Entities

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

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

- Income derived from sources within the territory of Ukraine by foreign entities which are not engaged in commercial activities on the territory of Ukraine through a permanent

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

The *Tax Code* provides that a foreign entity is liable for the payment of CIT with respect to all "Ukrainian-source" income. Article 141.4 of the *Tax Code* provides a non-exhaustive list of the types of income, which are, *per se*, deemed to constitute Ukrainian source income, including: interest payments, dividends, royalties, lease payments, proceeds from real estate sales on the territory of Ukraine, profits from securities transactions, profits from joint activity agreements or long-term agreements, broker's or agency fees, and other kinds of income derived by a foreign entity from its business activity on the territory of Ukraine.

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

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

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

5.4 Double Taxation Treaties

Ukraine is a party to nearly 70 bilateral double taxation treaties with the following countries as of January 2016:

Table 1: Double Taxation Treaties

Country:	Signing Date:	Ratification Date:	Date of Entry Into Force
Algeria	4 Dec 2002	5 Jun 2003	1 Jul 2004
Armenia	14 May 1996	13 Sep 1996	19 Nov 1996
Austria	16 Oct 1997	17 Mar 1999	20 May 1999
Azerbaijan	30 July 1999	2 Mar 2000	3 July 2000
Belarus	24 Dec 1993	20 Dec 1994	30 Jan 1995
Belgium	20 May 1996	29 Oct 1996	25 Feb 1999
Brazil	16 Jan 2002	4 Jul 2002	24 Apr 2006
Bulgaria	20 Nov 1995	23 Apr 1996	3 Oct 1997
Canada	4 Mar 1996	12 Jul 1996	22 Aug 1996
China	14 Dec 1995	12 Jul 1996	18 Oct 1996
Croatia	10 Sep 1996	17 Mar 1999	1 Jun 1999
The Czech Republic	30 Jun 1997	17 Mar 1999	20 Apr 1999
Cuba	27 Mar 2003	20 Nov 2003	
Cyprus	8 Nov 2012	4 Jul 2013	7 Aug 2013
Denmark	5 Mar 1996	12 Jul 1996	21 Aug 1996
Egypt	29 Mar 1997	17 Mar 1999	27 Feb 2002

Country:	Signing Date:	Ratification Date:	Date of Entry Into Force
Estonia	10 May 1996	13 Sep 1996	24 Dec 1996
Finland	14 Oct 1994	6 Oct 1995	14 Feb 1998
France	30 Jan 1997	3 Mar 1998	1 Nov 1999
Georgia	14 Feb 1997	17 Mar 1999	1 Apr 1999
Germany	3 Jul 1995	22 Nov 1995	4 Oct 1996
Greece	6 Nov 2000	29 May 2001	26 Sep 2003
Hungary	19 May 1995	23 Apr 1996	24 Jun 1996
Iceland	8 Nov 2006	03 Sep 2008	03 Sep 2008
India	7 Apr 1999	20 Sep 2001	31 Oct 2001
Indonesia	11 Apr 1996	29 Oct 1996	9 Nov 1998
Iran	22 May 1996	6 Dec 1996	21 Jul 2001
Ireland	19 Apr 2013		
Israel	20 Nov 2003	16 Mar 2006	20 Apr 2006
Italy	26 Feb 1997	17 Mar 1999	25 Feb 2003
Japan*	18 Jan 1986	14 Mar 1988	14 Jun 1988
Jordan	30 Nov 2005	03 Sep 2008	23 Oct 2008
Kazakhstan	9 Jul 1996	15 Nov 1996	14 Apr 1997
Korea	29 Sept 1999	2 Feb 2002	19 Mar 2002
Kuwait	20 Jan 2003	19 Jun 2003	22 Feb 2004
Kyrgyzstan	16 Oct 1997	17 Mar 1997	1 May 1999

Country:	Signing Date:	Ratification Date:	Date of Entry Into Force
Latvia	21 Nov 1995	12 Jul 1996	21 Nov 1996
Lebanon	22 Apr 2002	19 Jun 2003	9 Sep 2003
Lithuania	23 Sep 1996	9 Dec 1997	25 Dec 1997
Luxembourg	6 Sep 1996		
Libya	04 Nov 2008	18 Nov 2009	31 Jan 2010
Macedonia	2 Mar 1998	5 Nov 1998	23 Nov 1998
Malaysia*	31 Jul 1987	1 Jul 1988	1 Jul 1988
Morocco	13 July 2007	18 Feb 2009	30 Mar 2009
Moldova	29 Aug 1995	23 Apr 1996	27 May 1996
Mongolia	1 Jul 2002	6 Mar 2003	6 Mar 2003
Mexico	23 Jan 2012	02 Oct 2012	6 Dec 2012
The Netherlands	24 Oct 1995	12 Jul 1996	2 Nov 1996
Norway	7 Mar 1996	12 Jun 1996	18 Sep 1996
Poland	12 Jan 1993	24 Mar 1994	24 Mar 1994
Portugal	9 Feb 2000	22 Mar 2001	11 Mar 2002
Pakistan	23 Dec 2008	18 Nov 2009	01 January 2012
Romania	29 Mar 1996	21 Oct 1997	17 Nov 1997
The Russian Federation	8 Feb 1995	16 Oct 1995	3 Aug 1999
The Slovak Republic	23 Jan 1996	12 Jun 1996	22 Nov 1996
Saudi Arabia	02 Sep 2011	18 Sep 2012	1 Dec 2012

Country:	Signing Date:	Ratification Date:	Date of Entry Into Force
Slovenia	23 Apr 2003	21 Mar 2007	25 Apr 2007
Singapore	Jan 26, 2007	Oct 22, 2009	Dec 18, 2009
South Africa	28 Aug 2003	4 Feb 2004	23 Dec 2004
Spain*	1 Mar 1985	7 Aug 1986	7 Aug 1986
Sweden	15 Aug 1995	23 Apr 1996	4 Jun 1996
Switzerland	30 Oct 2000	10 Jan 2001	26 Feb 2002
Syria	5 Jun 2003	4 Feb 2004	4 May 2004
Thailand	10 Mar 2004	23 Sep 2004	24 Nov 2004
Tajikistan	7 Sep 2002	5 May 2003	1 Jun 2003
Turkey	27 Nov 1996	16 Jan 1998	29 Apr 1998
Turkmenistan	29 Jan 1998	17 Mar 1999	21 Oct 1999
The United Arab Emirates	22 Jan 2003	19 Jun 2003	9 Mar 2004
The United Kingdom	10 Feb 1993	10 Aug 1993	11 Aug 1993
The United States of America	4 Mar 1994	26 May 1995	5 Jun 2000
Uzbekistan	10 Nov 1994	2 Jun 1995	25 Jul 1995
Vietnam	8 Apr 1996	29 Oct 1996	19 Nov 1996
Yugoslavia (Serbia and Montenegro)	22 Mar 2001	4 Oct 2001	29 Nov 2001

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

5.5 Taxation of Permanent Establishments

As mentioned above, for the purposes of the *Tax Code,* permanent establishments of foreign entities are deemed to be independent (of such foreign entities) as taxpayers in Ukraine. Under Article 14.1.193 of the *Tax Code,* a "permanent establishment of a foreign entity" in Ukraine is created (i) through a fixed place of business through which the business activities of such foreign entity are either fully or partially conducted in Ukraine or (ii) through an agent, commissioner or other resident entity acting in a similar capacity.

The definition of a permanent established is aligned with the definition under most double taxation treaties. Thus, the domestic definition of a permanent establishment includes (1) a construction site and (2) provision of services, including consultancy services, by a foreign entity through its employees working in Ukraine for the period exceeding 6 months in any 12-month period.

At the same time, the *Tax Code* (1) introduces a "safe harbor" with respect to provision of personnel (secondment) services, and (2) provides for the types of activities that do not give rise to a permanent establishment, e.g. preparatory and auxiliary activity.

The *Tax Code* provides that income derived by a foreign entity that conducts its business activities in Ukraine through a permanent establishment is subject to taxation at the general tax rate, which under the provisions of the *Tax Code* effective 1 January 2014 is 18%.

5.6 Value Added Tax

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

- Has sold goods (or provided works or services) subject to VAT during the last 12 calendar months with an aggregate value in excess of UAH1 mln threshold (approximately USD 40,000);

- Imports (ships) goods and concomitant services into the customs territory of Ukraine; or

- Supplies goods (services) on the customs territory of Ukraine via global or local computer networks.

The Tax Code identifies a list of transactions subject to VAT, which includes the following:

- The sale of goods (or the provision of services) on and within the customs territory of Ukraine;

- The import of goods into the customs territory of Ukraine;

- The export of goods out of the customs territory of Ukraine; and

- The provision of services by foreign persons to VAT registered payers.

Transactions that do not constitute taxable events subject to VAT, include:

- The issuance, placement, and cash sale of securities;

- The interest or commission element of lease payments pursuant to a financial lease agreement;

- The transfer of title to pledged property pursuant to a loan agreement and its return to the pledgor after the expiry of such agreement (conditions apply); and

- The provision of insurance and re-insurance services.

The basic VAT rate is 20% of the contractual value of the relevant goods (services), but not less than the original purchase price thereof or, in case of the sale of produced goods, not less than the arm's

length value thereof (for goods imported into Ukraine this value includes any excise duty, import duty, and other tax or payment required by the applicable Ukrainian legislation).

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

Effective from 1 February 2015, Ukraine has switched to electronic VAT administration and introduced VAT accounts.

5.7 Personal Income Tax

5.7.1 Introduction

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

5.7.2 Tax Rates

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

Tax residents can benefit from certain tax exemptions and reduced tax rates (e.g., 5% applicable to income from sales of real estate and movable property). The *Tax Code* establishes the tax rate applicable to dividends at the level of 5% (20% on dividends distributed by institutes of joint investment), while interest, royalties and capital gains are taxed at 18% regardless of the amount of such interest. Winnings and prizes (except for the state lottery) are subject to PIT at a double rate, *i.e.*, 36%.

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

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

5.7.3 Tax Residency

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

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

To be more precise, pursuant to the *Tax Code*, the following criteria are used to determine the resident status of a person:

- A tax resident of Ukraine is an individual who has a permanent residence in Ukraine;

- If an individual has a permanent residence in more than one country, he/she will be a tax resident in that country with which he/she has closer personal or economic ties (*e.g.,* his/her center of vital interests). The *Tax Code* specifically outlines that the place of the permanent residence of the members of an individual's family or the place of an individual's registration as a business entity (as a subject of entrepreneurial activity) will be a sufficient (but not exclusive) condition for determining the location of the center of vital interests of such individual;

- If it is impossible to determine the country in which the individual has his/her center of vital interests, or if the individual does not have a permanent residence in any country, then the individual will be considered a Ukrainian tax resident if he/she is present in Ukraine for at least 183 days of the tax period (including days of arrival and departure);

- If it is impossible to determine tax residency on the basis of the above provisions, then the individual will be a tax resident of Ukraine if he/she is a Ukrainian citizen; and

- The *Tax Code* stipulates that an individual's own identification of his/her principal place of residence on the territory of Ukraine according to the procedure established by the *Tax Code*, or the registration of an individual as a self-employed person in Ukraine, will constitute a sufficient basis for identifying such individual as a tax resident of Ukraine.

- A person who fails to qualify as a Ukrainian tax resident will be considered a "non-resident" for the purposes of the *Tax Code*.

The criterion of "one's own identification," as well as the variety of criteria in and of themselves, combined with the absence of clear guidance, might create situations where an individual is treated as being a tax resident in several jurisdictions simultaneously. Moreover, the above set of criteria makes it difficult in practice to identify the correct criterion when several can easily be applied. The latter circumstances can also create a conflict between two residences. In the majority of cases the rules of the applicable double tax treaties may be applied to solve such residency conflicts.

5.7.4 Taxable Income

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

The *Tax Code* provides a list of items specifically included in the gross income of either a resident or a non-resident individual. These include: gifts; insurance payments and premiums; rental income; fringe benefits (including the cost of received property, food,

assistance of home servants, expense reimbursements, amounts of financial aid, *etc.*); amounts of punitive (*vs.* actual) damages received; forgiven debts and obligations; interest and dividend income; investment income; and inheritances.

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

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

Taxes paid by a resident taxpayer outside Ukraine may be taken as credits against Ukrainian taxes due, in the event that the taxpayer provides a written acknowledgment from the foreign tax authority that such foreign taxes have, in fact, been paid. However, the total of such foreign tax credits may not exceed the amount of the Ukrainian personal income tax due.

5.7.5 Tax Administration

The general rule of the *Tax Code* is that it is the duty of the payer of source income *i.e.*, "tax agents" in the parlance of the *Tax Code*, to report, charge, collect, and remit personal income tax to the Government. Thus, employers are deemed to be tax agents with respect to the personal income tax due on the wages and salaries

payable to their employees. The relevant tax returns are filed by tax agents quarterly and the remittance is made at the time of payment of income.

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

5.8 Payroll Taxes

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

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

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

The Unified Contribution is payable by the employer at the time of payment of income. All payroll taxes must be paid by wire transfer to the appropriate state treasury accounts at the same time as the employer withdraws funds from a bank to pay salaries to its employees or pays salaries to bank accounts of employees.

Effective from 1 January 2016, the employee-related Unified Contribution (3.6%) has been abandoned.

The maximum taxable base for the purposes of Unified Contribution constitutes 25 times the minimum statutory monthly salary (which is UAH 34.450 as of 1 January 2016). Any portion of the taxable base in excess of the maximum taxable base is exempt from taxation for the purposes of Unified Contributions. The same cap, rates, and rules apply for resident individuals and foreigners employed in Ukraine.

5.8.1 Handicapped employees

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

5.9 Land Tax

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

pay a rent payment but is not responsible for the payment of the land tax.

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

The State Agency for Land Resources may issue extracts from technical documentation on the normative pecuniary valuation of a particular plot.

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

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

5.10 Excise Duty

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

- Entities engaging in entrepreneurial activity, their branches, divisions, or other separate units, which are: the producers of excisable goods (products) on the customs territory of Ukraine (including those produced in accordance with tolling mechanisms); and customers on whose instructions a third party produces goods (products) in accordance with a tolling mechanism, which goods (products) are subject to the excise

duty at rates fixed as a percentage of the price of such goods (products);

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

- Any other entity carrying out entrepreneurial activity and any other legal entities, their branches, divisions, or other separate units, which import excisable goods into the customs territory of Ukraine;

- Individuals (both Ukrainian and foreign) who transport excisable goods (products) into, or who ship excisable goods (products) from outside of, the customs territory of Ukraine;

- Wholesale suppliers of electricity

- Producers of electricity that sell electricity outside the wholesale electricity market

- Owners of cargo-truck loads which are reconfigured into excisable passenger cars and

- Entities engaging in the retail sale of excisable goods ("Tax on Retail of Excisable Goods").

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

The rates of excise duty on excisable goods (products) are primarily established as a fixed rate per item, except for the Tax on Retail of Excisable Goods. The excise duty is calculated as follows: a fixed rate is applied to the price per item sold or imported. Goods exported for foreign currency are not subject to the excise duty.

The Tax on Retail of Excisable Goods is established by the local tax authorities (it may not exceed 5%) and is levied on the value of the excisable goods sold.

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

5.11 Tax Controversies

Under the *Tax Code*, a tax audit may be carried out in the form of either: a chamber audit, a documentary audit (scheduled or non-scheduled; on-site or off-site), or an actual audit. The chamber tax audit is conducted by the tax auditors in the tax office on the basis of the tax returns and other mandatory filings of the taxpayer related to the computation of the latter's tax liability. A scheduled on-site tax audit of a taxpayer is carried out only if and when such audit is scheduled in the so-called "plan of works" of the relevant tax office. An unscheduled on-site tax audit, in contrast to a scheduled one, is not pre-planned and is conducted upon the occurrence of any of the statutory defined events e.g., when a taxpayer fails to file a tax return.

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

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

TP audits may not last longer than eighteen months. In certain cases, such as submitting requests to foreign tax authorities, price experts, etc., the duration of the tax audit may be extended for another twelve months.

The general rule is that the Ukrainian tax authorities can exercise their authority to issue an assessment of a taxpayer's liability with respect to a tax return only within a period of 1,095 days following: (a) the final statutory date for filing the tax return, or (b) the date of the actual filing of the tax return, whichever is later. After the expiration of this period of limitations, the taxpayer may not be assessed with additional taxes, tax penalties, or late payment interest for such tax liability.

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

For the purposes of checking a tax return, the auditing tax officer may require the taxpayer to produce documents or information, which are in the taxpayer's possession or within its power to secure, and which may be reasonably required to establish whether the tax return is incorrect or incomplete. The applicable tax law extends the Ukrainian tax authorities' rights of access to information which is stored electronically, rather than in documentary form, only during tax audits of tax payers that qualify as major tax payers. In certain circumstances the Ukrainian tax authorities may conduct an unscheduled on-site tax audit of a taxpayer on the basis of information obtained from a third party. Special conditions may apply giving tax authorities the right of access to information protected by legal privilege or bank secrecy.

The Ukrainian tax authorities may send requests to foreign tax authorities for assistance in obtaining documents and information from third parties located in their jurisdictions. Such documents and

information may also be requested from foreign tax authorities pursuant to an applicable double tax treaty.

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

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

6. Currency Regulations

6.1 General

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

The principal act of legislation in Ukraine in the area of currency regulation is the Decree of the Cabinet of Ministers of Ukraine "On the System of Currency Regulation and Currency Control" (the "*Currency Decree*"), dated 19 February 1993. The NBU has adopted a large number of regulations and instructions implementing the Currency Decree.

6.2 Status of the National Currency

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

6.3 Use of Foreign Currency in Ukraine

The Currency Decree sets forth the general rule that any use of foreign currency on the territory of Ukraine, as a means of payment or as collateral, may legally be carried out only pursuant to a permit of the NBU issued on a case-by-case basis (the so-called "individual license").

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

6.4 Transfer of Foreign Currency from Ukraine

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

- transfer of foreign currency abroad by a Ukrainian resident individual within the limit determined by the NBU;
- transfer of foreign currency abroad by a Ukrainian resident or non-resident individual within the limit of the amount previously imported into Ukraine by such resident or non-resident on a legal basis;
- transfer of foreign currency abroad by a Ukrainian resident (legal entity or individual) in discharge of a contractual obligation in such foreign currency to a non-resident on payment for goods, services, works, intellectual property rights, or other property rights acquired or received by such resident from such non-resident (*N.B.:* an acquisition of securities or other "currency valuables" does not fall within this exemption);
- payment of interest under a loan or income earned (*e.g.,* dividends) from a foreign investment in foreign currency abroad;
- repatriation from Ukraine abroad of the amount of a foreign investment in foreign currency previously made in Ukraine upon the termination of the relevant investment activity;
- payment in foreign currency abroad to the European Organization for the Safety of Air Navigation as a fee for aircraft navigation services; and

- transfer of foreign currency abroad by a foreign investor (or its representative office in Ukraine) to other investors based on a production sharing agreement.

6.5 Other Licensable Transactions

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

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

- depositing funds in foreign currency and other "currency valuables" (*e.g.*, securities, banking metals, *etc.*) in an account or on deposit outside Ukraine (except, *inter alia*, the opening by a duly licensed Ukrainian commercial bank of a correspondent account with a foreign bank, and the opening by a Ukrainian resident individual of a bank account with a foreign bank for the duration of such individual's stay abroad); and

- investing abroad, including transferring foreign currency abroad in connection with the acquisition of assets and securities.

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

Finally, under Ukrainian law resident legal entities and individuals are required, upon opening a foreign bank account, to notify the NBU regarding such an account within three days from the date on which such account is opened. This requirement does not extend to the opening of correspondent accounts by Ukrainian banks, opening of a foreign bank account by a Ukrainian resident individual for the

duration of a stay abroad and by the entities which enjoy diplomatic immunity and privileges.

6.6 Settlements under Export and Import Contracts

Ukrainian legislation allows settlements under export or import contracts between a Ukrainian resident and a non-resident to be carried out in foreign currency as well as in hryvnia. If in foreign currency, a Ukrainian resident's foreign currency proceeds under an export contract must be collected on such resident's own bank account within 90 days from the date of the customs clearance of the exported goods. Similarly, goods prepaid by a Ukrainian resident in foreign currency, pursuant to an import contract concluded with a non-resident, must be imported and cleared through the Ukrainian customs within a 90-day term from the date on which such resident's prepayment was made.

In addition, 75% of the foreign currency proceeds of individual entrepreneurs, legal entities and foreign representative offices are subject to mandatory sale for (conversion into) hryvnia.

6.7 Purchase of Foreign Currency

A resident Ukrainian legal entity or individual entrepreneur may acquire non-cash foreign currency in Ukraine only through a duly licensed Ukrainian commercial bank or non-bank financial institution which obtained a general license from the NBU, and only in a limited number of cases and with the submission to such bank or non-bank financial institution of various documents confirming the legitimacy of the purchase. Instances in which such a purchase will be permitted include the need for such resident to discharge payment obligations to a non-resident in connection with:

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

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

6.8 Trade in Foreign Currency

Trade in foreign currency on the territory of Ukraine may be carried out only by or through Ukrainian commercial banks and licensed financial institutions, and only on the inter-bank currency market of Ukraine.

6.9 Payments for Services Rendered and Works Performed by Non-Residents

On 30 December 2003 the NBU adopted Resolution No. 597 "On the Remittance of Funds in National and Foreign Currency to Non-Residents under Certain Operations" (the "*Remittance Resolution*"). The Remittance Resolution is aimed at restricting the remittance of funds from Ukraine as payment for works performed and/or services provided by, or the IP rights purchased from, non-residents on "commercially unreasonable" terms and at making such a remittance of funds more transparent.

If the aggregate amount of such service payments specified in the preceding paragraph exceeds EUR 50,000 or its equivalent for each agreement or each foreign payee the payer would be required to obtain, prior to the making any such payment, either (a) a certificate of price evaluation (the Price Evaluation Certificate) issued by the State Information and Analytical Center for Monitoring External Commodities Markets (the External Markets Monitoring Center), confirming that such payment does not exceed the "fair market price" for such works or services, or (b) the individual approval of the NBU for making such payment, if the External Markets Monitoring Center has refused to issue a Price Evaluation Certificate. NBU approval cannot be issued if a Price Evaluation Certificate has been obtained for the payment and indicates that the amount of such payment exceeds the applicable "fair market price."

The Remittance Resolution does not apply to, *inter alia,* financial, transport and communications services rendered by a non-resident service provider, as long as the resident recipient possesses a license allowing it to engage in the relevant business activity, and the payments are made under loan registration certificates and individual licenses issued by the NBU.

6.10 Borrowing from Non-Residents

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

(a) for fixed interest rate loans:

- with a maturity of up to 1 year – 9.8% p.a.;
- with a maturity from 1 to 3 years – 10% p.a.; and
- with a maturity over 3 years – 11% p.a.; and

(b) for floating rate loans – LIBOR for three-month USD deposits plus 750 basic points.

6.11 Temporary Restrictions on Currency Transactions

Following the Russian annexation of Crimea and the City of Sevastopol in March 2014 a number of laws and implementing regulations, including regulations of the NBU, were adopted aimed at, among other things, the termination of the provision of banking and financial services in the occupied territories and the regulation of payments within Crimea and between the businesses and individuals residing in Crimea and in mainland Ukraine. Such payments are subject to a special legal regime while the specified territories are under foreign occupation.

At the end of 2014 the NBU introduced a number of temporary restrictions on certain currency transactions (cross-border payments in particular) with a view to stabilizing the currency market in Ukraine. Such restrictions (in effect until March 2016) included, among other things, suspension of repatriation of dividends from Ukraine abroad and suspension of payments from Ukraine abroad pursuant to certain individual licenses of the NBU. The NBU may extend or lift one or more of these restrictions depending on the situation in the currency market. Please seek our advice on the current status of these restrictive measures.

7. Customs Regulations

7.1 Introduction

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

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

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

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

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

Further, as of 1 January 2016, an additional 5/10% import duty on all imported goods was cancelled. This was originally scheduled to expire on 25 February 2016 according to the *Law of Ukraine On Stabilizing*

Ukraine's Balance of Payments in Accordance with Article XII of the GATT and the *Law of Ukraine On Introducing Amendments in to the Customs Code of Ukraine to Stabilize the Balance of Payments*.

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

However, according to Resolution of the Cabinet of Ministers of Ukraine No. 1035 dated 16 December 2015, supply of goods to/from mainland Ukraine from/to Crimea under all customs regimes is suspended as of 17 January 2016. Transfer of personal belongings and a limited amount of food products is still permitted. The resolution does not apply to the (i) supply of electricity to and from Crimea, (ii) supply of "strategically important" goods from Crimea to mainland Ukraine, and (iii) supply of humanitarian aid to Crimea.

As of 1 January 2016 the Russian Federation suspended the CIS Free Trade Agreement with regard to Ukrainian goods and imposed other restrictive measures (banned the import of a number of Ukrainian agricultural goods and prohibited the transit of Ukrainian goods through its territory). Ukraine, in turn, reciprocated by imposing customs duties on certain goods of Russian origin from 2 January 2016, and banned certain agricultural goods and pesticides originating from Russia, from 10 January 2016. On 20 January 2016 the Cabinet of Ministers of Ukraine extended the ban to certain foodstuffs of Russian origin.

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

1. Declarant (Importer of Record)

2. Customs Broker

3. Registration Procedure

4. Customs Clearance

5. Customs Regimes

6. Certification and Control

7. Customs Valuation Rules

8. In-Kind Contribution

9. Customs Control

7.2 Declarant (Importer of Record)

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

Under the *Customs Code,* importers of record are:

- Business entities or Ukrainian citizens engaged in cross-border activities involving importation into/exportation from Ukraine; or
- Authorized customs brokers.

The importer of record is responsible for:

- Declaring commodities and vehicles;
- Presenting, on the request of the fiscal authorities, commodities and vehicles for customs control and customs clearance;

- Submitting documents and additional information, necessary for the fulfillment of customs procedures, to the customs body;

- Paying taxes and duties.

7.3 Customs Broker

All procedures and operations regarding customs clearance of goods (products) shipped through the customs border of Ukraine may be conducted through a customs broker. A customs broker is a legal entity carrying out customs clearance formalities on behalf and in the name of the importer of record. To conduct customs brokerage activity in Ukraine an entity must obtain a permit. Only a Ukrainian business entity may obtain such a permit and act as a customs broker. Customs brokers should be included in the official register of the customs brokers.

7.4 Registration Procedure

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

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

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

7.5 Customs Clearance

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

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

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

The *Customs Code* establishes the procedure for obtaining preliminary decisions and declarations. Under the *Customs Code* all importers of record can apply for and obtain preliminary rulings of the fiscal authorities regarding: (i) the classification of goods; (ii) the confirmation of goods' country of origin; (iii) approval for declaring goods under various customs regimes. Preliminary decisions are valid for up to three years.

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

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

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

- Documents Usually Required for Customs Clearance of Goods

- Documents confirming the authority of an entity or individual (-s) to represent the importer/exporter before the fiscal

authorities (customs/broker agreement, power of attorney, permit for conducting customs brokerage activities);

- Customs declaration;
- Customs value declaration (where applicable);
- Supporting documents for the declared customs value of the goods (products) (*e.g.*, foreign trade contract, invoice or document that specifies the value of goods (products), *etc.*);
- Payment documents, financial and accounting documents, official price lists, *etc.*;
- Documents substantiating the provision of security or other guarantees, if required;
- Transportation documents (SMGS, CIM, air waybill, bill of lading, *etc.*), license of the customs carrier, *etc.*;
- Documents required under a particular customs regime;
- Documents specifying the code of goods (products) under the Ukrainian Customs Tariff (UKTZED);
- Documents proving the right to apply tariff preferences or tax benefits, if any;
- Documents specifying the country of origin of goods (products) (*i.e.*, certificate of origin);
- Documents proving that the relevant taxes and duties have been paid (*e.g.*, payment orders, cash slips, promissory notes);
- Other certificates, licenses and permits, if required.

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

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

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

7.6 Customs regimes

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

(1) import (release into free circulation);

(2) re-import;

(3) export;

(4) re-export;

(5) transit;

(6) temporary import;

(7) temporary export;

(8) bonded warehouse;

(9) free customs zone;

(10) customs free trade store;

(11) processing on the customs territory of Ukraine;

(12) processing outside the customs territory of Ukraine;

(13) destruction;

(14) surrender to the State.

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

7.6.1 Import

Import is the main customs regime for delivery of goods (products) into the customs territory of Ukraine. The import regime contemplates free circulation of goods so imported on Ukrainian territory without any further customs restrictions and post-clearance customs control, provided that all applicable customs duties and taxes have been paid properly and in full.

The import regime requires:

(1) submission of all necessary documents certifying the purposes and conditions for bringing the goods (products) into the customs territory of Ukraine;

(2) payment of all applicable taxes and duties in accordance with the laws of Ukraine;

(3) compliance with the non-tariff regulation regime and other restrictions.

7.6.2 Re-Import

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

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

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

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

The export duty, if paid upon exportation of goods (products) through the customs territory, is to be reimbursed, provided that the goods (products) (i) are re-imported into the customs territory of Ukraine

within six months as of the date of their exportation, and (ii) remain in the same condition in which they had been exported.

7.6.3 Export

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

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

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

No excise tax applies to exported goods (products).

7.6.4 Re-export

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

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

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

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

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

7.6.5 Transit

Goods (products) may be moved across the territory of Ukraine under the transit regime without an obligation to pay import customs duties and taxes, and without regard to domestic quota restrictions or other economic measures, provided that the appropriate documents are submitted to the fiscal authorities.

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

- The goods (products) may not be used or modified, except for natural wear and tear or losses during transportation and storage;
- The goods (products) may not be utilized on the territory of Ukraine for any purposes other than their transit;
- In certain cases, a special permit may be required to move products (goods) under the transit regime;
- The products (goods) may have to be moved along a specific route; and

- The products (goods) under the transit regime must be delivered to the ultimate customs post within a certain pre-defined period of time.

7.6.6 Temporary Import

Under the *Customs Code* goods (products) of foreign origin may be imported into Ukraine on a temporary basis for a particular purpose with full or conditional exemption from import duties, provided that such goods (products) are imported for a period that does not exceed three years.

The following commodities can be imported on a temporary basis:

- Goods (products) imported for the purposes of demonstration or use at exhibitions, fairs, conferences, *etc.*;

- Professional equipment for preparing reports, making records for the mass media or making movies;

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

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

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

- Personal items of passengers and commodities imported for the purposes of sports;

- Materials for advertising and tourism;

- Means of transportation, which are used exclusively for the purposes of moving passengers and commodities across the customs border of Ukraine;

- Sea-going and river vessels, watercraft and aircraft, imported for the repair;

- Spare parts and the equipment intended for the repair or maintenance of vehicles.

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

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

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

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

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

- Partial conditional exemption – contemplates payment of 3% of the amount of VAT to be paid in case of delivery of goods under the import customs regime each month.

7.6.7 Temporary Export

Under the *Customs Code* goods and commercial vehicles of Ukrainian origin may be exported from Ukraine on a temporary basis with full conditional exemption from duties, provided that such goods and commercial vehicles are reimported into Ukraine within the period of temporary export. The period of temporary export should not exceed three years. This period can be prolonged by the fiscal authorities.

7.6.8 Bonded Warehouse

Under the bonded warehouse customs regime goods (products) imported into Ukraine are stored at special places (bonded warehouses) under customs control without an obligation to pay import customs duties and taxes and without regard to domestic quota restrictions or other economic measures.

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

The full conditional exemption from VAT should apply to goods placed under the bonded warehouse regime. No domestic quota restrictions or other economic measures should apply to such goods.

Upon the expiration of the storage term the goods (products) should be declared by the owner or by the authorized person (*i.e.*, importer of

record) under another customs regime with the payment of the relevant import customs duties, taxes and excise tax due.

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

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

7.6.9 Free Customs Zone

The special customs zone regime applies to goods (products) of foreign origin which are imported into or exported from free customs zones throughout the territory of Ukraine. Under this regime no tariff or non-tariff measures should apply unless otherwise stipulated by law. If goods of Ukrainian origin are imported into the free customs zone the customs duties and non-tariff measures should apply.

7.6.10 Customs Free Trade Store

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

7.6.11 Inward Processing Customs Regime

Under the regime of inward processing on the customs territory of Ukraine, goods (products) originating from other countries may be temporarily brought into the customs territory of Ukraine with conditional relief from VAT and customs duties and taxes and without

the application of any non-tariff measures to such goods (products), upon issuance of a financial guarantee (if applicable), provided that such goods (products) will be re-exported outside the customs territory of Ukraine. A permit of the fiscal authorities is required to clear the goods under the inward processing customs regime.

The processing may include the following types of operations with commodities:

- The processing of goods (products);
- The installation, assembling, mounting and adjustment of goods (products);
- The repair of the goods (products), including modernization and calibration;
- The use of goods (products) which improve or facilitate the processing of the goods.

The term for the inward processing regime of goods (products) on the customs territory of Ukraine is established by the fiscal authorities on a case-by-case basis. The term for inward processing may be prolonged by the fiscal authorities; however the total term of processing should not exceed 365 days. In case of re-export of goods placed under the inward processing customs regime, the Ukrainian origin goods used under the inward processing customs regime could be cleared under the export customs regime. If the processed goods are to be sold on the customs territory of Ukraine, such goods should be placed under the import customs regime with due payment of all applicable taxed and duties. The sale of processed goods on the customs territory of Ukraine by a foreign company could be performed through its duly registered representative office.

7.6.12 Outward Processing Customs Regime

Under the regime of processing outside the customs territory of Ukraine, goods (products), not subject to any restrictions for

circulation within Ukraine, may be taken out of Ukraine without the application of any non-tariff measures to such goods, provided that such goods will be imported back into Ukraine. A permit of the fiscal authorities is required to clear the goods under the outward processing customs regime. The total period for processing the goods may not exceed 365 days.

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

7.6.13 Destruction

Destruction is the customs regime whereby goods (products) brought into the customs territory of Ukraine are subject to destruction under customs control, without payment of any import taxes or the application of any tariff or non-tariff measures. Waste generated as a result of destruction should be subject to customs clearance requirements and customs duties and taxes depending on the claimed customs regime.

Full conditional exemption from VAT should apply to goods placed under the regime of destruction.

7.6.14 Surrender to the State

Under the regime of surrender of goods (products) for the benefit of the state, the owner of the goods (products) may abandon the goods (products) in favor of the state without the payment of any import taxes or the application of any tariff or non-tariff measures. This regime may be a convenient way to avoid unreasonable customs clearance costs if they become applicable to the goods for any reason (*e.g.*, the customs have classified the goods under a code entailing a substantially higher import duty than the importer is ready to pay, or the customs office requests a permit/license that the importer does not possess, and it is too costly/burdensome to ship the goods back from Ukraine).

VAT should not apply in case of placement of goods under the regime of surrender to the state.

7.7 Certification and Control

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

7.7.1 Sanitary and Epidemic Certification

According to the *Law of Ukraine On Provision of Sanitary and Epidemical Protection of Citizens* dated 24 February 1994 (the "*Sanitary Protection Law"*), the importation of goods into Ukraine is subject to sanitary and epidemiological expert examination and is allowed if a sanitary and epidemiological certificate which certifies the safety of products for human health is issued by the State Sanitary Service of Ukraine. If the sanitary and epidemiologic examination was performed in the state of export and the relevant certificate issued in such other state the results of the examination may be recognized in Ukraine based on an agreement on mutual recognition of expert examination results. An examination shall be performed for products included on the *List of Goods Subject to State Control upon Transfer through the Customs Border of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1031 dated 5 October 2011*.

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

Further, pursuant to the EU-Ukraine Association Agreement, Ukraine has committed to bring its sanitary and phytosanitary and animal welfare legislation closer to that of the EU, establishing a mechanism

for the recognition of equivalence of sanitary or phytosanitary measures. In connection with this, once equivalence is formally recognized by the importing party, the following is to be procured: (i) the reduction of physical checks at the frontiers, (ii) simplified certificates and (iii) pre-listing procedures for establishments as appropriate.

7.7.2 Radiological Control

Imported products brought into Ukraine are subject to radiological control. In most cases the radiological control is performed at the customs.

7.7.3 Certificate of Origin

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

7.8 Customs valuation rules

The customs value of goods imported into Ukraine is the basis for calculation of the import custom duties and taxes and normally includes the cost of goods, insurance costs and transportation costs of the goods up to the Ukrainian customs border. Depending on the actual circumstances, including contractual arrangements, a Ukrainian importer of record in addition to the aforementioned costs may be required to include royalties (payable for the right to use trademarks and other IP rights) into the customs value of those goods, provided that the Ukrainian importer must directly or indirectly (*e.g.*, via third parties) pay those royalties, other license fees and/or other income as a condition/direct consequence of importation of the goods being valued at customs.

The *Customs Code* provides an exhaustive list of documents to be filed for determining the customs value of goods. The code precludes

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

7.8.1 Import and export customs duties

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

A preferential rate of customs duties (as well as an exemption from the payment thereof) is applied to: products originating from countries with which Ukraine has entered into a customs union; products originating from countries with which Ukraine has created special customs zones; or upon the establishment of a special "preferential" customs regime pursuant to an international agreement of Ukraine.

Reduced rates of customs duties are applied to goods originating from countries and economic unions which have been granted most-favored nation regime in Ukraine.

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

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

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

7.8.2 Import VAT

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

For the purpose of VAT the tax base for goods imported into Ukraine should be determined based on their contract price but not be lower than their customs value. The excise tax and import customs duty are to be added to the customs value of imported goods for the determination of the tax base for VAT.

The customs value should include the following costs incurred by the importer or to be paid by the importer for the imported goods, which should be added to the contract price: (i) transportation, (ii) loading/ unloading, (iii) insurance; (iv) brokerage, agency, commission, other fees; and (v) payments for the use of intellectual property (royalties).

The cost thus determined shall be converted into Ukrainian hryvnia at the National Bank of Ukraine exchange rate effective as of 00:00 of the day when a customs declaration is filed or the customs formalities are carried out (if no customs declaration is filed).

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

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

Import VAT may be generally offset against output VAT collected from local customers.

7.8.3 0% Export VAT

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

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

For VAT purpose goods are viewed to be exported if and when their export is evidenced by the customs cargo declaration. More specifically, in order to confirm the export operation subject to 0% VAT, the taxpayer must file the original of the customs cargo declarations with the stamp of the customs office confirming that that export operation is completed.

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

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

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

7.8.4 Import Excise Taxes

Please refer to section 5.10 above for a discussion of excise taxes payable in Ukraine.

7.9 In-Kind Contribution

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

The rule, however, does not apply if the importer disposes of such property within a three-year period. The position of the Ukrainian fiscal authorities is that the rule would apply not only to an asset deal but also to a share deal, as the sale of shares of a foreign participant is equalized by Ukrainian fiscal authorities to the sale of such assets. If the share or asset sale took place within a three-year term after the importation of the assets the company is obliged to pay the exempted amount of import duties applied to such imported property to its local customs office.

7.10 Customs Control

The fiscal authorities are allowed to carry out customs control of the accuracy of the determination of the customs value of imported goods. The customs control procedures may be executed at the moment of the customs clearance of goods and their transfer across the customs border of Ukraine and after the completion of the customs clearance procedures and admission of goods across the customs border of Ukraine (*e.g.*, the post audit procedure).

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

The *Customs Code* introduces several types of post-audit control, which would be performed in the form of: (i) on-site documentary audits (scheduled and unscheduled); and (ii) off-site documentary audits. Documentary audits are not to take longer than 30 business days. Scheduled documentary on-site audits will not be conducted more often than once a year and certain importers of record, *e.g.* Authorized Economic Operators, may be audited only once every 2.5 years.

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

- Analysis of documents;
- Conducting consultations and interviewing the importers;
- Examination of imported products to determine features affecting the customs value;
- Comparison of the reported customs value with the customs value of identical or similar goods or with the information available in information data bases of the fiscal authorities;
- Other forms of control.

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

- Verification of the data filed by the importer;
- Conducting chamber audits;
- Conducting scheduled and unscheduled on-site customs audits;
- Filing enquiries with the fiscal authorities of foreign states and other Ukrainian state authorities.

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

7.10.1 Liability

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

- Warning;
- Fine;
- Confiscation of goods.

Depending on the type of violation committed, the fine against company officials could amount to 10 to 1,000 times the non-taxable minimum (currently UAH 17, *i.e.*, US$ 0.7), *i.e.*, currently UAH 170 – 17,000 or approximately US$ 6.8 - US$ 680 and in certain cases could amount to 100% or 200% of the value of goods and include confiscation of those goods, or 300% of the unpaid customs taxes.

It should be noted that the *Customs Code* provides for:

1. liability of the fiscal authorities in the form of criminal, administrative and/or disciplinary liability for unlawful decisions, unlawful actions or unlawful failure to act by the fiscal authorities and provides for compensation for the importer of record, among others things, for damage caused by such actions or failure to act;

2. a procedure for amicable agreement - the *Customs Code* introduces a procedure for amicable agreement (compromise) between the fiscal authorities and importers of record in disputes related to alleged violations of the customs procedures, which if successful results in no administrative charges for importers of record;

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

There is a 6-month limitation period under Article 467 of the *Customs Code* with respect to customs violations. Normally, it elapses starting from the moment of the violation. However, in case of on-going violations this 6-month period elapses from the date of discovery of the violation by the Ukrainian fiscal authorities.

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

7.10.2 Criminal Liability

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

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

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

8. Property Rights

8.1 General

In contrast to the former system of state and collective ownership of property of the Soviet era, the *Civil Code of Ukraine*, dated 16 January 2003, specifically recognized and honored private ownership in Ukraine.

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

Property rights to real estate (ownership, lease rights, servitudes, *etc.*) are subject to state registration according to the procedure established by the *Law of Ukraine on State Registration of Property Rights to Real Estate and their Encumbrances,* dated 1 July 2004. Starting from 1 January 2013 the restated version of this law came into force and a new property rights registration system became effective. As a result the State Register of Property Rights to Real Estate administered by the Ministry of Justice of Ukraine (the *Property Rights Register*) was created. The Property Rights Register contains, among other things, unified information on the property rights to land plots, buildings and also the existing encumbrances, mortgages and lease rights thereto. The Property Rights Register replaced the numerous property rights registers, such as the State Register of Mortgages, State Register of Prohibitions on Alienation of Real Estate etc. that contained information on restrictions and encumbrances over real estate.

The latest restated version of the *Law of Ukraine on State Registration of Property Rights to Real Estate and their Encumbrances*, effective as of 1 January 2016, provides for the decentralization of the system

of registration authorities. In particular, after the above restated version enters into force, notaries will be authorized to perform state registration of property rights to real estate and their encumbrances even without the notarization of the agreement giving rise to such rights or encumbrances and other relevant changes aimed to ensure the above decentralization will be implemented. However, no detailed procedure for such decentralization has been developed so far.

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

The information on rights to land plots or other real estate registered in the Property Rights Register initially became publicly available for all individuals and legal entities following the adoption of the *Law of Ukraine on Amending Certain Laws of Ukraine Relating to the Identification of Ultimate Beneficiaries of Legal Entities and Public Figures,* effective as of 25 December 2014. The *Law of Ukraine on Amendments to Certain Acts of Ukraine on Improving Transparency in Property Relations in order to Prevent Corruption*, dated 4 August 2015, went one step further by authorizing any person or legal entity to obtain information about real estate, as well as about the holder of rights thereto from the Property Rights Register in paper or electronic form, and the information on registered land plots from the State Land Cadaster. In addition, as of 30 June 2015, it has become possible to order an extract from the State Land Cadaster via the Public Cadastral Map and obtain such extract at any administrative services center irrespective of the location of the land plot on the basis of the principle of extraterritoriality.

8.2 Lease of Real Estate Objects

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

The *Civil Code* and the *Commercial Code* contain general provisions governing the lease of movable and immovable property. In particular, according to Article 793 of the *Civil Code*, the lease of a building (or other capital structure) or part thereof must be concluded in writing, and must be notarized and registered by the state if entered into for a period of three years or longer. The *Commercial Code* defines the essential elements of a leasing agreement.

According to the Decree of the Cabinet of Ministers of Ukraine *On State Duty*, parties to a lease agreement must pay a state duty for the notarization of a lease agreement of 0.01% of the contract price of a lease agreement for a building or other capital structure (instead of the formerly applied 1%) which is capped at 50 times the "*non-taxable minimum income*" (currently, UAH 850 or approximately USD 37), and 0.01% of the land appraisal for a land lease agreement.

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

8.3 Land Ownership

The principal law governing land issues in Ukraine is the *Land Code of Ukraine* (the *Land Code*), as amended, which entered into force on 1 January 2002. The *Land Code* applies to all types of land in Ukraine; it governs the legal relations of Ukrainian and foreign individuals and legal entities, state-owned companies, Ukrainian state and municipal authorities, and foreign states and international

organizations in the area of the ownership, use and disposition of land in Ukraine. The *Land Code* clearly distinguishes between agricultural and non-agricultural land and establishes specific legal treatments for each type of land.

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

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

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

The *Land Code* appears not to directly grant the right to own any land in Ukraine to Ukrainian companies with 100% foreign investment. It stipulates that only those Ukrainian legal entities which have been founded by (a) Ukrainian individuals or legal entities and (b) joint ventures may own land in Ukraine. However, the *Land Code* does not contain any similar restrictions with respect to the lease of land by Ukrainian legal entities with 100% foreign investment (for more details please see 8.4 below). Since this discrepancy appears to be an anomaly, it is expected that the relevant amendments to the *Land Code* will be adopted to rectify this defect.

The right to perpetual use of land may now be granted only to (i) state- and municipally-owned companies, institutions and organizations, (ii) public organizations of disabled people, their legal entities, unions, institutions and organizations, (iii) religious organizations (only for construction and maintenance of religious and auxiliary facilities), (iv) public joint stock companies of public railway transport, (v) higher educational establishments regardless of the ownership thereof, and (vi) co-owners of multi-flat (apartment) buildings in order to maintain such buildings and ensure residential, social and household needs of the owner (co-owners) and tenants of residential and non-residential premises.

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

The *Land Code* contains a number of transitional provisions which postpone or limit the application of certain of its provisions until a future date. One of the most important of these states that until adoption of the *Law of Ukraine on Agricultural Land Turnover* certain types of agricultural land, such as (a) state- and municipally-owned agricultural land, (b) individual household land allocated in kind to the owners of land shares and (c) agricultural commodity production land, may not be re-sold, alienated, or otherwise disposed of (unless such

alienation occurs as a result of inheritance, exchange for another land plot in compliance with the statutory requirements or withdrawal of land for public purposes); individuals or legal entities may not contribute the right to a land share to the charter capital of a legal entity; and the designated use of the land mentioned in items (b) and (c) may not be changed that represents a so-called *"moratorium on alienation of agricultural land"*. At the end of 2015, the above moratorium was extended to 1 January 2017, the earliest possible date of its cancellation. The *Land Code* does not contain any similar restrictions with respect to non-agricultural land.

8.4 Land Leases

The *Land Code* contains a number of general provisions with respect to land leases. In particular, it provides that a land lease is the contractual, limited-in-time possession and use of a land plot for a lessee's commercial and other activities, which is granted for compensation. All Ukrainian and foreign individuals and legal entities, foreign states, and international organizations may lease land in Ukraine. The Land Code provides for two types of land lease: short-term (up to five years) and long-term (up to 50 years). The *Land Code* establishes the right of a lessee to sublease a land plot, subject to the lessor's consent. The term "lessors of land plots" is defined to include only land owners or their authorized representatives.

More specifically land lease relations are governed by the *Law of Ukraine on Land Lease* (the *Land Lease Law*), dated 6 October 1998, as amended, which governs the issues of land lease agreements and land rent payments in more detail.

According to the *Land Lease Law*, a land lease agreement must be executed in writing, must contain a set of essential terms. The *Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Simplification of the Business Environment (Deregulation)*, dated 5 April 2015, significantly reduced the list of the above essential terms. In particular, a land lease agreement to be concluded should contain only the following mandatory conditions: the leased object (its

location, cadastral number and size); the term of the agreement; the amount of rent, its indexation, rent revision, terms and means and procedure for payment and liability for failure to timely pay the rent.

The procedure for the lease of state and municipal land is set forth in the *Land Code* and the *Land Lease Law*. Currently, state or municipal land can be leased out pursuant to a decision of the respective local state administration or local council and exclusively on a competitive basis (auction). The *Land Code* allows waiver of the auction requirement in some cases, such as:

- when the land plot is occupied by a building owned by an individual or a legal entity;
- for the use of natural resources and special water use according to permits;
- the land plot is to be used by a religious organization legalized in Ukraine for the location of a religious building;
- construction of an object which is fully financed by the state or local budget;
- allocation of land to a state or municipal enterprise, budgetary establishment, higher educational establishments and commercial entities if the state or municipal share in the charter capital of such companies exceeds 60 percent;
- allocation of land to cultural and artistic enterprises, establishments, and public organizations for workshops;
- land lease for the purposes of reconstruction of old residential blocks, social residential construction based on the results of the relevant investment tenders;
- allocation of land for the purposes of the private partner in public and private partnership projects;

- allocation of land plots withdrawn for public needs or public necessity;
- for the location of diplomatic and similar representative offices of foreign states and international organizations in accordance with the international treaties of Ukraine;
- for the construction and maintenance of engineering, transportation or energy infrastructure and roads;
- for the construction of public parks and green areas;
- allocation of land to individuals for farming purposes, individual agricultural household, gardening, individual residential construction;
- for the use of land for concession projects;
- lease or concession of buildings and structures located on state-owned or municipal land;
- renewal of land lease agreements;
- construction of infrastructure for the agricultural wholesale market;
- lease of land of industrial parks to companies operating such industrial parks, *etc*.

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

8.5 Third Party Rights

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

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

9. Privatization

9.1 General Background

In 1992 Ukraine embarked on a mass privatization program which combined both voucher privatization by citizens and limited cash privatization. In March 1992 the Verkhovna Rada enacted two major pieces of legislation on privatization, one covering large scale privatization, *i.e.,* the *Law on the Privatization of the Property of State Owned Enterprises* (the *Privatization Law*), and the other covering the privatization of small-scale enterprises, the *Law on the Privatization of the Property of Small State-Owned Enterprises* (the *Law on Small-Scale Privatization*). These two laws established the basic principles of privatization: the possible objects of and participants in privatization; the role of the state authorities in the privatization of state property; the general characteristics of the methods and procedures for privatization; and various other principles. In January 2012 both the *Privatization Law* and the *Law on Small-Scale Privatization* were significantly amended and the new *Law of Ukraine on the State Property Fund of Ukraine* was enacted, which defines the role of the main state authority in charge of state property and establishes the procedure for its formation and activity.

2015 became the year when the Ukrainian government entered on the path of large-scale privatization. In May 2015 the Cabinet of Ministers of Ukraine adopted the *Regulation On Transparent and Competitive Privatization in 2015-2016* (the *Privatization Regulation*) defining the list of properties subject to privatization for the years 2015 through 2016. This list includes a significant number of strategic enterprises in the energy, mining, infrastructure and chemical industries, e.g. PuJSC "Odessa Portside Plant", PuJSC "CenterEnergo", PuJSC "DonbassEnergo", PuJSC "Sumykhimprom".

Also, in November 2015 the Ukrainian government adopted the new *Methodology of Property Valuation*, establishing proper rules for fair market valuation of objects to be privatized.

Moreover, the State Property Fund of Ukraine has also proposed amendments to the Privatization Law abolishing mandatory sale of 5-10% of the shares in a public joint stock company (*JSC*) belonging to Groups B and G (Ukrainian state strategic enterprises) on a stock exchange as well as establishing new mechanisms for engaging advisors and payment of their fees.

9.2 Objects of Privatization

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

- Assets, production facilities, and structural units of enterprises that constitute integrated property complexes, which may include underlying state-owned land plots;
- Unfinished construction sites that may include underlying state-owned land plots;
- State-owned shares in enterprises; and
- Sociocultural objects that may include underlying state-owned land plots

The *Privatization Law,* as amended, divides all state-owned assets into six groups. Group A includes state enterprises and their structural units, which may be spun off into separate enterprises, that during a fiscal year have up to 100 employees and gross revenue of more than UAH 70 million (approx. US$ 3.025 mln or EUR 2.761 mln[5]), and/or a fixed asset value that is not sufficient to form a public joint stock company. Group B includes enterprises and their structural units that, during a fiscal year, employ more than 100 employees and have a gross revenue of more than UAH 70 million and/or a fixed asset value that is sufficient to establish a JSC. Group G covers integrated property complexes that are monopolies (have dominant market

[5]At the NBU rate as of 23.12.15

positions), companies of strategic importance, and those determined on a case-by-case basis by the relevant authorities to merit the application of an individual procedure by being unique in the sphere of production or intellectual property. Group D covers unfinished construction sites and mothballed construction sites, including the underlying land plots. Group E includes state-owned shares in private enterprises of any legal organizational form and the last group, Group J, covers social and cultural objects, including the underlying land plots. Groups A, D and J cover small scale privatization.

The privatization of the property complexes of monopolists in certain markets, of military-industrial establishments which require conservation, and of companies whose privatization is carried out with the attraction of foreign investment and other objects in Group G should be carried out with the agreement of the Cabinet of Ministers of Ukraine.

There are certain objects that are exempt from privatization by law (certain cultural heritage sites; hydraulic facilities; seaport areas; agricultural land which can be privatized only after the adoption of the *Law on Transfer of Agricultural Land*, but in any case not earlier than 1 January 2016).

9.3 Participants in Privatization

Under the *Privatization Law* foreign individuals and legal entities may participate in the privatization process, along with Ukrainian citizens and legal entities. Foreign investors should pay for the privatization objects they intend to purchase in local currency or in freely convertible currency.

Under the *Privatization Law* the following entities may not purchase state-owned property:

- entities more than 25% of the assets of which are state-owned;
- state bodies;

- employees of state privatization bodies;
- state business entities or their subsidiaries of any legal organizational form;
- persons that are incorporated in off-shore zones (the list of such zones is compiled by the Cabinet of Ministers of Ukraine) or in jurisdictions that are listed in FATF's "Non-Cooperative Countries or Territories";
- all persons that are directly or indirectly controlled by the persons specified.

The *Privatization Law* stipulates that foreign investors must submit a declaration of the origin of the funds which they intend to use as consideration for the property being privatized, regardless of the value of the purchase.

The *Privatization Law* contains a number of restrictions on potential purchasers of shares of JSCs that enjoy a monopoly (dominant) position in the national market for the relevant products, or that are of strategic significance to the national economy and/or security. In such cases only a majority stake in such a JSC may be offered for privatization and privatization of such objects is performed on a case-by-case basis, and such privatization is strictly regulated.

9.4 Methods of Privatization

Under the *Privatization Law* state-owned property may be privatized through the sale of state property at auctions, through a tender with open price offers or under alternative methods specifically established by law. In 2009 the Cabinet of Ministers of Ukraine concluded that land under objects subject to privatization may be privatized through auctions only and approved the *Procedure for the Sale of Objects Subject to Privatization together with Land Plots Owned by the State*.

The State Property Fund of Ukraine (the SPF) may organize a tender for the sale of shares in a JSC in the form of an open auction. In such a case the winner is determined on the basis of the auction held in accordance with the procedure established by the privatization regulations.

There are additional requirements for the sale of shares in "strategic enterprises". If an enterprise which is to be sold through an auction or a tender or at a stock exchange is identified as "strategic," the bidders must provide information to the privatization authorities about connected undertakings and other additional documentation that may be requested by the SPF. If the stake to be acquired in a strategic enterprise exceeds 25% or 50 % or is otherwise deemed to grant controlling powers in the highest management body of the enterprise, then the approval of the Antimonopoly Committee of Ukraine must be obtained prior to the purchase.

The lists of enterprises to be sold through auctions, tenders and buyouts must be approved by the SPF for state-owned property, by the Parliament of the Autonomous Republic of Crimea for property of Crimea, and by local councils of deputies for municipal property.

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

9.5 Investment Obligations

The *Privatization Law* also provides for investment obligations which must be included into the sale-purchase agreement. These investment obligations include the following:

- Preservation of the main types of activity;
- Modernization of production;
- Compliance with mobilization targets;

- Ensuring social guarantees for employees;
- Environmental protection obligations;
- Repayment of debts.

The parties to the privatization process may agree on other investment obligations.

The period for the fulfillment of such investment obligations, except the obligation regarding the compliance with the mobilization targets, may not exceed five years. Any transfer of shares (property) which are subject to investment obligations must be approved by the state privatization authorities and is generally prohibited until the investment obligations are performed in full. If the state privatization authority approves such a transfer of shares (property), the investment obligations must be assumed by the new owner of the shares (property) in question.

10. Competition Law

10.1 General

On 18 January 2001, the Verkhovna Rada adopted the Law of Ukraine *On the Protection of Economic Competition*, which became effective on 2 March 2002 (the *Competition Law*). In 2005 the *Competition Law* was amended adding a new requirement regarding transactions subject to prior approval of the Antimonopoly Committee of Ukraine (the AMC).

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

The *Competition Law* also describes the transactions which require prior approval of the AMC, subject to the satisfaction of the thresholds mentioned below.

The *Competition Law* has an extra-territorial effect. This means that its provisions extend to transactions and/or relations (agreements, actions) that arise (are concluded, performed) among and by Ukrainian and/or non-Ukrainian persons in and/or outside of Ukraine provided the mentioned below thresholds are exceeded.

10.2 Transactions and actions Subject to Prior AMC Approval

10.2.1 Merger control regulation

Pursuant to Article 22 of the *Competition Law*, the following transactions may be subject to prior AMC approval: (i) mergers or consolidations of business entities; (ii) the acquisition of direct or indirect control over a business entity by any means; (iii) the establishment of a business entity by two or more business entities that will engage in business activities independently over a prolonged

period, provided that such establishment does not result in the coordination of the competitive conduct among business entities that established such business entity, or between the business entities and the newly established business entity; and (iv) the direct or indirect acquisition of, obtaining the ownership of, or management over the shares (participatory interests) of a business entity, if such acquisition results in obtaining or exceeding 25% or 50% of the voting rights in the highest governing body of the target business entity.

The foregoing types of transactions will be subject to prior AMC approval if the financial thresholds established by the Competition Law are exceeded. Until recently, such financial thresholds were unreasonably low and many transactions with no effect in Ukraine were caught by the merger control notification requirement.

However, on 26 January 2016 the Ukrainian Parliament approved in the second reading Draft Law 2168-a *On Amendments to the Law of Ukraine On Protection of Economic Competition Increasing the Efficiency over Merger Control* (the *Law on Amendments*).

The *Law on Amendments* increased financial thresholds that trigger merger control notification requirements, as well as introduced certain novelties aimed at simplification of merger control application review process. In particular, the most important changes include the following:

(1) the filing requirement is triggered if the following financial thresholds are exceeded (all thresholds are to be calculated on a worldwide group level):

    (a) the parties' aggregate worldwide assets/turnover exceeds EUR 30 million and at the same time Ukrainian assets/turnover of each of the 2 parties exceeds EUR 4 million;

    OR

(b) Ukrainian assets/turnover of the target in which shares/assets or control are acquired, or of at least 1 of the founders of the new entity to be established exceeds EUR 8 million, while at the same time worldwide turnover of the other party exceeds EUR 150 million;

(2) elimination of the 35% market share driven filing requirement;

(3) introduction of pre-consultation mechanism with Ukrainian competition authority and simplified 25-day review procedure for qualifying parties; and

(4) introduction of remedy offering mechanism for concentration/concerted actions participants for cases where the authority establishes grounds for banning a transaction.

The new financial thresholds described above become effective on 18 May 2016. Until this date, the AMC filing requirement is triggered if the following thresholds are exceeded:

- the aggregate asset value or the aggregate sales volume of all of the participants to the transaction (the Participants) for the previous fiscal year exceeds the UAH equivalent of EUR 12 million (calculated on a worldwide basis) at the exchange rate of the NBU as of the last day of the previous fiscal year, provided that:
    - the aggregate asset value or the aggregate sales volume of at least two of the Participants (calculated on a worldwide basis) exceeds the UAH equivalent of EUR 1 million at the NBU exchange rate as of the last day of the previous fiscal year; and
    - the aggregate asset value or the aggregate sales volume of at least one Participant on the territory of

Ukraine exceeds the UAH equivalent of EUR 1 million at the NBU exchange rate as of the last day of the previous fiscal year.

- Or (irrespective of the aggregate asset value or the aggregate sales volume of the Participants), if the market share of any Participant or the combined market share of the Participants in Ukraine exceeds 35 percent of the market, on which the transaction takes place, and/or the adjacent markets.

For the purpose of calculating the foregoing thresholds, the definition of the 'Participant' includes not only the actual merging, consolidating, establishing or acquiring business entity, but also all of the business entities associated with such entity by relation of control.

Intra-group transactions are generally exempted form obligations to obtain prior merger control approval provided, however, a group has been established in compliance with Ukrainian merger control requirements (i.e. all necessary approvals were obtained for any transactions which led to establishing a group).

Another exemption from merger control requirement is the acquisition of shares (participatory interests) of a business entity by a person (entity) whose principal business is the performance of financial or securities operations, provided that such acquisition has been undertaken with the purpose of the subsequent resale of the shares and such person does not vote on any governing body of the business entity. Such transactions may be carried out without the prior approval of the AMC, subject to the resale of such shares (participatory interests) within one year after their purchase.

One more exemption is the acquisition of control over a business entity or a division thereof, including the right to manage and to administer the property of such business entity, by an appointed receiver in bankruptcy proceedings or by a state official.

10.2.2 Concerted actions

According to Articles 5, 6 of the *Competition Law* any actions/arrangements/behavior of business entities which may limit, eliminate or distort economic competition on any product market in Ukraine are prohibited unless such actions/arrangements/behavior are individually permitted by the respective prior AMC approval or fall under a limited number of exemptions provided by the *Competition Law*. Thus, any proposed concerted actions should be assessed separately on a case-by-case basis, since the AMC is quite active in the area and thoroughly investigates various product markets (particularly distribution arrangements, vertical arrangements, collusive behavior, etc.).

10.3 Special Approval

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

10.4 Liability

On 15 September 2015 the AMC approved and published on its website the Recommendations *On the Procedure of Calculation of Fines for Violation of legislation on Protection of Economic Competition and Protection Against Unfair Competition* (the *Recommendations*), establishing guidelines for calculation of fines for various types of violations. These *Recommendations* are not of normative character (i.e. are not binding) and the AMC is not obliged

to follow them, although the authority declared that it would adhere to them in terms of calculation of fines.

The *Recommendations* provide for the two-step approach: (i) definition of the basis for a fine and (ii) its further adjustment subject to availability of mitigating and/or aggravating circumstances. Further, all infringements of the competition law are divided into the following groups: the most serious infringements, serious infringements, medium-gravity infringements, infringements of minor gravity.

For serious infringements the basis for the fine shall be defined in the amount of up to 30% of the turnover generated from the sales on the market in which the concentration has taken place or in the adjacent markets. For medium-gravity infringements the basis for the fine shall be in the range – from UAH 510,000 up to 5% of the turnover generated from the sales on the market in which the concentration has taken place or in the adjacent markets starting from the date of the violation till the merger control application is filed to the AMC or for the last fiscal year proceeding the year in which the fine is imposed. If the parties' activities do not overlap and they are active in different and non-adjacent markets the basis amount of the fine shall be in the range from UAH 170,000 up to UAH 510,000. Further, the basis amounts of fines may be increased or reduced by 50%, in case all aggravating or all mitigating circumstances are in place respectively. The document also provides for the possibility, in exceptional cases, to impose larger amount of the fine in order to ensure the deterrent effect as well as to impose a symbolic fine.

At the same time, the maximum fine that can be imposed for failure to receive prior AMC approval (either for concentration or concerted actions) remains unchanged – up to 5% of the global annual turnover of the participating groups for the last fiscal year in which the fine is imposed and parties to the respective transaction failed to obtain such approval, the AMC may hold such parties liable within a term of 5 years after completion of the respective transaction. In case of

continued infringement, the parties to the respective transaction may be held liable within 5 years after the termination of infringement.

For failure to comply with merger control regulations the AMC may impose a fine on parties to the respective transaction in the amount of up to 5% of the annual parties' (including all related to them by control persons/entities) turnover for the year preceding the one in which a fine is imposed. The AMC may also invalidate the respective transaction if it led to monopolization of any product market or significantly restricted competition on any product market in Ukraine.

For failure to comply with the concerted action regulations the AMC may impose a fine on parties to the respective arrangement in the amount of up to 5 % (or up to 10% for performance of anti-competitive concerted actions) of the annual parties' (including all related to them by control persons/entities) turnover for the year preceding the one in which a fine is imposed. The AMC may also apply remedial measures (i.e. impose certain obligations on parties to concerted actions) in order to restore competition on the market. The mentioned above *Recommendations* set forth so-called "*amnesty rule*" pursuant to which reduced fines were set if parties applied to AMC after 15 September 2015 to obtain retrospective clearance for notifiable transactions within one year (until 15 September 2016) – i.e., approximately UAH 20,400 (if applications were made within 6 months) and UAH 102,000 (if applications were made after first 6 months but up until 15 September 2016).

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

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

- Recognizing the violation;
- Terminating the violation;
- Eliminating the consequences of the violation;
- Compelling state authorities, local self-governing authorities, and administrative management authorities to cancel or amend their decisions or to terminate agreements constituting anti-competitive actions of such authorities;
- Recognizing a business entity as holding a dominant position (monopoly) in a given market;
- Recognizing a business entity as such that abuses its dominant position (monopoly) (fine is up to 10% of a dominant undertaking (including all persons related to it by control) plus risk of business divestiture);
- Splitting up a business entity holding a dominant position (monopoly) in a given market;
- Imposing penalties (in the amount of 1%-10% (for different types of infringement) of parties' group turnover for the year preceding a year in which the fine is imposed);
- Invalidating the proposed transaction, terminating the respective arrangement, and
- Blocking securities on securities accounts.

10.5 Other developments

On 3 March 2016 the Law of Ukraine No.782-VIII *On Amendments to Certain Laws of Ukraine aimed at Ensuring the Transparency of the Activity of the Antimonopoly Committee of Ukraine*, obliging the AMC to publish all its decisions (save for confidential information), came into force. Notwithstanding that the *Law on Transparency* allows that the decisions could be published without confidential information, it shall be proved to the authority that it is necessary for the information provided to be treated as confidential and that the publishing of such information could result in damages for the party.

11. Dispute Resolution

11.1 Introduction

A foreign or Ukrainian legal entity or individual entrepreneur may apply to an appropriate Ukrainian court, or to an appropriate arbitration tribunal or institution within or outside Ukraine, for the resolution of disputes.

In Ukraine the courts of general jurisdiction are organized according to the principles of territoriality and specialization and include: local courts; appellate courts; Supreme Specialized Courts; and the Supreme Court of Ukraine, as shown in Diagram 1 in Section 10.2.

Local courts consist of common courts and specialized courts (i.e., commercial and administrative courts). Local common courts adjudicate civil and criminal cases, as well as actions on administrative violations. Local commercial courts exercise jurisdiction over disputes arising out of commercial relations, while local administrative courts administer justice in disputes connected with legal relations in the area of state and municipal governance.

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

Cassation supervision is carried out by the relevant Supreme Specialized Court. Also, in a limited number of cases identified by the applicable procedural rules, the decisions of a Supreme Specialized Court can be reviewed by the Supreme Court of Ukraine.

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

judgments of the European Court of Human Rights, which are a source of law in Ukraine.

11.2 Commercial Litigation in Ukraine

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

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

According to the *Law of Ukraine On Court Fees,* with amendments effective starting from September 2015, the court fee for bringing an action at a commercial court has changed. Currently the maximum court fee for filing a monetary commercial claim is approximately USD 7,800. If the dispute is non-monetary the court fee will be approximately USD 52.

The *Law of Ukraine On International Private Law*, dated 23 June 2005, envisages broader opportunities for consideration of cases with a foreign element by the Ukrainian courts compared to the Commercial and Civil Procedural Codes. According to the court practice on disputes involving foreign companies published by the Supreme Commercial Court of Ukraine, Ukrainian courts' jurisdiction over disputes involving a *"foreign element"* should be established in accordance with the *Law of Ukraine On International Private Law.* This law establishes a list of disputes with foreign element that are reviewed by Ukrainian courts. The list includes cases where (1) parties previously agreed on Ukrainian court jurisdiction; or (2) the damage which is the subject of the dispute was caused on the territory of Ukraine; or (3) an act or event, which is the grounds for the dispute, took place on the territory of Ukraine, etc.

This law also sets the list of disputes falling within the exclusive jurisdiction of Ukrainian courts. Such disputes include disputes (1) over real estate located in Ukraine; (2) over intellectual property rights that require registration on the territory of Ukraine; (3) bankruptcy disputes, provided that the debtor is incorporated under the laws of Ukraine; or (4) cases relating to issuance or annulment of securities originating in Ukraine, etc.

The abovementioned provisions of the *Law of Ukraine On International Private Law* appear to have been adopted in order to make Ukrainian law consistent with the *Hague Convention on Choice of Court Agreements* of 30 June 2005. However, as Ukraine has not joined this convention and has not amended its procedural legislation accordingly, there still remains a certain inconsistency in application of the above provisions by the Ukrainian courts.

Diagram 1: The Ukrainian Court System

	Review of decisions of Supreme Specialized Courts in limited cases identified by the procedural rules	**SUPREME COURT OF UKRAINE**
Third Instance	Cassation review of commercial, administrative, civil and criminal cases.	SUPREME SPECIALIZED COURT FOR CIVIL AND CRIMINAL CASES SUPREME COMMERCIAL COURT SUPREME ADMINISTRATIVE COURT
Second Instance	Consideration of cases at appeal	APPELLATE COURTS OF GENERAL JURISDICTION APPELLATE COMMERCIAL COURTS APPELLATE ADMINISTRATIVE COURTS
First Instance	Initial consideration of cases	LOCAL COURTS OF GENERAL JURISDICTION LOCAL COMMERCIAL COURTS LOCAL ADMINISTRATIVE COURTS

Under the *Commercial Procedural Code of Ukraine*, the court venue is determined following the territorial principle. As a general rule, disputes are adjudicated by the commercial court at the location of the respondent. Cases for the conclusion, modification, termination or recognition as null and void of agreements are considered by the court at the location of the debtor party to such agreement (i.e., the party under an obligation to provide the services, to transfer assets, etc.).

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

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

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

In particular, the *Commercial Procedural Code of Ukraine* specifically prohibits the application of injunctive relief involving:

(i) prohibition on holding general meetings of shareholders or other meetings of the owners of a commercial enterprise and on issuance of decisions at these meetings;

(ii) prohibition on providing the register of privileged shares or information about the shareholders or other owners of a commercial enterprise by the shares issuer, the registrar, the

keeper, or the depositary for the purpose of holding general meetings of shareholders of a commercial enterprise;

(iii) prohibition on shareholders or by other owners of a commercial enterprise participating in general meetings of shareholders, or on establishing the legal capacity of general meetings of shareholders or other meetings of the owners of a commercial enterprise;

(iv) prohibition on execution of a decision of the Guarantee Fund for Individuals' Deposits regarding appointment of an authorized person or implementation of temporary administration or liquidation of a bank, or prohibition on such authorized person of the Guarantee Fund for Individuals' Deposits performing certain actions, etc.

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

As a general rule, effective court decisions are subject to compulsory execution by the state enforcement authorities at the location of the debtor. In certain cases, however, court decisions are to be enforced by the regional enforcement authorities or by the State Enforcement Service of Ukraine depending on the amounts to be collected in course of compulsory execution or status of the debtor (e.g., state or municipal authorities, courts).

In addition, the *Law of Ukraine On State Guarantees Regarding Enforcement of Court Decisions* establishes the procedure for enforcement of court decisions rendered against state bodies, institutions and state-owned companies. This procedure is applied by the state enforcement authorities where a decision remains unenforced six months after commencement of the enforcement proceedings. In such cases further enforcement of the court decision is to be carried out by the state treasury authority, and the debt recovered from the state budget. In certain cases such recovery can be made even before

expiry of the six-month term (e.g., if the debtor has no recoverable assets).

11.3 Commercial Arbitration

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

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

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

11.4 Enforcement of Foreign Court Judgments

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

A foreign judgment will not be enforced in Ukraine if it is determined that: the foreign judgment did not come into force; and/or Ukrainian courts or other Ukrainian authorities have exclusive jurisdiction over such disputes; and/or a Ukrainian court has rendered a judgment or is currently considering a dispute in the same matter between the same parties and such consideration had started before opening of the proceedings by the foreign court; and/or the established term for applying for enforcement of a foreign judgment expired; and/or under Ukrainian legislation a disputed matter is not subject to a court's consideration. Ukrainian courts will also not recognize a foreign judgment against a party which was not given an opportunity to participate in the proceedings due to improper notification, if the enforcement of such judgment would threaten the interests of Ukraine or in other cases prescribed in international treaties and Ukrainian legislation.

In addition, it is possible for an interested party to seek injunctive relief measures in the process of recognition and enforcement of foreign court judgments. The same rule applies as for the enforcement of foreign arbitration awards, discussed in paragraph 10.5 immediately below.

11.5 Enforcement of Foreign Arbitral Awards

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

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

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

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

12. Financial Services

12.1 Ukrainian Financial Services Sector

The Ukrainian financial (non-banking/non-securities) services sector is a significant part of the services sector in Ukraine. Financial institutions act in accordance with the *Constitution of Ukraine*, the *Civil Code of Ukraine;* the *Commercial Code of Ukraine* and the *Law of Ukraine On Financial Services and the State Regulation of the Financial Services Markets* (the "**Financial Services Law**") dated 12 July 2001, Ukrainian legislation on joint stock companies and other business entities, as well as the regulations of the National Commission Carrying out State Regulation of the Financial Services Markets (the "**Financial Services Commission**") and their respective constituent documents. In 2015 the Financial Services Commission together with other financial regulators (the National Bank of Ukraine and the National Securities and Stock Market Commission) have adopted a comprehensive program of reforming financial services markets until 2020, which includes, among many other issues, reorganization of the regulation of the financial services market and reorganization of the Financial Services Commission into the other two regulators.

12.2 Role of the Financial Services Commission

The Financial Services Commission is the specialized state agency responsible for the regulation and control of (non-banking/non-securities) financial institutions in Ukraine. It is authorized to register financial institutions, issue licenses to insurance companies, consumer finance and other financial companies, as well as to adopt regulations. Also, the commission is authorized (i) to hold on-site inspections and remote documentary examinations of financial institutions, and (ii) to set out mandatory capital adequacy and liquidity ratios.

The Financial Services Commission is also authorized, *inter alia*, to:

- impose administrative sanctions;

- bring an action in a civil or a commercial court regarding regulatory breaches;
- issue a mandatory warning to a financial institution or a self-regulated organization on rectifying breaches of applicable law;
- initiate criminal or anti-trust proceedings.

On 4 December 2015 the National Reform Council supported an initiative of the President of Ukraine to abolish the Financial Services Commission and allocate its authority between the National Bank of Ukraine and the National Securities and Stock Market Commission. The draft law to this effect was registered by the President at the Verkhovna Rada on 20 July 2015. Once this draft law is enacted, the Financial Services Commission will cease to exist and will be replaced with the National Bank of Ukraine and/or the National Securities and Stock Market Commission in the relevant areas.

12.3 Financial Institutions

Pursuant to applicable Ukrainian legislation, **financial services are provided exclusively by financial institutions** (except in certain instances explicitly provided by law). Any services are considered to be financial when such services are rendered for the benefit of a third party (regardless of whether the costs are borne by a service provider or allocated to a client) in order to obtain income or to preserve the value of financial assets.

The Financial Services Law defines a **financial institution** as a legal entity that provides one or several financial services, as well as other services associated with the provision of financial services, and is included in the relevant register pursuant to the procedure prescribed by law. Article 1 of the Financial Services Law establishes a lengthy number of companies that are considered to be financial institutions. These are banks, mutual funds, pawn brokers, leasing companies,

insurance companies, trusts, pension and investment funds that exclusively pursue financial services activity.

A legal entity that intends to provide financial services must comply with the relevant legislative requirements and regulations. It also must apply either to the Financial Services Commission or to the National Securities and Stock Market Commission for entry into the State Register of Financial Institutions or the State Register of Financial Institutions rendering Financial Services on the Stock Market. A legal entity aiming to render banking services must apply to the National Bank of Ukraine to be included in the register of Ukrainian banks.

A financial institution may be established in any organizational and legal form, unless otherwise provided in laws governing certain financial services. Depending on the type of a financial institution, the requirements for the minimal **charter capital** will vary.

12.4 Types of Financial Services

On 10 October 2013 the Ukrainian Parliament adopted amendments to the Financial Services Law which became effective on 9 February 2014 and are aimed at limiting the number of financial services which may be rendered in Ukraine. In particular, these amendments changed one of the basic principles of the Financial Service Law, i.e., prior to the adoption of the amendments any service which possessed the core characteristics of a "financial service" could be regarded as such and in theory the respective entity could render such service provided it registered as a financial institution and obtained a license from the Financial Services Commission (if applicable). According to the amendments a market participant is permitted to render only those financial services which are expressly listed in the Financial Services Law. However, the responsible regulator may treat a service which is not so listed as falling into the scope of one of the listed services. Otherwise, the service must be included into the relevant list in the Financial Services Law to enable a market participant to legitimately render such service.

12.5 Licensing

In the financial sector certain types of professional activity may only be carried out by a financial institution provided that it has obtained the relevant license from the Financial Services Commission, the National Bank of Ukraine or the National Securities and Stock Market Commission accordingly.

Pursuant to the applicable Ukrainian legislation, the Financial Services Commission issues licenses to financial institutions for:

- insurance activity;
- administering private pension funds;
- issuing financial credits using solicited deposits;
- rendering any financial services, the provider of which intends to directly or indirectly solicit financial assets from individuals.

Foreign participation in Ukrainian financial institutions is not limited. A foreign legal entity would have to either set up a new financial institution and obtain an appropriate license for it (if necessary) or buy an existing financial institution. In both cases it would have to comply with the legislation applicable to foreign investments and the applicable competition legislation.

12.6 Financial Institutions with Foreign Participation

Foreign participation in a Ukrainian financial institution is not limited; however the prior written approval of the Financial Services Commission is required for a Ukrainian or foreign legal entity, or for an individual, to directly or indirectly own, hold, or control various thresholds of a financial institution's charter capital or voting rights in its governing body, i.e., 10% or more, 25% or more, 50% or more, or 75% or more. At each threshold new approval of the Financial Services Commission must be obtained.

13. Capital Markets

13.1 General

The debt and equity securities markets in Ukraine are regulated by several laws, as well as by regulations and resolutions issued by the National Commission on Securities and Stock Markets of Ukraine (the Securities Commission). The principal legislation in this area includes the *Civil Code of Ukraine*; the *Commercial Code of Ukraine*; the laws *On Securities and the Stock Market*, dated 23 February 2006; *On the Depository System of Ukraine*, dated 6 July 2012; *On Joint Stock Companies*, dated 17 September 2008; *On the State Regulation of the Securities Market in Ukraine*, dated 30 October 1996; *On the Circulation of Promissory Notes in Ukraine*, dated 5 April 2001; *On Mortgage*, dated 5 June 2003; *On Mortgage Lending, Transactions with Consolidated Mortgage Debt and Mortgage-Backed Certificates*, dated 19 June 2003, *On Mortgage-Backed Bonds*, dated 22 December 2005.

13.2 Types and Forms of Securities

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

Ukrainian issuers may issue securities (i) in registered (nominative) form, (ii) bearer form and (iii) order form. Ukrainian securities may exist in (i) documentary (certificated) form, or (ii) non-documentary (book-entry or electronic) form.

The transfer of ownership rights to registered securities in documentary form is effected by means of assignment. Ownership rights to bearer securities issued in documentary form are transferred as of the moment of the physical transfer (delivery) of the securities to a new owner. Ownership rights to documentary form securities are evidenced by the certificates of such securities.

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

13.3 Securities Commission

The Securities Commission is the state agency authorized to determine and implement a uniform state policy in the area of the development and operation of the securities market in Ukraine, and to carry out state regulation and monitoring of the issuance and circulation of securities and derivatives on the territory of Ukraine. The Securities Commission is subordinate to the President of Ukraine and is accountable to the Verkhovna Rada. The Securities Commission has been granted broad powers with respect to the formation of the overall legislative framework for the operation and development of Ukraine's securities market, as well as registration, licensing, compliance monitoring and enforcement powers.

13.4 Depository System

The law of Ukraine "On the Depository System of Ukraine" dated 6 July 2012 (the "*Depositary System Law*") provides for the formation of the depository system in Ukraine, which is to consist of the following participants:

- The Central Depository, which is a public joint stock company, with the state of Ukraine together with the NBU being its majority shareholders. The Central Depository is authorized (i) to maintain accounts in securities of all Ukrainian depository institutions, i.e., institutions carrying out depository activity, the NBU and clearing institutions, (ii) carry out custody of securities and (iii) to carry out certain regulatory functions with respect to the Ukrainian stock market;

- depository institutions, i.e., legal entities holding a license of the Securities Commission to carry out depositary activity, which includes holding records of rights to securities in book-entry form (these rights constitute proprietary rights under Ukrainian law); and

- the Settlement Center, i.e., a licensed Ukrainian bank which ensures monetary settlements for the stock market and over-the-counter securities transactions which are settled on a delivery versus payment basis.

13.5 Securities Traders

Licenses to act as a securities trader may be granted to companies (the charter capital of which is formed entirely of monetary funds) engaged exclusively in securities trading and banks. Securities traders may be licensed by the Securities Commission to perform any or all of the following activities with securities: broking activities (transacting with securities in its own name or in the name of a client and at the expense of the client), dealing activities (transacting with securities in its own name and at its own expense for the purpose of subsequent resale), underwriting (placement (subscription or sale) of securities at the instruction, in the name and at the expense of a client) and securities management activities (transacting with securities for a fee in its own name but for the benefit and in the interests of a third person). A securities trader can carry out dealing activities if its charter capital (paid in monetary funds) is not less than 500 thousand Hryvnias,

broking activities – if not less than 1 million Hryvnias, and underwriting or securities management activities – if not less than 7 million Hryvnias.

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

13.6 Stock Exchanges

Securities are traded in Ukraine on several stock exchanges and on an over-the-counter basis. At present most of the securities trading activity takes place on the PFTS Stock Exchange, the Ukrainian Exchange and Perspectyva Stock Exchange.

At the current time the secondary market for securities in Ukraine is highly volatile and its liquidity is inconsistent.

13.7 State Securities

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

State bonds can be issued only in a non-documentary form with domestic state bonds being evidenced by book-entries at the NBU. State bonds can be either in registered or bearer form. Domestic state bonds can be denominated and offered for sale in Hryvnia as well as in foreign currency. Foreign entities and individuals are permitted to invest in domestic state bonds through Ukrainian depository institutions that are clients of the NBU as the depository of state securities.

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

14. Employment

14.1 Legislation

The *Code of Laws on Labor of Ukraine* (the *Labor Code*) dated 10 December 1971, as amended, is the principal but not the sole legislative act governing employment relationships in Ukraine. The *Labor Code* applies to all Ukrainian and foreign enterprises, institutions, and organizations, irrespective of their ownership form, type, or area of activity, and to all individuals employing labor in Ukraine.

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

14.2 Employment Agreements and Employment Contracts

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

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

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

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

Ukrainian law distinguishes between an "employment agreement" and an "employment contract". An "employment contract" is a specific form of written "employment agreement".

An "employment agreement" is an agreement between an employee and an employer pursuant to which the employee agrees to perform the work specified by this agreement and act in accordance with the employer's internal labor regulations, whereas the employer agrees to pay the employee a specified salary and provide him/her with working conditions according to Ukrainian labor legislation. An employment agreement is usually concluded in writing and the employee is forbidden to be admitted to work before the relevant notice on recruitment is given to the fiscal service. The employment agreement can also be concluded by the employer issuing a hiring order and notifying the relevant fiscal service about recruitment. The notice to the state fiscal service can be submitted (i) electronically with a digital signature; (ii) on paper with an electronic copy; or (iii) on paper only (provided that such notice concerns no more than five employees).

An "employment contract" is a specific form of written employment agreement. It may be concluded only when such a possibility is

expressly provided by a statute , *e.g.*, with the CEO (as opposed to all other employees) of a company, and it must always be executed in writing. The resolution of certain issues in an employment contract (including the term of the contract and any additional grounds for termination of employment) may be determined by the parties and may deviate from the requirements of the *Labor Code*. However, Article 9 of the *Labor Code* provides that the provisions of an employment agreement (including employment contracts) may not deprive an employee of the rights and benefits guaranteed by the labor laws of Ukraine.

Pursuant to Article 21 of the *Labor Code,* the parties to an employment contract have discretionary powers to determine the terms of such contract, in particular:

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

Thus, the principal advantage of an employment contract (as opposed to an employment agreement) is the discretion which the parties to an employment contract may exercise in the terms and conditions of employment and the grounds for termination, in contrast with the rigid requirements of the *Labor Code*. On the other hand, the principal disadvantage of an employment contract is that, unlike an employment agreement, it may be concluded only if it is expressly allowed by law.

14.3 Equal Job Opportunities

The *Labor Code* prohibits any discrimination in the workplace, including violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of employees depending on their race, color, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social or foreign origin, age, health, disability, or suspected presence of HIV/AIDS, family and property status, family responsibilities, residence, membership in a trade union or other association of citizens, participation in a strike, appeal or intention to apply to the courts or other authorities to protect their rights or support other employees in defending their rights, linguistic or other grounds not related to the nature of the work or the context of its performance.

Article 22 of the *Labor Code* forbids any unjustified denial of employment. Moreover, any direct or indirect restriction of rights, or granting of any direct or indirect advantages during employment on the grounds specified above, is unacceptable. At the same time, requirements for the age, level of education or health of an employee may be specified by the employer in cases determined by the legislation of Ukraine.

Article 25 of the *Labor Code* prohibits an employer, while concluding an employment agreement with a prospective employee, from demanding any information about his/her political or national affiliation, origin, place of residence, as well as any additional documentation not specified by the current legislation.

Similar, but more specific, provisions can be found in Article 17 of the Law of Ukraine "*On Equal Rights and Opportunities for Females and Males*" dated 8 September 2005. In particular, Article 17 stipulates that females and males must be provided with equal rights and opportunities, promotion at work, further training and professional retraining. Moreover, an employer must create conditions that would allow females and males to work on an equal basis, ensure that females and males can combine work with their family

responsibilities, provide equal pay for females and males with the same qualifications and working conditions, take measures to create safe and healthy working conditions as well as take measures to prevent sexual harassment at work.

In addition, employers are also prohibited from advertising job vacancies exclusively to females or males (unless the nature of the work justifies it) or from requiring any data regarding the employee's private or family life while concluding an employment agreement with a prospective employee. Collective agreements must also contain measures on providing equal rights and opportunities for females and males and must specify the terms for their fulfillment.

On 1 January 2013, a new version of the Law of Ukraine "*On Employment*" (the *Employment Law*), dated 5 July 2012, came into effect, introducing a number of significant changes to the Ukrainian employment legislation. Among them the *Employment Law* introduced a new focus on equal job opportunities, substantiating the above statutory rules and providing a mechanism for their enforcement. In particular, a new mandatory quota for employment of certain categories of employees has been established, in addition to the already existing quota for employment of disabled individuals.

14.4 Labor Books

Every employee (including certain categories of students that are engaged as interns) working for more than five days in an enterprise must have his/her employment recorded in his/her labor book. The labor book contains information about an employee, his/her past and current employment, as well as certain other information relating to an employee's work history. The labor book is vital for establishing the right of an employee to a state pension and other benefits. The *Labor Code* prohibits the entering of information on disciplinary punishments into an employee's labor book.

14.5 Probationary Period

An employer has the right to establish a three-month probationary period for a newly-hired employee. For non-managerial workers the duration of the probationary period may not exceed one month. The probationary period must be specifically provided for in the employment agreement (contract), as well as in the order on hiring an employee issued by an employer. During the probationary period an employer may dismiss an employee at any time if the employer determines that the employee does not meet the criteria established for the position for which such employee was hired. However, there are restrictions on the dismissal of certain categories of women, which effectively makes probation for these employees meaningless. Also, there are certain categories of employees for which a probationary period cannot be established at all. Among these categories of employees are:

- persons under 18;
- young workers who have just finished their education;
- young professionals who have just finished their higher education;
- persons discharged from military or alternative (non-military) service;
- disabled persons who were referred for this position on the basis of a recommendation of a medical and social commission.

14.6 Minimum Wage

Wages in Ukraine may not be lower than the minimum monthly salary established under the applicable Ukrainian legislation. The minimum monthly salary is subject to frequent indexation. As of September 2015 it is equal to UAH 1,378 (approximately USD 59). The officially established minimum monthly salary is periodically adjusted by the

Verkhovna Rada (Parliament) of Ukraine to reflect increases in the cost of living.

14.7 Working Week

The regular working week in Ukraine is a maximum of 40 hours. However, fewer working hours per week may be envisaged in a collective agreement. Any time worked in excess of the set limit is classified as overtime and may only be required in extraordinary circumstances. The *Labor Code* limits the total amount of overtime to 120 hours in one calendar year and an employee may not be required to work more than four hours of overtime during two consecutive days. Pregnant women, women with children under three, persons under 18 and the employees enrolled in secondary schools or vocational technical schools may not be required to work overtime. Overtime must be paid at the rate of 200% of the regular hourly rate. Depending on the nature of the work, managers or highly skilled specialists need not be paid for overtime. For these categories it is possible to specify variable working hours, which allows the after-hours work of such employees (without extra pay, but with extra vacation) within the maximum time limits described above.

14.8 Holidays and Vacations

According to Article 73 of the *Labor Code*, there are ten official holidays in Ukraine:

- 1st of January - New Year's Day;
- 7th of January - Christmas;
- 8th of March - International Women's Day;
- 1st and 2nd of May - International Workers' Day;
- 9th of May - Victory Day;
- 28th of June - Ukraine Constitution Day;

- 24th of August - Ukraine Independence Day;
- 14th October - Ukraine Defenders' Day;
- one day (the following Monday) - Easter;
- one day (the following Monday) - Trinity Day.

Employees may be required to work on an official holiday only in extraordinary circumstances, except for certain types of businesses. Employees in Ukraine are entitled to an annual paid vacation of a minimum of 24 calendar days (to include weekends during the vacation period but excluding official holidays). Persons under 18 must be granted such annual basic leave for a term of at least 31 calendar days. Certain categories of employees are entitled to additional paid vacation, *inter alia*, employees:

- with hazardous or difficult working conditions;
- engaged in special types of production;
- in other cases envisaged by the law.

The duration, terms, and procedures for granting additional annual vacation are established by the laws of Ukraine, but may also be indicated in the collective agreement.

14.9 Sick Leave

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

14.10 Maternity Leave

Paid maternity leave is provided for a minimum of 70 calendar days prior to the birth, and for an additional 56 calendar days (or 70 calendar days in the event of multiple births or delivery complications) after the birth. An employee may take additional unpaid leave until the child reaches three years of age. During the entire period of paid and unpaid leave an employee retains the right to return to her job, with the full leave period included when calculating an employee's length of service.

14.11 Termination of Employment and Job Protection

The procedure for terminating an employment agreement or employment contract is governed by Articles 36 through 49 of the *Labor Code.*

Pursuant to Article 40 of the *Labor Code*, an employer may terminate an employment agreement before its expiration only in a limited number of cases, including but not limited to: staff redundancy; an employee's systematic failure to fulfill his/her employment duties; an employee's insufficient qualifications or deteriorating health condition; an employee's unjustified absence from the workplace for more than three consecutive hours during one working day; and a number of other cases.

In contrast, Article 36 of the *Labor Code* provides that an employment contract (as opposed to an employment agreement) may also be terminated on any grounds specified in the contract.

In addition, Ukrainian law prohibits an employer's unilateral dismissal of pregnant women, women who have children under three (or, in special circumstances supported by medical evidence, under six), and single mothers who have disabled children or children under 14. Pursuant to Article 184 of the *Labor Code,* this rule does not apply in the event of the dissolution of an enterprise or if the woman was on a fixed-term contract which expired. However, in these two cases an employer is obliged to find alternative employment for such women.

The same guarantees apply with regard to fathers bringing up children without a mother (including cases when the mother is receiving medical treatment for a long period of time), guardians (custodians) and foster parents of such children.

Under the *Labor Code*, the dismissal of an employee who is a trade union member requires the prior consent of his/her trade union under certain circumstances.

14.12 Collective Agreements

The Law of Ukraine on "*Collective Agreements and Arrangements*", dated 1 July 1993, requires legal entities operating in Ukraine and employing large numbers of employees to negotiate on the conclusion of collective agreements with the relevant trade unions or, if there are no such trade union bodies, with the elected representatives of employees who have been authorized by their fellow employees to sign and negotiate such a collective agreement with an employer. If concluded, collective agreements become mandatory for an employer and all its employees. At the same time, provisions that deprive employees of the rights and benefits guaranteed by the laws of Ukraine cannot be included into collective agreements and if they are, will be deemed null and void.

14.13 Remuneration

As a general rule, all employers in Ukraine, both residents and non-residents, are required to pay salaries to their employees exclusively in Ukrainian currency to a bank account in Ukraine. If an employer tries to transfer an employee's salary to an employee's bank account in foreign currency, then, pursuant to the Regulation of the National Bank of Ukraine "*On the Procedure for Depositing Funds in Foreign Currency in Current Accounts of Individuals within Ukraine*", dated 16 September 2013, the employee's bank will be obliged to sell the relevant salary amount in foreign currency on the interbank foreign exchange market of Ukraine and the salary's UAH equivalent will be deposited on the current account of the relevant employee.

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

14.14 Foreigners Working in Ukraine

Article 3 of the Law of Ukraine "*On the Legal Status of Foreigners and Stateless Persons*", dated 22 September 2011, provides that foreigners who lawfully reside in the territory of Ukraine enjoy the same rights and opportunities (including employment) as Ukrainian citizens.

The Law of Ukraine "*On International Private Law*", dated 23 June 2005, states that the employment relationships of foreigners and stateless persons working in Ukraine are not governed by the laws of Ukraine only if:

- such foreigners and stateless persons work with diplomatic missions or representative offices of international organizations, unless otherwise provided for in international agreements to which Ukraine is a party; or

- the employment agreement which provides for the performance of works in Ukraine was concluded outside Ukraine, unless otherwise provided for by such employment agreement or international agreement to which Ukraine is a party.

Article 42 of the Law of Ukraine *"On Employment",* dated 5 July 2012 (the *Employment Law*), provides that Ukrainian companies, entities and organizations are entitled to employ foreign nationals and stateless persons only subject to obtaining a work permit issued by the

relevant employment center, unless otherwise provided for by the applicable international agreement to which Ukraine is a party. Although, it is not clear from the law, foreigners employed by representative offices are not eligible for work permits. Instead they must obtain service cards from the Ministry of the Economy of Ukraine (such cards are valid for up to three years).

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

Under the Resolution of the Cabinet of Ministers of Ukraine "*On the Procedure for the Issuance, Prolongation, and Annulment of Work Permits for Foreigners and Stateless Persons*", dated 27 May 2013 (the *Work Permit Resolution*), work permits are issued to foreigners and stateless persons by the relevant Ukrainian employment center only if:

- there are no qualified Ukrainian nationals in the relevant sphere who are suitable for the position in question; or

- there are significant grounds for the employment of such foreign nationals as specialists.

It is presumed that hiring a foreign citizen is sufficiently justified if such employee (1) will occupy a managerial position and is a founder (co-founder) of an employing entity, or (2) has copyright or related rights and is employed to exercise them, or (3) will occupy a managerial position (*e.g.*, a database administrator, software engineer, technician or programmer) with a legal entity in the IT industry, or (4) has a graduate degree from an educational institution in the first hundred in one of the world rankings (*i.e.*, Times Higher Education, Academic Ranking of World Universities by the Center for World-Class Universities at Shanghai Jiao Tong University, QS World

University Rankings by Faculty or Webometrics Ranking of World Universities). Nevertheless Ukrainian law does not provide a definition of the term "significant grounds" and thus in practice foreigners are employed in Ukraine on the grounds that "there are no qualified Ukrainian nationals in the relevant area who are suitable for the position in question".

The *Work Permit Resolution* requires a work permit to be obtained for foreigners who perform services or work pursuant to contracts between their foreign employers and Ukrainian customers. Also, intra-corporate transferees must have work permits. Allowing a foreigner to commence his/her activities in Ukraine prior to obtaining a work permit for the specific role that the foreigner is intended to perform will trigger the imposition of a fine of 20 times the minimum monthly salary for each foreign employee for whom the employer failed to obtain a work permit.

Work permits are issued for up to one year regardless of the term of employment. For a temporary employment agreement (contract) the work permit will be granted for the period specified in such employment agreement (contract), but not for more than one year. If the relevant foreigner has signed an employment agreement (contract) for an unlimited period, the work permit will also be issued for one year. However, employers are entitled to apply for renewal of the work permit an unlimited number of times by filing an application at least 20 days prior to the expiration of the current work permit.

Work permits for intra-company transferees are granted for three years with a possible two-year extension. Employees who do not fall into the intra-company employee category may receive a work permit for one year, which can be prolonged for the same period an unlimited number of times.

Under the *Work Permit Resolution*, applications for work permits will be considered by the relevant Ukrainian employment center, which must accept and register the application together with all relevant documents on the day of receipt of the documents. The relevant

regional employment center must issue a work permit (or give its written refusal to do so) within seven calendar days from the date of registration of the application and documents. The state fee for the consideration of a work permit application is four times the minimum monthly salary and is paid by an employer only after a decision to issue the relevant work permit is issued. No state fees are charged (1) if the work permit is issued to a legal entity engaging foreigners and/or stateless persons who have just been granted refugee status; (2) for an application for extension of a work permit.

According to the *Work Permit Resolution*, after obtaining the work permit, an employer is obliged to submit a copy of the employment agreement (contract) concluded with the employee to the relevant employment center within seven business days after its execution. Otherwise, the employment center might cancel the work permit issued to such employee. The *Work Permit Resolution* sets an exhaustive list of grounds for refusal to issue a work permit or to prolong its term, as well as for the annulment of a work permit. Among other reasons, a work permit will not be issued or prolonged if an employer has an unpaid Unified State Contribution liability, the foreigner has criminal proceedings initiated against him/her or is serving a criminal sentence, or the foreigner is to be expelled from Ukraine. The annulment of a work permit may, among other reasons, result from early termination of the employment agreement/contract with the foreigner, the migration authority's decision to expel the relevant foreigner, or to shorten the permitted term of the employee's stay in Ukraine if the work performed by the foreigner does not correspond to that provided for in the work permit.

14.15 Personal Data

The Law of Ukraine "*On Personal Data Protection*", dated 1 June 2010, establishes requirements for the processing of personal data and the relevant obligations of the owners of personal data.

The law regulates legal relations related to the protection and processing of personal data and aims to protect the fundamental rights

and freedoms of citizens, including the right to privacy in connection with the processing of personal data. Article 7 of the law prohibits the processing of personal data concerning racial or ethnic origin, political, religious or ideological beliefs, membership in political parties and trade unions, criminal penalties, as well as data on health, sexual life, biometric or genetic data. The owner of personal data (*e.g.*, an employer) must notify the Ukrainian Parliamentary Commissioner for Human Rights about the processing of personal data that is of particular risk to the rights and freedoms of the subjects of personal data within thirty days after the beginning of such processing.

Liability for failure to follow the above requirements may result in imposition of an administrative fine of up to UAH 17,000 (approximately USD 722). In addition, certain other statutes, including the *Civil Code*, the *Labor Code* and the *Criminal Code*, contain separate provisions on the protection of personal information and privacy in the workplace. For that reason, background checks and internal investigations should be preceded by obtaining the advice of a Ukrainian lawyer knowledgeable in this field.

15. Intellectual Property

15.1 General

Ukrainian intellectual property legislation affords protection, *inter alia*, to: copyright and neighboring rights; trademarks and service marks; trade names; inventions; utility models; industrial designs; trade secrets; plant and animal varieties; appellations of origin; layouts of integrated circuits; and technical improvements. In addition, implementing regulations have been adopted, and amendments have been made, with respect to the applicable civil, administrative, and criminal legislation, in order to allow more effective enforcement of intellectual property rights in Ukraine.

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

- The *Civil Code of Ukraine* (the *Civil Code*);
- The *Criminal Code of Ukraine* (the *Criminal Code*);
- The *Customs Code of Ukraine* (the *Customs Code*);
- The *Civil Procedural Code of Ukraine* (the *Civil Procedural Code*);
- The *Commercial Procedural Code of Ukraine* (the *Commercial Procedural Code*);
- The *Administrative Infringements Code of Ukraine* (the *Administrative Infringements Code*);
- The *Law of Ukraine On Copyright and Neighboring Rights* (the *Copyright Law*) dated 23 December 1993;
- The *Law of Ukraine On the Protection of Rights in Trademarks and Service Marks* (the *Trademark Law*) dated 15 December 1993;

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

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

15.2 State Intellectual Property Service

The functions of the Ukrainian Patent and Trademark Office are vested in the State Intellectual Property Service of Ukraine (formerly known as the State Intellectual Property Department of the Ministry of Education and Science of Ukraine) (the Service). The Service is responsible for the overall control over carrying out the examination of intellectual property applications; maintaining a system for the search and examination of intellectual property applications; and granting patents and certificates on trademarks and other intellectual property, as well as copyright certificates.

15.3 International Conventions

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

- The 1883 *Paris Convention for the Protection of Industrial Property* (the *Paris Convention*);
- The 1886 *Berne Convention for the Protection of Literary and Artistic Works*;
- The 1891 *Madrid Agreement Concerning the International Registration of Marks* (the *Madrid Agreement*);
- The 1952 *Universal Convention on Copyright*;
- The 1957 *Nice Agreement Concerning the International Classification of Goods and Services*;
- The 1961 *International Convention for the Protection of New Varieties of Plants*;
- The 1967 *Convention Establishing the World Intellectual Property Organization* ("*WIPO*");
- The 1970 *Patent Cooperation Treaty*;

- The 1977 *Budapest Treaty on the International Recognition of Deposits of Microorganisms for the Purposes of Patent Protection*;

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

- The 1994 *Trademark Law Treaty*.

Ukraine has also signed a number of bilateral treaties on the protection of intellectual property and a number of multinational agreements on intellectual property matters, within the framework of the Commonwealth of Independent States. Moreover, Ukraine became the 152nd member of the World Trade Organization ("WTO") on May 16, 2008. Thus, Ukraine is now subject to the requirements of the Agreement of the World Trade Organization on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

15.4 Registration of Industrial Property Rights

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

15.5 Trademark Protection

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

- Marks registered with the Service pursuant to the *Trademark Law*; and

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

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

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

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

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

The *2003 IP Law* also brought significant changes to the opposition and cancellation procedures, set more severe sanctions for the violation of intellectual property rights, and extended the authority of

the courts in applying measures directed at removing infringing products from all trade channels.

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

As a result of such revisions of the opposition procedure an applicant has an opportunity to file an opposition against a conflicting application, whereas under the previous law the applicant could only oppose a decision of the examining authority on the applicant's own application. However, the applicant now has less time to file an opposition against a decision of the examining authority on the applicant's own application - two months after the date of receipt of the decision. Furthermore, the Chamber of Appeal of the Service will consider oppositions within two months, instead of four months as was previously the case. This term may be extended at the applicant's request, but by no longer than two months. The term for opposing a decision of the Chamber of Appeal of the Service in court has also been reduced to two months, instead of six months as was previously the case.

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

15.6 Patent Protection of Inventions and Utility Models

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

- Novelty;
- Non-obviousness; and
- Utility.

The *Inventions Law* provides for a 12-month grace period for any public disclosure of information concerning an invention either by the inventor or by any third person who directly or indirectly obtains such information from the inventor.

A patent may be issued for an invention in the name of the inventor, his/her employer, or his/her legal successors. As a general rule, an inventor is entitled to patent his/her own invention, unless the *Inventions Law* provides otherwise. In all cases the inventor is entitled to retain the rights of authorship in his/her invention indefinitely. An invention made by an employee during his/her employment and in relation to his/her working functions should be patented in the name of the employer, to the extent that such invention is made within the scope of the employee's working functions, pursuant to the direct instructions of the employer, or with the use of the expertise, know-how, trade secrets, and/or equipment of the employer. Employers and employees are authorized to provide different conditions for the patenting of inventions under the employment agreements concluded between them.

Patents are granted to inventions for 20 years from the priority date. Patents for inventions in the area of medicine, pharmaceuticals, agrochemistry and related areas may be further extended for a

maximum period of five years. The term of patent validity is conditional upon the payment of annual maintenance fees.

15.7 Copyright

The *Copyright Law* protects published, as well as unpublished, works of authorship. The works may be of a scientific, literary, or artistic nature. They are protected regardless of their volume, purpose or genre, as well as their scientific, literary, or artistic value.

The *Copyright Law* does not require fixation as a mandatory condition for copyright protection. It grants protection to any work of authorship, regardless of the manner of its expression. As a result, a protected work may exist in oral and/or written form.

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

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

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

15.8 Enforcement of Intellectual Property Rights

15.8.1 Criminal Liability

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

Criminal sanctions are based on the non-taxable minimum monthly income (currently UAH 17). However, the extent of damage is calculated on the basis of the tax social privilege, which currently amounts to UAH 609.

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

- Substantial if it amounts to more than 20 times the tax social privilege;
- Extensive if it amounts to more than 200 times the tax social privilege; and
- Very extensive if it amounts to more than 1000 times the tax social privilege.

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

Under the *Criminal Code* as amended by the *2006 IP Criminal Amendments*, in the event that an infringement of trademarks causes **substantial damage**, then the following sanctions apply:

- A fine of 200 to 1,000 times the non-taxable minimum monthly income (*i.e.*, currently UAH 3,400 – 17,000) with seizure of all infringing products, equipment and materials intended for the manufacture of such products. The criminal(s) may be prohibited from occupying certain positions or engaging in certain activities at the discretion of the court.

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

- A fine of 1,000 to 2,000 times the non-taxable minimum monthly income (*i.e.*, currently UAH 17,000 – UAH 34,000) with seizure of all infringing products, equipment, and materials intended for the manufacture of such products.

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

- A fine of 2,000 to 3,000 times the non-taxable minimum monthly income (*i.e.*, currently UAH 34,000 – UAH 51,000) with seizure of all infringing products, equipment, and materials intended for the manufacture of such products. The criminal(s) may be prohibited from occupying certain positions or engaging in certain activities at the discretion of the court.

15.8.2 Customs Control

Further to the relevant provisions of the *Customs Code*, the Ministry of Finance of Ukraine has developed a procedure under which the owner of intellectual property rights can register goods containing

intellectual property with the appropriate customs authorities in accordance with Resolution No. 648 "On Approval of the Procedure for Registration of Intellectual Property Rights that are Protected by Law in the Customs Register", dated May 30, 2012.

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

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

15.8.3 Intellectual Property Inspectors

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

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

- An inspector is now entitled to control not only the legitimacy of the production and distribution of IP objects, but also the legitimacy of use of such objects.

- An inspector may now conduct scheduled and unscheduled inspections during which he/she is entitled to seize objects of intellectual property or any material data media which contain these objects for a term of up to 30 days.

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

16. Bankruptcy Issues

16.1 General

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

16.2 Debtors Exempt from Bankruptcy

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

Debtors Exempt from Bankruptcy

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

- State enterprises, which fall under the category "*kazenne pidpryyemstvo*";
- Mining companies with a state share of at least 25 per cent which have been privatized, within one year from commencement of the relevant privatization plan, except for those companies liquidated by the decisions of their owners; and
- Public Joint-Stock Company of Railway Transport for General Use established under the law *"On Establishment of the Public Joint-Stock Company of Railway Transport for General Use"*.

16.3 Pre-trial rehabilitation of Debtor

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

Pre-trial rehabilitation may be commenced upon:

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

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

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

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

16.4 Specifics of Bankruptcy Proceedings for Certain Categories of Debtors

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

16.5 Initiation of Bankruptcy Proceedings

A bankruptcy petition may be brought in a Ukrainian commercial court ("*hospodarsky sud*") at the location of the debtor by any creditor (other than a fully secured creditor), the debtor itself, the State Tax Administration, and certain other state agencies acting as creditors. A creditor (an individual or a business entity) that holds an incontestable claim against the debtor may initiate bankruptcy proceedings against the debtor if the amount of the claim is not less than 300 times the minimum monthly salary and such claim remains unsatisfied by the debtor three months after it is due. In 2016 the minimum monthly salary in Ukraine is UAH 1378 (until 1 May 2016). Starting from 1 May 2016 the minimum monthly salary in Ukraine will be UAH 1450, and starting from 1 December 2016 - UAH 1550. Where a claim is denominated in foreign currency (e.g., US dollars, euros, etc.), the creditor must apply the official exchange rate established by the National Bank of Ukraine (http://www.bank.gov.ua/control/en/index)

as of the day of filing the application for commencement of bankruptcy proceedings with the competent court, in order to determine the amount of the claim in Ukrainian hryvnyas and to prove that it meets the minimum amount requirement established by the *Bankruptcy Law* for the commencement of bankruptcy proceedings.

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

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

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

16.6 Stages of Bankruptcy Proceedings

Judicial bankruptcy proceedings in Ukraine may include the following stages:

- Special proceedings for the disposal of the debtor's assets (the assets administration proceedings);
- Solvency renewal proceedings;
- Amicable settlement; and
- Liquidation proceedings.

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

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

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

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

approval; and to decide on other practical issues during the bankruptcy proceedings.

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

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

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

Upon the ruling on the introduction of solvency renewal proceedings the court appoints a solvency renewal administrator, who acts as the head of the debtor. For the period of the solvency renewal proceedings other managing bodies of the debtor are not able to exercise their statutory powers.

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

The solvency renewal plan may include corporate restructuring of the debtor, sale of its assets, recovery of receivables, debt restructuring, asset restructuring, sale or cancellation of debt and other means of renewal of the debtor's solvency. The solvency renewal plan may also provide for "*replacement of assets*", a procedure under which a part of the debtor's assets and obligations can be alienated to a newly established entity created by the debtor. Shares in such a newly

created entity can be included in the debtor's assets and sold at auction.

If the solvency renewal administrator fails to provide the solvency renewal plan to the court for approval within six months from the day of commencement of the solvency renewal proceedings, the court may recognize the debtor as bankrupt and commence the liquidation proceedings (i.e., the final stage of bankruptcy proceedings).

The court may also introduce liquidation proceedings with the relevant ruling at the request of the committee if the debtor has failed to restore its solvency in accordance with the solvency renewal plan.

It should be noted that the committee may ask the court to commence liquidation proceedings after the asset administration proceedings omitting the solvency renewal proceedings. Upon the introduction of liquidation proceedings the court appoints a liquidator, who acts as the head of the debtor. For the period of the liquidation proceedings other managing bodies of the debtor are not able to exercise their statutory powers.

In the liquidation proceedings the liquidator must determine the liquidation value of the debtor's assets, sell these assets and pay off the debt to the creditors in accordance with the order of priority for satisfaction of the creditors' claims as established by law.

Upon completion of the liquidation proceedings, the liquidator prepares a report, as well as the liquidation balance sheet of the debtor, and provides them to the court for consideration and approval. Based on the results of the liquidation proceedings the court may approve the report and the liquidation balance sheet of the debtor, dissolve the debtor and terminate the bankruptcy proceedings.

According to the *Bankruptcy Law* the term of liquidation proceedings is 12 months from the day of commencement.

At any stage of the bankruptcy proceedings the creditors and the debtor may enter into an amicable agreement with a view to restructuring and/or cancellation of the debt. However, first priority debt cannot be cancelled or restructured and the debt arising from mandatory pension and social security contributions cannot be cancelled by an amicable agreement.

The parties to the amicable agreement may agree on the transfer of the debt to third parties or the transfer of the debtor's assets or the corporate rights of the debtor to its creditors in exchange for the cancellation of the debt.

The amicable agreement is subject to approval by the committee, all secured creditors and the court and becomes effective from the day of a court ruling on approval of the amicable agreement. Upon approval of the amicable agreement, the court terminates the bankruptcy proceedings.

It should be noted that the amicable agreement may be invalidated by the court on the legal grounds provided by the Civil Code of Ukraine. Where the amicable agreement is invalidated, the court may reinstate the bankruptcy proceedings against the debtor.

The creditors may apply to the court for the termination of the amicable agreement in the event of non-performance of the agreement by the debtor with regard to not less than one-third of the total amount of debt. The termination of the amicable agreement for a specific creditor or creditors will not terminate the agreement for the rest of the creditors.

16.7 Priority of Claims

Amounts received from the sale of the bankrupt's assets are used to pay the claims of its creditors in the following order:

1. First priority:

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

    - Claims of creditors under insurance agreements; and

    - Claims for recovery of costs associated with the conduct of the bankruptcy proceedings.

2. Second priority:

    - Liabilities arising from the infliction of harm to the life or health of an individual, by means of capitalization of the respective payments, *inter alia*, to the Employment Injuries and Occupational Diseases Insurance Social Fund for the employees insured at this fund;

    - Liabilities relating to mandatory pension and social security contributions; and

    - Claims of individuals whose property or funds are deposited with the bankrupt (where the bankrupt is a trust company ("*dovirche tovarystvo*"), a bank or other credit-financial institution, or any other business entity attracting the assets of individual depositors).

3. Third priority:

    - Local and state taxes and other mandatory payments; and
    - Claims of the State Reserve Fund.

4. Fourth priority:

    - Claims of creditors not secured by pledge (mortgage) of the bankrupt's assets (other than claims of the fifth and sixth priorities), including claims which have arisen during the asset administration proceedings or solvency renewal proceedings.

5. Fifth priority:

    - Claims for repayment of the bankrupt's employees' contributions to the charter fund of the bankrupt;
    - Claims for the payment of additional remuneration to the solvency renewal administrator or the liquidator.

6. Sixth Priority:

    - Other remaining claims.

Higher priority claims must be satisfied in full before any lower ranking claims may be paid. In the event that the cash proceeds from the sale of the property are insufficient to satisfy all claims with equal priority, they must be satisfied *pro rata*. Claims not paid due to the insufficiency of funds in the liquidation proceedings are deemed extinguished. Any assets remaining after the satisfaction of the claims of the creditors are to be returned to the "owners" of the debtor (i.e., its shareholders or holders of its participatory interests) if the court decides to dissolve the debtor. The court is not able to dissolve the debtor if the remaining assets of the debtor exceed the amount of assets required by law for operation of the relevant legal entity.

Note that Ukrainian legislation establishes a special order of priority of satisfaction of creditors' claims for certain categories of debtors (including banks).

16.8 Clawback

There are a number of grounds on which transactions entered into by a Ukrainian debtor before or after the commencement of the bankruptcy may be challenged.

A challenge can be made in the bankruptcy proceedings by the bankruptcy administrator or by any of the competitive creditor. Such challenges can be made where:

- the debtor alienated its assets, assumed obligations or declined its claims without compensation;
- the debtor fulfilled its obligations before the due date;
- prior to commencement of the bankruptcy proceedings the debtor entered into an agreement that led to its insolvency;
- the debtor paid a creditor or accepted any property/assets as a set off of payment obligations of its contractor at which the debtor's assets became insufficient to satisfy creditors' claims;
- the debtor alienated or acquired property at a price which was lower or higher than the market price, provided that the debtor's assets were insufficient for the satisfaction of creditors' claims at that time;
- the debtor pledged its property to secure the fulfillment of pecuniary claims.

16.9 Criminal Liability

Under the *Criminal Code of Ukraine*, "allowing bankruptcy" is defined as intentional activity, with mercantile or personal motives or in the interest of third parties, of an individual shareholder (participant) or a corporate official of an enterprise that caused the financial incapability of such enterprise and substantial material damage (i.e., until 1 May 2016 exceeding UAH 689,000) to the state or a creditor, which is punishable with a monetary penalty of 2000 to 3000 times the monthly non-taxable salary (i.e., from UAH 34,000 to UAH 51,000) with a prohibition on occupying certain positions or conducting certain activities for a period of up to three years.

The *Criminal Code of Ukraine* as amended on 16 July 2015 provides for criminal liability for the falsification of information regarding contracts, obligations or property which is provided by a financial institution in its records or accounting documents and for disclosure of such information if such actions are aimed at concealing bankruptcy or persistent financial insolvency. The *Criminal Code of Ukraine* provides for punishment for such actions in the form of monetary penalty of 800 to 1000 times the monthly non-taxable salary (i.e., from UAH 13,600 to UAH 17,000) or imprisonment for up to four years with a prohibition on occupying certain positions or conducting certain activities for a period of up to ten years.

17. Consumer Protection and Product Liability

17.1 General

The principal legislative act in Ukraine in the area of consumer protection and product liability is the Law of Ukraine on Protection of Consumer Rights (the "*Consumer Rights Law*"), dated 12 May 1991, as amended. The core principles of the *Consumer Rights Law* have been further affirmed by the new Civil Code of Ukraine (the "*Civil Code*") and Commercial Code of Ukraine (the "*Commercial Code*"), both effective from 1 January 2004.

Under the *Consumer Rights Law*, producers of goods, providers of services, and merchants have the obligation to furnish consumers with goods and / or services that comply with the established quality standards, the terms of the agreement with the consumer, and the information about the goods / services provided by the producer / provider / merchant. In particular, the documents accompanying a product (if subject to mandatory certification in Ukraine) must indicate the number of the state certificate that confirms compliance of the product with the state certification requirements.

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

Furthermore, the *Consumer Rights Law* requires that a producer of goods must ensure the availability of maintenance services and of spare parts for their products for the duration of production of the product. After cessation of production, spare parts should be available for the service life of the product or, if this has not been established by the manufacturer, for a period of ten years. It also sets forth the obligations of producers (merchants) towards consumers with respect to the replacement of defective goods and warranty repairs. In particular, the consumer may demand 1) a proportional price reduction; 2) free defect correction within a reasonable time; 3)

reimbursement for deficiencies of a product if discovered during the warranty period. If the deficiencies are substantial or the purchased goods have been falsified then the consumer can 1) return the goods and receive full reimbursement; 2) require replacement of the defective goods.

Moreover, the consumer has the right to exchange non-food goods of appropriate quality for the same goods within fourteen (14) days if such goods do not satisfy him / her in shape, size, style, color, or for other reasons, or can not be used for the intended purpose so long as these good are not included in the list of goods that can not be exchanged approved by the Cabinet of Ministers of Ukraine.

In addition, in December 2010, the Law on General Safety of Non-Foodstuffs (the "*Law*") was adopted. The *Law* provides a framework for releasing goods to market and for ensuring the safety of any product that is not a foodstuff, whether imported or manufactured domestically. The safety of products is presumed as long as they conform to the Ukrainian state technical standards, which have been harmonized with the relevant EU regulations. If a national standard is non-existent certain other documents, including foreign standards, will be taken into account. The *Law* also establishes labeling requirements and user manual / safety instructions for non-foodstuff products and requires the withdrawal of such products from the market if other safety measures have failed.

To complement the *Law*, the Law on State Market Supervision and Control of Non-Foodstuffs was adopted concurrently. It establishes, *inter alia*, the procedure and criteria for quality testing of products and the conditions for the use of the National Sign of Quality. Also it describes in detail the powers of the relevant authorities in relation to safeguarding the safety of non-foodstuff products.

A number of technical regulations governing the quality of various groups of products (and harmonized with EU legislation) have been adopted since 2011. Most notably the Technical Regulation on Ecological Labeling (the "*Regulation*") was adopted in May 2011

pursuant to EU Regulation No. 66/2010 of 25 November 2009 on the EU Ecolabel. The *Regulation* must be followed by anyone wishing to use "green" or similar labeling on its products. It expressly prohibits the use of unclear or misleading "ecology friendly" markings that can lead consumers into believing that a product is certified as compliant with such labeling. This includes a prohibition on use the following phrases (among others): "green", "non-polluting", "environment friendly", "ecologically safe", etc., until the compliance of the relevant product or service with the *Regulation* is confirmed by an authorized body.

17.2 Liability for Damage Caused by Defective Goods (Services)

Under the applicable Ukrainian legislation, in particular the Law on Liability for Damage Caused by Defective Goods (the "*Defective Goods Law*"), the *Consumer Rights Law*, the *Civil Code*, damage suffered by a consumer with regard to his / her life, health, or property caused by a producer's (provider's) goods (services) must be indemnified in full by the person who inflicted the damage. The *Defective Goods Law* introduced a concept of "defective goods" into Ukrainian legislation. It defines "defective goods" as goods that do not meet the level of security that the consumer or user may expect taking into account all the circumstances, including those related to the development, production, transportation, storage, installation, maintenance, consumption, use, destruction (recycling) of these goods, as well as the warnings and other information related to such goods.

The right to claim damages, including "moral damages," a concept similar to "emotional pain and suffering" in Western jurisdictions, is vested in every affected consumer, regardless of whether such consumer had concluded a contract with the producer (provider / merchant). This right is deemed valid for the duration of the service life of the specific product or, if the service life of the product is unidentified, for ten years from the date of manufacture of the goods (production of the works, rendering of services). The only exceptions

to the above rule are cases where damage was inflicted due to the fault of the consumer or caused by force-majeure.

17.3 Liability for Violation of Consumer Rights and Enforcement

The applicable Ukrainian legislation provides for civil, administrative, and criminal liability for the violation of consumer rights. The scope of penalties envisaged by the *Consumer Rights Law* for the violation of consumer rights ranges from 1% to 500% of the cost of the goods manufactured or sold, or the services rendered. The *Consumer Rights Law* also sets a fine for the violation of consumer rights in the amount of 5 to 100 times the Statutory Tax Exempt Minimum (currently UAH 17), *i.e.*, UAH 85 - UAH 1,700 (approximately USD 3.4 - USD 68 or EUR 3 - EUR 60).

Meanwhile, the *Code of Ukraine on Administrative Offenses* sets a fine for the relevant offenses in the amount of 1 to 200 times the Statutory Tax Exempt Minimum, *i.e.*, UAH 17 - UAH 3,400 (approximately USD 0.7 - USD 136 or EUR 0.6 - EUR 121).

At the same time, a person will bear criminal responsibility under the *Criminal Code of Ukraine* for the intentional introduction of dangerous products (*i.e.*, those products that do not meet the safety requirements established by relevant laws and regulation) into the market of Ukraine if such acts are committed on a large scale (*i.e.*, the overall price of the dangerous products is not less than 500 times the Statutory Tax Exempt Minimum). The maximum penalties for criminal offenses in the area of consumer protection are 500-1000 times the Statutory Tax Exempt Minimum, *i.e.*, UAH 8,500 - UAH 17,000 (approximately USD 340 - USD 680 or EUR 303 - EUR 607) with a prohibition on holding certain positions or engaging in certain activities for up to three years.

The State Inspectorate of Ukraine on Food Safety and Consumer Protection (the “Inspectorate”) was formed in September 2015 and is subordinate to the Cabinet of Ministers of Ukraine. The Inspectorate is

responsible for the implementation of state policy in the areas of the state control of foodstuffs safety; veterinary, sanitary and phytosanitary safety; state control of metrology; consumer rights protection related advertising; and state control of compliance with applicable regulations and technical standards. Its headquarters are in Kyiv and there are local branches in regions of Ukraine. Its officers are authorized to carry out planned and *ad hoc* inspections of the quality of products or services (including in response to customer complaints), to impose administrative fines and to issue mandatory orders or suspend operations of a production or trading facility if any violations of consumer rights (e.g., poor quality of products or services) are detected.

17.4 Control Over the Quality of Food Products

The Law of Ukraine on Quality and Safety of Food Products (the "*Quality Food Law*"), dated 23 December 1997, as amended, sets requirements for producers, suppliers, and sellers of food products for the development, production, import, supply, storage, transportation, sale, usage, consumption, and utilization of these products. On 24 October 2002 the Verkhovna Rada (Parliament) introduced changes to the *Quality Food Law*, which modified these requirements. The *Quality Food Law* no longer applies to tobacco or tobacco products, or to food products manufactured for personal consumption.

Under the *Quality Food Law,* all food products produced in Ukraine must be safe and suitable for consumption, properly labeled and meet sanitary standards and technical regulations. To ensure the safety of produced food it is prohibited to use: 1) food additives that are not registered for use in Ukraine; 2) flavorings and related materials for production that are not registered for use in Ukraine; 3) dietary supplements that are not registered for use in Ukraine; 4) aids and materials for production and circulation that are not allowed for direct contact with food; 5) aids and materials for production and circulation that by their nature and composition may transfer contaminants to food; 6) use food ingredients in manufacturing, including agricultural

products, if they contain hazardous substances at levels that exceed the mandatory safety parameters.

On 2 December 2010, changes to the Law on Food for Children (the "*Children's Food Law*") tightened the requirements for the raw materials, permissible additives and the manufacturing of foodstuffs for children of various ages. In particular, raw materials can be used only if they were produced in a specially certified area and comply with the minimal safety and quality requirements established by the Ministry of Health. Certain raw materials may not be used for the production of food for children (e.g., hydrated soybean protein, certain oils, fish and meat). The manufacturing facilities must have a special certificate issued pursuant to the procedure established by the Cabinet of Ministers. Moreover, in the production of food for children, use of artificial substances is prohibited: flavors (except vanilla, vanilla extract and ethyl vanilla); dyes; sweeteners (except special-purpose food for children); food additives, stabilizers, and aromas.

On 6 January 2015, the Chief Inspector of Veterinary Medicine of Ukraine enacted an order approving the list of products of high and low risk for human and animal health (the "*Inspection Order*"). Under the *Inspection Order*, products posing a high risk to human and animal health are in category I (fresh and frozen meat and fish, eggs, etc.) and category II (poultry, milk and dairy products, honey and bee products, etc.). Low risk products such as milk and milk products (for processing, not for consumption as is), frogs' legs and snails, bone and bone products, etc. are in category III.

All products that are imported into Ukraine are subject to standard veterinary and sanitary control by way of examination of documents and visual inspection of the goods. If contradictions are revealed or there are suspicions about the safety of the products, laboratory examinations must be conducted. In some cases extended control is obligatory, including if: 1) the shipment is chosen for it in accordance with the program of selective veterinary and sanitary control; 2) the products in at least in one of the last five shipments of certain goods from certain production facilities were recognized as dangerous, unfit

for consumption, incorrectly labeled, or otherwise did not comply with the relevant technical regulations and sanitary measures; 3) obvious violations of the relevant sanitary requirements were revealed during the visual inspection; 4) the goods of this manufacturer or supplier are being imported into the customs territory of Ukraine for the first time.

17.4.1 Food Quality Assurance

Under the *Quality Food Law*, food products (except food products produced for personal consumption, tobacco or tobacco products) intended for human consumption may not be produced in or imported into Ukraine, or supplied for sale, sold, or otherwise used before their quality and safety have been proven by means of the appropriate documents. Among these documents are:

- A declaration of conformity issued by the producer of agricultural products, other products intended for human consumption, food additives, flavorings or related materials for processing that shall be issued before the relevant products are released to market. This declaration certifies the compliance of food, food additives, flavorings or related materials for processing if the requirements set by the producer are further observed by this producer;

- A certificate of compliance issued by the relevant chief state sanitary or veterinary doctor after an examination that certifies that food products are fit for human consumption;

- An expert (veterinary) conclusion issued by the state veterinary laboratory that certifies the suitability or unsuitability for human consumption of food products subject to veterinary control, or their subsequent processing or other use, as well as an analysis of the processing technology that should be employed by the producer and supplier to ensure food safety;

- An international veterinary (sanitary) certificate issued by the relevant state veterinary doctor in the state of export that stipulates special requirements pursuant to the instructions of the relevant international organization and certifies the state of health of animals and / or other requirements related to human health protection that every food product must comply with;

- Veterinary documents for food products for human consumption;

- An operational permit issued by the relevant chief public health doctor to the producer that is issued for each of the food production units used for production, processing and sale of food products.

In November 2010, the Ministry of Health of Ukraine enacted an order prescribing the list of food ingredients that must be tested for the presence of genetically modified organisms (the "*Order*"), *i.e.*, any organisms in which the genetic material has been altered using artificial gene transfer techniques that do not occur under natural conditions. The food ingredients that must be tested include soya, corn, potatoes, tomatoes, wheat, rice, sugar beet, melons, cotton and many other similar products and their derivatives. Among the products that must be tested are products for children and the raw materials used for their production, special dietary foods, special-purpose foods, dietary supplements, nutritional supplements that are produced with the use of ingredients specified in the *Order*.

17.4.2 State Product Examination

Under the Law of Ukraine on Ensuring the Sanitary and Epidemiological Well-Being of the Population, dated 24 February 1994, as amended (the "*Sanitary Law*"), particular food products are subject to state sanitary and epidemiological expert examination on food safety carried out by the state sanitary and epidemiological service in order to prevent, reduce and eliminate possible harmful effects on human health.

According to the *Quality Food Law*, all new food products, food products used for special diets, special-purpose food products, dietary supplements, food additives, flavorings and related materials, aids and materials for production, food imported to Ukraine for the first time (if the supplier does not have a valid conclusion of the state sanitary and epidemiological expert examination or a producer's declaration) are subject to mandatory sanitary and epidemiological expert examination. The procedure for state expert examination, except for new food products, may be completed within 30 working days following the receipt of a complete application for such examination. The state expert examination of new food products may be completed within 90 working days.

In addition, all food products of animal origin, projects for facilities that produce and circulate food products, production facilities that produce and circulate food products, facilities that produce and circulate food products with the purpose of obtaining or renewing an operational permit, facilities that produce and circulate food products for import and export, systems that ensure quality and safety at the facilities that produce and circulate food products are subject to sanitary and veterinary expert examinations.

Moreover, under the *Sanitary Law,* economic activities that are related to potential hazards to human health are subject to obligatory licensing. Under the Law on Licensing Particular Types of Economic Activities, dated 1 June 2000, among such activities are the production and sale of ethyl, cognac and fruit spirits, alcoholic beverages and tobacco.

Besides, pursuant to the *Quality Food Law*, all producers of food products must obtain an operational permit for each food production unit. This permit is issued to legal entities producing / trading food products by the relevant chief public health officer.

17.4.3 State Registration of Food Products

Under the *Quality Food Law*, food additives and flavorings that can be used in food production and released into the Ukrainian market are

subject to mandatory state registration. The Ministry of Health is in charge of the state registration of such food additives and flavorings. After state registration is carried out, the registered food additives and flavorings are included in a special register. The *Quality Food Law* provides for the expedited registration of both food additives and flavorings, if these particular food additives and flavorings are approved for use by the relevant international organizations. In the event of the expedited registration of food additives and flavorings, the registration should be completed within 30 working days. For comparison, the ordinary registration procedure may take up to 120 working days.

Under the *Children's Food Law*, all food products for children either produced in Ukraine or imported into Ukraine are subject to obligatory state registration.

Food products for special diets, special-purpose food products and dietary supplements are no longer subject to state registration, except for novel (non-traditional) food products, which must be registered.

17.4.4 State Certification of Products

Only tobacco products are currently subject to state certification. Since 2015, all food products have been exempt from such certification.

17.4.5 Labeling Requirements

The *Quality Food Law* establishes labeling requirements for food products. Such labeling must be in Ukrainian and convey the required information in a manner intelligible for consumers. Such labeling should indicate 1) the name of the food product; 2) the name and full address / telephone number of the food production unit (the name and full address / telephone number of the importer); 3) the net quantity of food in the established units; 4) the food ingredients in order of significance, including food additives and flavorings used during production; 5) the amount of calories and nutritional value indicating the protein, carbohydrates and fats; 6) the final consumption date, or

date of production and expiry date; 7) the number of the lot of goods; 8) the conditions of storage and use; 9) the warning that the consumption of certain food products may be harmful for certain groups of consumers (such as children, pregnant women, sportsmen, etc.); 10) the presence or absence in food of genetically modified organisms (the product should be labeled "contains GMO" or " GMO free" respectively).

The *Quality Food Law* provides that the description of special symbols used in the labeling and marking of food products with a bar code must be carried out in the manner provided by the Cabinet of Ministers. The text for labeling food products for special dietary needs, special-purpose food products and food additives is subject to obligatory confirmation by the Ministry of Health of Ukraine.

Law of Ukraine No. 1778-VI, dated 17 December 2009, introduced the requirement for provision of information about the presence of genetically modified objects in products into the *Quality Food Law*. At present the information about food products must contain a statement on the presence or absence of genetically modified components. Food products must be labeled in Ukrainian and must convey the information about the presence or absence of genetically modified objects (GMOs) in the food in a manner which is intelligible for consumers and which is achieved by placing the words "Contains GMO" or "GMO free", as the case may be, on the label of the product.

Under the Order on Labelling Food Products Containing Genetically Modified Organisms, labeling food products that do not contain genetically modified organisms or whose content is less than 0.1 % with the words "GMO free" is voluntary. Food products that contain more than 0.9 % of genetically modified organisms, or have been produced from agricultural products in which the amount of genetically modified organisms exceeded 0.9 %, must have these facts stated on the label, or , the producer (seller) must withdraw such products from the market. In February 2011, in furtherance of the provisions of the *Quality Food Law*, a detailed technical regulation for

labeling foodstuffs was introduced by the State Committee on Technical Regulation and Consumer Policy. In particular, under this technical regulation, the labeling of food products shall 1) contain no information that can mislead the consumer; 2) include information that particular food products can contribute to the prevention, healing and treatment of any disease, or refer to such properties (except for natural mineral waters and foodstuffs for special dietary needs, special-purpose food products and dietary supplements).

17.4.6 Hazard Analysis and Critical Control Point System

Under the *Quality Food Law*, subjects of entrepreneurial activity (defined as individuals and legal entities which engage in economic activities) connected with the production of food products, food additives, flavorings, dietary supplements and other related materials shall apply the international system of food products quality assurance "Hazard Analysis and Critical Control Point" ("*HACCP*") at their enterprises and / or other systems to ensure the safety and quality of the production and release of food products onto the market.

17.4.7 Limitation on Consumption of Alcohol and Tobacco

In January 2010 the Verkhovna Rada of Ukraine adopted restrictions on consumption of alcohol and tobacco (the "*Amendments*"), including special labeling requirements, zoning and other rules for sales of these products. Under the *Amendments*, low-alcohol beverages have the legal status of alcohol. Moreover, all restrictions regarding alcohol consumption and sales are currently applied with regard to low-alcohol beverages. Also, amendments to the Administrative Violations Code have been made whereby specific liability for violation of the abovementioned restrictions has been established.

17.4.8 Prohibition on Non-Milk Ingredients in Traditional Dairy Products

In May 2013, amendments to the Law on Milk and Dairy Products expressly prohibited the use of any non-milk derived proteins or fats,

as well as any stabilizers and preservatives, in traditional dairy products. These include butter, cheese, and various types of fermented milk products (yoghurts). Imported dairy products are subject to control in this respect prior to customs clearance.

17.5 Developments in Legislation to Come into Effect in 2016

17.5.1 New version of the Quality Food Law effective from 20 September 2015

On 22 July 2014, the Verkhovna Rada of Ukraine adopted the Law on Amendments to Certain Legislative Acts of Ukraine Regarding Food Products, which is effective from 20 September 2015. In particular, the *Quality Food Law* was replaced by a new version. It aims 1) to harmonize the legislation of Ukraine with the EU legislation in the field of safety and food quality; 2) to ensure a high level of protection of human health and consumer interests; 3) to create transparent conditions for business; and 4) to improve the competitiveness of domestic foods and reduce their prices. It clarifies terminology, types of offenses and penalties, cancels some permits and procedures pursuant to the EU legislation.

The most significant changes effective from 20 September 2015 are the following:

(1) An operating permit is needed by only production facilities for the production and / or storage of food products of animal origin (*i.e.*, milk, meat, fish and shellfish, including fresh, chilled or frozen, eggs, honey, derivatives and other products made from animal parts, their organs and / or tissues intended for human consumption).

(2) If it is not necessary to obtain an operating permit, the production facilities can be registered at any stage of the production and / or circulation of food products;

(3) The list of products subject to state registration has been extended. In particular, new food products, nutritional supplements, flavorings, enzymes, processing aids and materials in contact with food that are released onto the Ukrainian market for the first time; drinking water that is classified as "natural mineral water";

(4) Application of *HACCP* is obligatory. For a breach regarding the implementation of *HACCP*, legal entities will pay a fine of from 30 to 75 times the minimum monthly salary, *i.e.*, UAH 36,540 - UAH 91,350 (approximately USD 2,327 - USD 5,793 or EUR 1,975 - EUR 4,938). For the same violations individual entrepreneurs will pay a fine of from 3 to 15 times the minimum monthly salary, *i.e.*, UAH 3,654 - UAH 18,270 (approximately USD 232 - USD 1,159 or EUR 198 - EUR 988). However, this requirement does not apply to primary production and related activities (transportation, storage, etc.).

17.5.2 New Law on Standardization effective from 3 January 2015

On 3 January 2015 the Law of Ukraine on Standardization (the "*Standardization Law*") of 5 June 2014 came into effect. Under the *Standardization Law*, among the objects that are subject to standardization are the following: 1) materials, components, equipment, systems, their compatibility; 2) rules, procedures, functions, methods, activities or their results, including products, control systems; 3) requirements for terminology, symbols, packaging, marking, labeling, etc. It does not apply to sanitary measures regarding food safety; veterinary, sanitary and phytosanitary measures; construction standards; pharmaceuticals; health care standards; accounting; assessment of property, education and other social standards.

The *Standardization Law* provides for the establishment of a national standardization body (the "*Standardization Body*") that is in charge of the realization of state policy in the field of standardization. The powers of the *Standardization Body* include organization and

coordination in the field of standardization, approval of the schedule of standardization, adoption and cancellation of national standards, including the establishment and termination of technical committees on standardization, representation of Ukraine in international regional organizations.

In addition, the *Standardization Law* envisages two levels of standardization: 1) national standards that are adopted by the *Standardization Body* (application is voluntary, unless otherwise expressly provided for in the relevant legislative acts); 2) standards and technical standards that are adopted by enterprises (application is voluntary).

The existing USSR standards (GOST), the standards of the Ukrainian Soviet Socialist Republic (PST USSR), codes of practice and technical standards that were adopted before the *Standardization Law* became effective, as well as the industry standards (OST) and other similar regulations of the former USSR, the industry standards of Ukraine (GSTU) shall be applied until they are replaced by national standards or codes of practices, or cancelled, which must take place within 15 years of the enactment of the *Standardization Law*. At the same time, the application of industry standards is voluntary unless it is expressly required by the relevant legislative acts.

17.5.3 Technical Regulations and Conformity Assessment Law

On 15 January 2015, the Verkhovna Rada of Ukraine enacted a new Law of Ukraine on Technical Regulations and Conformity Assessment (the "*Technical Regulations Law*") pursuant to the obligations of Ukraine under the Agreement on Technical Barriers to Trade of 1994. The *Technical Regulations Law* is a consolidation of the Law of Ukraine on Conformity Assessment and Law of Ukraine on Standards, Technical Regulations and Conformity Assessment Procedures. Overall the *Technical Regulations Law* will come into effect a year following the day when it is published (publication pending as of 20 January 2015), except certain provisions that will come into effect during 2015. It establishes unified legal and

organizational principles for the development, adoption and application of technical regulations and conformity assessment procedures. The *Technical Regulations Law* is applicable to all products except artwork and unique items of folk art and crafts; collectibles and antiques. However it is not applicable to sanitary and phytosanitary measures; conformity assessment of the quality of grain and grain products, seeds and planting material; conformity assessment of wheeled vehicles and their parts; mandatory conformity assessment of services, etc.

The *Technical Regulations Law* extended the concept of "technical regulation". It is defined as a legal act that stipulates the characteristics of products or related processes and production methods, including the relevant administrative provisions the observance of which is mandatory. It may also include requirements for terminology, symbols, packaging, marking or labeling in so far as they apply to a product, process or production method. In the previous *Technical Regulations Law* technical regulation was limited only to the laws of Ukraine and legal acts adopted by the Cabinet of Ministers of Ukraine.

The purpose of technical regulations is to protect the life and health of people, animals and plants, the environment and natural resources, energy efficiency, property, national security and prevent business practice that defrauds consumers. However the legislation may specify other purposes of the adoption of technical regulations.

Technical regulations can be developed on the basis of both 1) international standards (except when such international standards or their relevant parts are ineffective, or use improper means to achieve the purposes of the relevant technical regulations); and 2) regional standards, national standards of Ukraine and other states, legislative acts of the EU and other economic groups, or other states, or the relevant parts of such standards and legislation. At the same time the *Technical Regulations Law* expressly stipulates that all technical regulations in Ukraine shall be developed, adopted and applied on the

basis of the principles established by the WTO Agreement on Technical Barriers to Trade of 1994.

Moreover, when technical regulations are developed on the basis of an EU legislative act, their content, form and structure should fully and accurately reflect the content, form and structure of the EU legislative act on the basis of which it is developed. All products must comply with the requirements stipulated in the relevant technical regulations, unless otherwise specified in the relevant technical regulation or the legal act that enacted this technical regulation.

The *Technical Regulations Law* also sets out the requirements for the conformity assessment procedure, the application of which is provided for by the relevant technical regulations. Such conformity assessment procedures shall be developed, adopted and applied on the basis of the principles established by the WTO Agreement on Technical Barriers to Trade of 1994. The conformity assessment procedures can be developed on the basis of 1) the guidelines or recommendations of international standardization organizations, except when they are inconsistent with the protection of life or health of humans, animals or plants, the environment or natural resources, energy efficiency, the protection of property, national security, the prevention of business practices that defraud consumers; 2) the guidelines or recommendations of regional standardization organizations, legislative acts of the EU and other economic groups, or other relevant states.

The assessment of conformity with the requirements of the technical regulations is carried out in the cases and through the use of the conformity assessment procedures defined in the relevant technical regulations. These procedures are performed by the producers or by the importers or distributors (when this obligation is imposed on them by the relevant technical regulations).

In addition, the technical regulations may provide for:

(1) A declaration of conformity with the technical regulations. In this case, the producer or its authorized representative shall

issue a declaration of conformity claiming that the requirements applicable to the products defined in the relevant technical regulation have been met. If several technical regulations are applied with regard to one product and they provide for the issuance of a declaration of conformity, the producer or its authorized representatives shall issue one declaration to cover the conformity of the products with all the technical regulations. The producer, by virtue of issuance of the declaration of conformity, undertakes responsibility for the conformity of the products with the requirements laid down in the relevant technical regulations;

(2) The labeling of the products with the mark of conformity with the technical regulations. The terms and conditions of the labeling are established in the technical regulations. When such terms are not established, the Cabinet of Ministers of Ukraine shall adopt the relevant labeling terms.

18. Industry Regulation

18.1 Banking

18.1.1 Ukrainian Banking Sector

The Ukrainian banking sector has a two-tier structure made up of the National Bank of Ukraine (the "**NBU**") and commercial banks of various types and forms of ownership. The banks act in accordance with the *Constitution of Ukraine*, the *Civil Code of Ukraine;* the *Commercial Code of Ukraine*, the *Law of Ukraine On the National Bank of Ukraine* dated 20 May 1999 (the *National Bank Law*), the *Law of Ukraine On Banks and Banking Activity* dated 7 December 2000 (the *Banking Law*), and the *Law of Ukraine On Financial Services and State Regulation of the Financial Services Markets* dated 12 July 2001 for non-banking financial services, the Ukrainian legislation on joint stock companies and other business entities, as well as the NBU regulations and their respective constituent documents. In 2015 the NBU together with other financial regulators (the Financial Services Commission and the National Securities and Stock Market Commission) adopted a comprehensive program of reforming the financial services markets by 2020, which includes significant reforms in the regulation of the Ukrainian banking sector.

18.1.2 Role of the National Bank of Ukraine and Monetary Policy

The NBU is the central bank of Ukraine. Established in 1991 and governed by the *Constitution of Ukraine* and the *National Bank Law*, the NBU is a specialized state institution with the principal objective of ensuring the external and internal stability of the national currency and possessing broad regulatory and supervisory functions in the banking sector. The NBU is empowered to develop and conduct monetary policy, organize banking settlements and the foreign exchange system, ensure stability of the monetary, financial and banking systems of Ukraine, regulate and oversee the activity of payment systems and protect the interests of commercial bank depositors.

The principal governing bodies of the NBU are the Council and the Board. The Council, the highest governing body of the NBU, consists of nine members, four of whom are appointed for a seven-year term by Parliament and four of whom are appointed for a seven-year term by the President. The Chairman of the NBU is nominated by the President and appointed by Parliament and acts *ex officio* as the ninth member of the Council during his/her term of office. However, the Chairman of the NBU can not be elected as the Chairman of the Council. The Chairman of the Council is elected among the other members of the Council for a three-year term. The Council is charged, in particular, with developing the principles of Ukraine's monetary policy pursuant to the recommendations of the Board. The Board, which is comprised of the Chairman, and his or her deputies, is responsible for implementing Ukraine's monetary and other policies in the banking sector and generally managing the activity of the NBU.

The NBU is charged with implementing monetary policy. Currently the NBU implements monetary policy through instruments such as mandatory reserve requirements for banks, interest rates, refinancing of commercial banks, deposit operations, and reverse repo operations. The main channel for the release of funds into circulation is the foreign currency market. With signs of the economy beginning to stabilize after the financial crisis in 1998 and the ensuing economic instability in the region, the NBU reduced the discount rate from 45% at the beginning of 2000 to 12.5% by the end of 2001, and 7% in December 2002. Since then, the NBU has gradually increased the discount rate to 9.5% (effective as of 10 August 2005) and then decreased it to 8.5% (effective as of 10 June 2006), and to 8% (effective as of 1 June 2007). As of 1 January 2008, due to macroeconomic and monetary indicators, the discount rate was raised to 10% and as of 30 April 2008 it was raised again to 12% and as of 15 June 2009 it was decreased to 11% and finally decreased to 10.25% as of 12 August 2009. As of 8 June 2010, due to an increase of macroeconomic and monetary indicators, the discount rate was decreased to 9.5%, than it was decreased to 8.5% as of 8 July 2010 and it was further decreased to 7. 75% as of 10 August 2010. The discount rate was further decreased to 7.5% as of 23 March 2012, then

to 7.0% as of 10 June 2013 and to 6.5% as of 13 August 2013. In 2014 the discount rate increased to 9.5% as of 15 April 2014, then to 12.5% as of 17 July 2014 and to 14.0% as of 13 November 2014. In 2015 the discount rate increased to 19.5% as of 2 February 2015, then to 27% as of 28 August 2015 and to 22% as of 30 October 2015.

Since 1 March 2004, the NBU has been separately determining interest rates on overnight unsecured loans and overnight loans secured by state securities and setting separate interest rates on deposits from banks placed with the NBU for various terms. Interest rates on overnight unsecured loans (10.5% as of 1 November 2006), increased to 25% (effective as of 25 December 2008), then decreased to 17% (effective as of 13 January 2010), further decreased to 13.5% (effective as of 8 March 2010), then decreased to 10.75% (effective as of 11 August 2010) and starting from 8 October 2010 rose to 11.25% and remained unchanged in 2011. Interest rates on overnight unsecured loans decreased to 11.00% as of 23 January 2012, to 10.75% as of 14 February 2012, to 10.50% as of 23 March 2012 and to 10.00% as of 10 June 2013. The NBU ceased to set the interest rates on overnight unsecured loans from 12 June 2013. Overnight loans secured by state securities (9.5% as of 1 November 2006), increased to 22% (effective as of 25 December 2008) and then decreased to 15.5% (effective as of 13 January 2010), further decreased to 12.5% (effective as of 8 March 2010), then decreased to 8.75% (effective as of 11 August 2010) and starting from 8 October 2010 raised to 9.25%. They further decreased to 9.00% as of 23 January 2012, to 8.75% as of 14 February 2012, to 8.50% as of 23 March 2012, to 8.00% as of 10 June 2013 and to 7.50% as of 14 August 2013. For example, as of 1 November 2006, the interest rates for 14 day and 30 day deposits were 0.5% and 1% respectively. Since 2007 the NBU has ceased to set the latter interest rate and started determining interest rates on depositary certificates. For example, as of 31 December 2008, the interest rates for 5 day and 14 day certificates were 12% and 25% respectively, as of 13 January 2010, the interest rates for 2 day and 7 day certificates were 2% and 8% respectively and as of 25 January 2011 the interest rates for 2 day and 14 day certificates were 0.2% and 2% respectively. As of 28

December 2011, the interest rate for 7 day certificates was 2.5% and as of 30 December 2011 the interest rates for 5 day and 14 day certificates were 2.5% and 3.2% respectively. Interest rates remained unchanged in 2012. As of 17 December 2013, the interest rates for 7 day and 14 day certificates were 2.25% and 3.00% respectively. As of 16 December 2014, the interest rates for 7 day and 14 day certificates were 11.00% and 11.50% respectively. As of 10 December 2015, the interest rates for 7 day and 14 day certificates were 19.0% and 22.0% respectively.

The main goal of the NBU's monetary policy for 2016-2020, as declared by the NBU, is to achieve and maintain price stability in Ukraine. The main contribution for achieving stable economic growth would be the low stable growth of inflation, which will be shown by the consumer price index being within 5% per year. In order to achieve this goal the NBU will take inflation targeting measures, which is considered as one of the most effective monetary regimes to provide for low and stable inflation.

New amendments to *Law of Ukraine On the National Bank of Ukraine* and certain other legislation came into effect on 17 July 2015 with the aim of further extending the institutional capacity of the NBU and to strengthen the independence of the NBU.

18.1.3 Commercial Banks

Current Ukrainian legislation distinguishes between "universal" (general) commercial banks and "specialized" commercial banks, with the latter including savings and asset management banks.

On 7 February 2015 new amendments to the *Banking Law* on preventing and counteracting the legalization (laundering) of criminal proceeds and financing of terrorism came into effect. The changes provided more detail on the procedure for identification and verification of banks' clients. On 11 July 2014, new amendments to the *Banking Law* came into effect whereby the minimum statutory capital requirement for all new banks at the moment of registration is established at UAH 500 million. Banks that are established before the

law came into effect are required to comply with this requirement by 2024.

On 4 October 2006 the *Banking Law* was amended to provide that banks should be established only in the form of an open joint stock company or cooperative bank (*i.e.*, banks could not be established in the form of a closed joint stock company or limited liability company). The banks established as closed joint stock companies or limited liability companies were to be reorganized into open joint stock companies within three (3) years after the entry into force of the amendments to the *Banking Law*. However, on 29 April 2009 the new law "*On Joint Stock Companies*" came into effect, providing for two new types of joint stock companies, i.e. public and private. Finally, on 5 August 2009, the new amendments to the *Banking Law* came into effect providing that banks should be established only in the form of a public joint stock company or cooperative bank.

The regulatory capital (*i.e.*, the sum of principal (core) capital and additional capital) cannot be less than the minimum statutory capital requirement and the minimum regulatory capital requirements established by the NBU. On 18 December 2014 new amendments to the Banking Regulation Instruction came into effect whereby the minimum regulatory capital of a bank that obtained a banking license after 11 July 2014 cannot be less than UAH 500 million. The minimum regulatory capital of a bank that obtained a banking license before 11 July 2014 should be as follows:

- UAH 120 million – before 10 July 2017;
- UAH 150 million – starting from 11 July 2017;
- UAH 200 million – starting from 11 July 2018;
- UAH 250 million – starting from 11 July 2019;
- UAH 300 million – starting from 11 July 2020;

- UAH 350 million – starting from 11 July 2021;
- UAH 400 million – starting from 11 July 2022;
- UAH 450 million – starting from 11 July 2023;
- UAH 500 million – starting from 11 July 2024.

On 30 December 2014, the Law of Ukraine "*On Measures Aimed at Facilitation of Banks' Capitalization and Restructuring*" *(*the "*Bank Restructuring Law*") came into force which will be effective until the Verkhovna Rada of Ukraine adopts a decision on its invalidity, which should be taken no later than 1 January 2017.

Under the *Bank Restructuring Law*, banks which require additional capitalization, according to the results of a diagnostic investigation carried out at the expense of the bank by the audit firm determined by the NBU and at the request of the NBU, are obliged to carry out capitalization and/or restructuring or re-organization of the bank to ensure that the bank complies with the capital adequacy requirements.

Should the bank fail to provide a program of capitalization or restructuring plan which is compliant with the NBU requirements, the NBU will take the decision either to: (1) submit a proposal to the NBU on capitalization of the bank; (2) or classify it as being insolvent.

Until the *Bank Restructuring Law* comes into effect, banks are prohibited from: (1) distributing net profit (accrual, payment of dividends, including dividends under privileged shares) other than distributing net profit for the purposes of increasing the bank's charter capital and forming the reserve fund, payment by state-owned banks of dividends to the state budget of Ukraine; and (2) buying out their issued shares.

On 8 March 2015, the Law of Ukraine "*On Amendments to Certain Legislative Acts of Ukraine Regarding Liability of Bankers*" dated 2

March 2015 (the "*Liability Law*") came into force. The purpose of the *Liability Law* was (i) to strengthen the liability of bank-related persons, i.e. primarily bank managers and beneficial owners of the banks who make decisions that affect the financial positions of banks ("bankers"), (ii) improve banking supervision and (iii) protect the interests of depositors and creditors.

The *Liability Law* requires an individual who owns a qualifying holding in a bank (i) to notify the NBU within one month upon entry into force of the *Liability Law* about such holding, and (ii) to disclose to the NBU all related documents within three months of the *Liability Law* entering into force.

Banks are also required to disclose to the NBU their updated ownership structures within two months of the *Liability Law* entering into force. On 21 May 2015 the NBU adopted the procedure for disclosing such structures. In addition, banks will have to submit the following to the NBU: (i) information regarding persons related to the banks, (ii) reports on transactions with bankers and (iii) a calculation of credit risk ratios for transactions with bankers.

In addition, the *Liability Law* expands the list of persons related to a bank and requires that an agreement with such persons must be entered into based on the current market conditions and indicates which transactions are to be regarded as not compatible with current market conditions. According to the *Liability Law*, a person related to a bank whose actions or omissions result in damage to a bank, will be liable for such actions or omissions with his/her property. If another such related person benefited directly or indirectly from the actions or omissions of a bank-related person, which caused damage to a bank, such persons are jointly and severally liable for the damage caused to the bank. The Deposit Guarantee Fund is authorized to seek redress for such damage in court from such persons.

18.1.4 Banks with Foreign Participation and Branches of Foreign Banks

A foreign bank may establish a presence in Ukraine through a representative office (with no right to conduct banking business) and/or a Ukrainian commercial subsidiary bank.

Foreign participation in a Ukrainian commercial bank is not limited (albeit previously Ukrainian legislation established a threshold of 35% of the charter capital); however the prior permission of the NBU is required for the establishment of a commercial bank with foreign participation, or for the "conversion" of an existing commercial bank into a bank with foreign participation. Notwithstanding that the applicable legislation does not limit the allowed participation in the charter capital of a commercial bank to any maximum threshold (unlike the previously established threshold of 35% of the charter capital), the permission of the NBU is still required for a Ukrainian or foreign legal entity, or individual, to directly or indirectly own, hold, or control various thresholds of a commercial bank's charter capital or voting rights in its governing body, *i.e.*, 10% or more, 25% or more, 50% or more, or 75% or more. At each threshold, a new permission of the NBU must be obtained.

On 19 December 2011 the three Ukrainian financial regulators[6] (the NBU, the NSEC and the FSMC) became endowed with new authority to supervise not only banks and non-banking financial institutions in Ukraine, but also their related parties and their ultimate beneficial owners ("**UBOs**").

The financial regulators became vested with much wider powers to supervise the activities of banks and financial institutions, and also to restrict transactions of banking and non-banking financial groups in certain cases.

[6] The NBU, the National Securities and Stock Exchange Commission ("**NSEC**"), and the National Commission for Regulation of Financial Services Markets ("**FSMC**")

The relevant changes were adopted by the Verkhovna Rada on 19 May 2011 by virtue of Law of Ukraine No. 3394-VI "*On Amendments to Certain Laws of Ukraine Regarding Supervision on a Consolidated Basis*" (the "**Amendments**"), which came into effect on 19 December 2011. The Amendments establish consolidated control over banking and non-banking financial groups, which implies, *inter alia*, the following:

(1) From 19 December 2011 the NBU, the SSEC and the FSMC have the right to establish certain additional requirements, including restricting a banking or non-banking financial group or its participants from carrying out certain activities or transactions in Ukraine or in other countries if the relevant national regulator considers such activities or transactions to be too risky;

(2) The UBOs of a financial group must appoint an entity from among the group's participants to be responsible for the group's fulfillment of the requirements established for the group on a consolidated basis, notifying the group's national regulator about the group's ownership structure or business activities, including any changes, and for preparation of consolidated reporting information. This entity should be approved by the national regulator of the group (the NBU, the SSEC or the FSMC);

(3) No participant of a banking group may hold corporate rights/shares in one of the group's non-financial institutions constituting more than 15% of the consolidated regulatory capital of the whole group, or in all such entities constituting more than 60% of the consolidated regulatory capital of the group;

(4) Participants of a banking group may carry out transactions generating a credit risk (the list of such transactions is yet to be approved by the NBU) for their non-financial institutions in an amount not exceeding 20 per cent of the consolidated

charter capital of the whole group, or in an amount not exceeding 5 per cent of the consolidated charter capital of a single entity of the group;

(5) Banks are prohibited from creating branches, representative offices or subsidiary banks in countries in which banking supervision and control does not comply with the Basic Principles of Effective Banking Supervision of the Basel Committee on Banking Supervision. If a Ukrainian commercial bank has an operating branch, representative office or subsidiary bank in such a country, it will be obliged to decrease participation in the capital of the subsidiary bank or to close such branch, representative office or subsidiary bank; and

(6) The NBU is authorized to force a banking group to change its ownership structure if it is unclear to the NBU, or if the NBU is unable to control the transactions of the group.

Additional sanctions may be imposed on a banking group, such as prohibiting a bank from carrying out transactions with its related entities for a breach of the banking legislation, not only by the bank itself but also by any participant of the banking group.

In view of the adopted Amendments, any group of companies having in its composition two or more banks or non-banking financial institutions should determine whether its activity may be classified as principally banking or non-banking financial services and, therefore, whether the group should submit to banking and non-banking supervisory control by the relevant regulator. The ultimate responsibility for taking such a decision under the Amendments now rests with the UBOs.

The NBU, as the principal author of the Amendments, has publicly announced that the Amendments are directed at ensuring financial stability and protection of the interests of banks' depositors and investors in financial institutions.

18.1.5 Types of Banking Activities

A commercial bank carries out its banking activities pursuant to a banking license issued by the NBU. A banking license permits a bank to: attract funds (deposits) from legal entities and individuals; open, maintain, and carry out transactions with current accounts of clients and correspondent banks; and place attracted funds in its own name, on its own terms, and at its own risk. Only a duly licensed commercial bank may carry out all of the foregoing except for certain banking operations which may be carried out by the Central Securities Depository based on the license of the NBU. A duly licensed commercial bank may also render financial services to its clients (save for other commercial banks), including through its commercial agents based on agency agreements. The list of such services is set out by the NBU.

In addition a duly licensed commercial bank may also carry out the following additional activities:

- the issuance of its own securities;
- the provision of safekeeping services (but not including the custody of securities);
- the rendering of consulting and information services related to banking and other financial services;
- investments;
- the organization of monetary lotteries; and
- the transportation of currency valuables and cash collection.

A duly licensed commercial bank may also render banking and other financial services in foreign currencies, which constitute foreign currency operations, only on the basis of a general license for carrying out foreign currency operations issued by the NBU.

18.1.6 Loan Provisioning

Banks must meet mandatory provisioning requirements to cover net loan risks. In order to build up appropriate provisioning banks must evaluate risks relating to the relevant borrowers. Some loan products, such as loans provided to entities affiliated with a bank and funds transferred to the NBU (e.g., under direct repo transactions), do not require any provisions. Ukrainian legislation sets forth separate provisioning requirements for loans extended to legal entities, banks, budget institutions as well as for consumer loans.

Loan provisioning requirements are determined by banks on the basis of the formulae set out in the applicable NBU regulation. The respective formulae take into account the degree of credit risk of any particular borrower, which is also determined in accordance with a formula applicable to a particular type of borrowers.

18.1.7 Competition

As of 1 November 2015, 119 commercial banks had been granted licenses by the NBU to perform banking transactions. As of the same date the total net assets of all commercial banks in Ukraine amounted to UAH 1316.85 billion (approximately US$ 57.4 billion/EUR 52.61 billion). As of 1 November 2015, their credit portfolio (including interbank loans) amounted to UAH 934.54 billion (approximately US$ 40.8 billion/EUR 37.33 billion).

According to the NBU, during the ten months ending 31 October 2015, the statutory capital of Ukrainian banks having licenses to perform banking operations increased by 6.9%, amounting to UAH 185.24 billion as on 1 November 2015, (compared to a 2.7% decrease in statutory capital during the previous twelve months in 2014). During the ten months ending 31 October 2015, the total assets and total liabilities of Ukrainian banks having licenses to perform banking operations decreased by 5.3 and increased by 0.3%, respectively (compared to increases of 3.1 per cent. and 8 per cent., respectively, in 2013). The regulatory capital of Ukrainian banks decreased by

approximately 35.6% during the ten months ending 31 October 2015, amounting to UAH 121.68 billion.

In 2015 commercial banks operating in Ukraine were divided by the NBU into four groups according to their asset size. Specifically, as on 6 January 2015, 16 major banks with total assets of more than UAH 21 billion were classified in the first group. 19 banks with total assets of more than UAH 6 billion were classified in the second group, 33 banks with total assets of more than UAH 3 billion were classified in the third group and 95 banks with total assets of less than UAH 3 billion were classified in the fourth group.

As on 1 October 2015 two of the largest banks in Ukraine, namely the Ukrainian Export-Import Bank (Ukreximbank) and the State Savings Bank of Ukraine (Oschadsbank), are state-owned and have approximately 23.8 per cent of the Ukrainian banking sector's total assets. As of 1 November 2015, 40 banks in Ukraine had some foreign capital of which 18 were fully foreign owned. Banks with foreign capital comprise over 37.8% of the total statutory capital of banks in Ukraine, as on 1 November 2015. According to NBU information there are no plans to limit the amount of foreign capital in the Ukrainian banking sector.

18.1.8 Consumer Protection

In 2007 the NBU adopted regulations on mandatory disclosure to individual customers of the essential information relating to consumer loans by Ukrainian commercial banks. According to the NBU Regulation "*Rules Governing Disclosure of Consumer Information by Ukrainian Banks on Consumer Loans Terms and the Overall Cost of Credit*", approved by NBU Resolution No. 168 dated 10 May 2007, all banks are required to disclose the effective rate of interest under loans granted to individual consumers in the text of the loan agreement. Also, banks are required to obtain written confirmation from the consumer stating that he/she has received all the information from the bank relating to the terms and conditions of the loan and, specifically, the costs of the loan to the consumer.

Additionally, on 22 September 2011 Parliament adopted amendments to the Civil Code of Ukraine, whereby banks may now apply either fixed or floating interest rates in relation to a loan agreement. Fixed interest should remain unchanged during the life of the loan and banks are not allowed to change it unilaterally. If the agreement contains a clause saying it can be changed unilaterally, then this clause is regarded as void *ab initio.*

The same amendments introduced changes to the Law of Ukraine "*On Protection of Consumers' Rights*" whereby banks are now prohibited from issuing consumer loans denominated in foreign currency and imposing any additional fees, interest, commission and other payments relating to activities which do not fall within the definition of the service under this law.

18.1.9 Regulatory Requirements

In November 2011 new rules for registration and licensing of banks, their branches and representative offices and for informing the NBU about the ownership structure of banks (the **"Rules"**) came into effect.

The Rules replace NBU's Regulation No. 275[7] and Regulation No. 375[8] and reflect changes introduced into the *Banking Law*[9] in 2011. However, the Rules introduce some additional requirements that directly affect the owners of substantial interests in banks and non-banking financial institutions.

The Rules were adopted by the NBU on 8 September 2011 by virtue of Regulation No. 306 "*On Approval of Certain Regulatory Acts of the*

[7] NBU Regulation "*On Approval of the Regulation on the Procedure for Issuance of Banking Licenses, Written Permits and Licenses for Certain Transactions to Banks*" No. 275 dated 17 July 2001.

[8] NBU Regulation "*On Approval of the Regulation on the Procedure for Incorporation and State Registration of Banks, Opening Branches, Representative Offices and Divisions*" No. 375 dated 31 August 2001.

[9] Law of Ukraine "*On Banks and Banking Activity*" No. 2121-III dated 7 December 2000 as further amended.

National Bank of Ukraine" ("**NBU Regulation No. 306**"), which came into effect on 7 November 2011. The major changes introduced by NBU Regulation No. 306 affect banks and owners of substantial interests in banks and non-banking financial institutions, and are as follows:

(1) written foreign currency permits of the NBU have been abolished: banks and accredited branches of foreign banks may carry out their banking operations in UAH on the basis of a banking license only. To enter into foreign currency transactions, banks and accredited foreign banks' branches should obtain a general or individual currency license from the NBU;

(2) the NBU changed the banking license template and will replace existing banking licenses free of charge. The NBU was obliged to replace the banking licenses of commercial banks and foreign banks' branches before 17 December 2011[10];

(3) non-banking financial institutions are no longer permitted to open and operate bank accounts or allocate monetary funds at their own risk[11];

(4) the Rules set requirements for the business reputation and financial status of bank shareholders. The Rules also set out indicators for the absence of an impeccable business reputation and adequate financial status of shareholders (for example, the shareholders'/controllers' losses for the last reporting period (year) or the absence of business reputation

[10] Pursuant to Law of Ukraine No. 3024-IV "*On Amendment of Certain Laws of Ukraine regarding the Regulation of Banking Activity*", dated 15 February 2011.

[11] NBU Regulation No. 306 cancelled NBU Regulation No. 344 "*On Approval of the Regulation on the Procedure for Issuing Licenses to Non-Banking Financial Institutions for Carrying Out Certain Banking Transactions*" dated 16 August 2001 which gave non-banking financial institutions the possibility to carry our certain banking transactions on the grounds of the relevant license issued by the NBU.

issues for senior managers of direct or indirect shareholders or ultimate beneficial owners if individuals);

(5) a bank may be incorporated by a single shareholder: such incorporation would be based on such shareholder's resolution of intent on the foundation and incorporation of the bank. The signature of the sole shareholder should be certified notarially (for a shareholder who is an individual) or with the shareholder's corporate seal (if the signatory is the representative of a corporate shareholder);

(6) the NBU outlined mechanisms for indirectly holding a substantial interest in a bank (however, this list is non-exhaustive). The NBU expressly excluded the option of voting at the bank's shareholders meeting pursuant to a power of attorney with voting instructions on the agenda items;

(7) if an owner of a substantial interest in a bank intends to decrease its interest in the bank below any of the set thresholds (i.e., 10, 25, 50 or 75%), this shareholder must inform the NBU within five days of taking such decision.

The Rules generally reflect the changes earlier introduced into the *Banking Law*.

18.2 Insurance

18.2.1 Regulatory Framework

Insurance services in Ukraine are governed, *inter alia*, by:

(i) *Law of Ukraine On Insurance*, dated 7 March 1996, as restated on 4 October 2001 and further amended (the *Insurance Law*);

(ii) Order of the State Commission for the Regulation of the Financial Services Markets of Ukraine No. 4934 "On the Approval of the Regulation for Entering Data Regarding

Legal Entities Seeking Insurer (Reinsurer) Status into the State Registrar of Financial Institutions" dated 22 November 2005;

(iii) Order of the State Commission for the Regulation of the Financial Services Markets of Ukraine No. 40 "On the Approval of the Conditions for the Licensing of Insurance Activity" dated 28 August 2003;

(iv) Order of the State Commission for the Regulation of the Financial Services Markets of Ukraine No. 8170 "On the Approval of the Procedure and Requirements for Conducting Intermediary Activities on the Territory of Ukraine on Concluding Insurance Agreements with Non-Resident Insurers" dated 25 October 2007;

(v) Regulation of the Cabinet of Ministers of Ukraine No. 1523 "On the Procedure for the Activity of Insurance Intermediaries" dated 18 December 1996;

(vi) Regulation of the Cabinet of Ministers of Ukraine No. 124 "On the Approval of the Procedure and Requirements for Reinsurance with a Non-Resident Insurer (Reinsurer)" dated 4 February 2004; and

(vii) *Law of Ukraine* No. 1702-VII *On Prevention and Counteraction to Legalization (Laundering) of the Proceeds of Crime, Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction*, dated 14 October 2014.

18.2.2 Regulation of Activity of an Insurance Company

The National Commission Performing the Regulation of the Financial Services Markets of Ukraine (the *Regulator*) is the specialized state agency responsible for the regulation and control of the insurance business in Ukraine. The Regulator is authorized to issue licenses to insurance companies as well as to adopt specific insurance regulations. The Regulator is also authorized to carry out on-site

inspections and document examinations of insurance companies. Finally, the Regulator may demand an additional annual audit of the financial statements of an insurance company, to be conducted by an auditor appointed by the Regulator at the cost of the insurance company.

Insurance companies are obliged to submit quarterly and annual reports to the Regulator. In addition, insurance companies are obliged to prepare and publish their annual financial statements and consolidated reports. The accuracy of these reports must be confirmed by an independent auditor.

The Insurance Law also regulates reinsurance. When the cost of insuring a single object exceeds 10% of the sum of paid charter capital and formed free reserves and insurance reserves, the insurance company is obliged to conclude a reinsurance agreement, which is subject to the registration pursuant to the procedure established by the Regulator.

An insurance premium may only be paid in Hryvnia. Upon agreement of the parties the financial obligations of the life insurance agreement may be determined in a foreign currency. Insurance benefits are to be paid in the currency stated in the insurance agreement, provided that it does not contradict the applicable law.

18.2.3 Registration of an Insurance Company

A Ukrainian legal entity must undergo the following registration procedures in order to be qualified to carry out insurance activity:

(a) state registration and various post-registration formalities to allow it to qualify as a local legal entity (subsidiary);

(b) registration with the State Register of Financial Institutions, which confirms its status of a financial institution; and

(c) receipt of an insurance license, either for life insurance services or general (non-life) insurance services.

18.2.4 State Registration

Under the *Insurance Law*, foreign insurers are not allowed to conduct direct insurance activity on the territory of Ukraine except for:

(a) insurance of risks related to overseas transporting, commercial aviation, launching of spaceships and freight (including freight of satellites), transit insurance contracts providing coverage against risks relating to cargo in transit and/or transport by which the cargo is transferred, and/or any liability arisen as a result of such cargo transportation;

(b) reinsurance;

(c) intermediary services in the form of agency or brokerage operations for reinsurance of risks explicitly mentioned in paragraph (a) above; and

(d) auxiliary insurance services such as, for example, consulting, actuarial risks assessment and satisfaction of claims.

In addition, under the *Insurance Law* a foreign insurer may conduct the above insurance activity in Ukraine if the following requirements are met:

(i) the country where the foreign insurer is registered is a member of the World Trade Organization (the WTO) and such country participates in the international cooperation aimed at prevention of and the counteraction to the legalization of money laundering and financing of terrorism and cooperates with the Financial Action Task Force (FATF). The requirement for membership of the WTO by the country where the foreign insurer is registered does not apply with respect to reinsurance;

(ii) there is a memorandum (agreement) on exchange of information signed between the Regulator and the relevant authority entitled to exercise control over insurance

companies of the country where the foreign insurer is registered;

(iii) the country of the foreign insurer's registration exercises state control over the insurance business;

(iv) there is a treaty on the avoidance of double taxation and prevention of fiscal evasion signed between Ukraine and the country where the foreign insurer is registered;

(v) the country where the foreign insurer is registered is not included by Ukraine into the list of tax heaven jurisdictions;

(vi) the foreign insurer has obtained an insurance license in the country of its registration; and

(vii) the foreign insurer's financial reliability rating meets the requirements established by the Regulator.

Only a Ukrainian legal entity in the form of a joint-stock company, a general partnership, a limited partnership, or an additional responsibility company may become an insurer in Ukraine.

The *Insurance Law* requires that an insurer must be established by, and must exist with, at least three shareholders (participants). Ukrainian and foreign legal entities and individuals may be shareholders of an insurance company.

Only legal entities with an insurance license may use the words "insurer", "insurance company" and "insurance organization" in their name.

Insurance companies which provide life insurance are prohibited from providing any other types of insurance, except for:

(a) reinsurance of life insurance;

(b) financial activities connected with the accumulation, investment, and management of insurance reserves (asset management);

(c) crediting the insured individuals; and

(d) the performance of any operations aimed at satisfying its own business needs.

The charter capital (fund) of an insurer must be paid in cash, with the exception that 25 per cent may be paid by state securities at par value. The statutory minimum for the charter capital of an insurer must be equal to the UAH equivalent of EUR 1,000,000.00 for an insurance company not issuing life insurance, and the UAH equivalent of EUR 10,000,000.00 for a life insurer. The total amount paid by an insurance company to the charter capital of any other Ukrainian insurer must not exceed 30% of its own charter capital (fund), and 10% of the charter capital per a particular insurer. However, this requirement does not apply to the insurer who provides services different from life insurance and contributes to the charter capital of the insurer who provides life insurance services.

18.2.5 Registration as a Financial Institution

In order to obtain the status of financial institution a company must file an application for registration in the State Register of Financial Institutions within thirty calendar days from the date of its state registration as a company. On the date of submitting an application and throughout its existence the company must comply with, among other things, the following requirements:

(a) the company's paid-in charter capital must be equal to or exceed the UAH equivalent of EUR 1,000,000 (calculated in accordance with the exchange rate of the NBU on the date of its application) for an insurance company, or the UAH equivalent of EUR 10,000,000 for a life insurance company;

(b) the company must have the required number of qualified insurance professionals, office premises and software, hardware and communication facilities installed therein.

(c) the company must present a business plan of its insurance activity for not less than three years.

18.2.6 Insurance License

In order to obtain and maintain an insurance license a financial institution must comply with the following requirements in addition to the requirements discussed above.

A financial institution must adopt and register its insurance conditions (containing a description of all of its insurance products) and any amendments thereto with the Regulator.

As a general rule, the actuary of an insurance company must have (i) a university degree; (ii) at least three years actuarial work experience; (iii) a special qualification certificate issued by the Regulator; and (iv) a document proving successful completion of the professional exams according to the American or British examinations systems. Other specific qualification requirements may apply to the actuary of a life insurer.

The General Manager and Chief Accountant of a company must have advanced professional skills, in particular:

(i) the General Manager (or Deputy General Manager) must hold a university (or equivalent) degree in law or economics, have at least five years relevant work experience (with at least two years holding a managerial position and at least one year with a financial institution), and have an irreproachable business reputation;

(ii) the Chief Accountant must hold a university degree in economics and have at least three years relevant work experience;

(iii) both the General Manager and Chief Accountant must (a) complete the appropriate professional skill enhancement courses organized by the Regulator and pass the relevant exam; (b) not have been the senior manager or chief accountant of a financial institution declared bankrupt, subjected to compulsory liquidation, or subject to appointment of temporary administration by the Regulator over the previous last five years; and (c) not have any standing or unexpunged conviction for a deliberate crime, including crimes in commercial or administrative spheres.

In order to obtain a license an insurance company must submit to the Regulator the following documents:

(i) application;

(ii) the page printed out from the web site of the Unified State Register of Legal Entities and Individual Entrepreneurs about the applicant which must be signed by its chief executive (to be submitted at the decision of the applicant);

(iii) certified copies of statutory documents;

(iv) a bank or auditor certificate confirming the amount of paid charter capital;

(v) a certificate on the financial condition of the founders (participants) of the insurance company certified by an auditor, where the insurance company is created as a general partnership, limited partnership or an additional liability company;

(vi) insurance conditions (rules);

(vii) a study of the feasibility of the planned insurance or reinsurance activity;

(viii) information regarding the participants of the insurance company, the head of the executive body and its deputies; a copy of the diploma in economics or law of the head of the executive body of the insurance company or its first deputy and a copy of the diploma in economics of the chief accountant plus information on respective certificates in the cases provided by the Regulator. All documents must be certified by the insurance company;

(ix) a copy of the regulations on internal financial monitoring, approved in accordance with the requirements of the applicable law, which must be signed by the applicant; and

(x) a copy of document on the appointment of a person responsible for internal financial monitoring and information on the chief managers or employees responsible for financial monitoring, which must be signed by the applicant.

The Regulator is obliged to decide upon the application of the insurance company within 30 days after obtaining all the necessary documents. In the event that changes are made to the documents submitted to the Regulator, the insurance company must inform the Regulator of such changes within 10 days.

18.2.7 Insurance Agents and Brokers

There are two types of insurance intermediary in Ukraine: (i) insurance agents and (ii) insurance and reinsurance brokers.

A broker is a representative of an insured entity and may not engage in any activity other than brokerage. Brokerage activities are very narrowly defined in Ukraine and do not include the provision of any services on behalf of and/or in favor of an insurance company.

According to Ukrainian law a broker must have a brokerage agreement with an insured rather than with an insurance company. Moreover, a conservative interpretation of existing Ukrainian law

suggests that a broker may not enter into the agreement with an insurance company.

Ukrainian law also states that a broker must receive its fee from an insured rather than from an insurance company.

This conclusion has been confirmed by the Regulator. On at least one occasion a Ukrainian broker has been penalized by the Ministry of Finance of Ukraine for receiving fees and bonus payments from an insurance company.

More importantly, according to Ukrainian law the sale of the insurance products of one company must not constitute more than 35% of a broker's activity within one year. In other words a broker must sell the insurance products of at least three insurance companies. In practice, this restriction limits the ability of an insurance broker to sell a significant amount of an insurance company's products in Ukraine.

Insurance agents are individuals or legal entities acting on behalf of, and under the authorization of, an insurance company. They carry out a portion of the insurance company's activities including, in particular, concluding insurance contracts, obtaining insurance premiums and performing functions in connection with insurance payments and reimbursements. Insurance agents are representatives of an insurance company and act in its interests for fees based on the relevant agency agreement with an insurance company.

In Ukraine non-resident insurance and reinsurance brokers may provide their services related to concluding insurance agreements with non-resident insurance companies either independently or through their permanent representative offices in Ukraine.

A non-resident insurance or reinsurance broker which provides its services without permanent representative office in Ukraine must notify in writing the Regulator about its intention to conduct business

in Ukraine, and the Regulator, will then publish such information on its official web-site and printed mass media.

18.3 Communications

18.3.1 Regulatory Framework

Significant changes have been introduced into the regulatory framework of the Ukrainian telecommunications sector following independence in 1991. These changes have greatly facilitated the process of adjusting domestic legislation to fundamental principles adopted by the European Union. As a result, the Ukrainian regulatory framework now provides for the separation of the regulatory and operational activities of the Ukrainian telecommunications administration.

As a first step toward its transformation into a traditional regulatory body, the former Ministry of Communications of Ukraine (now the Ministry of Infrastructure of Ukraine (the MIU) created several umbrella organizations to take over its previous operational functions. Consequently, all organizations involved in the planning, building and operating of public telecommunications networks in Ukraine were merged into Open Joint Stock Company "Ukrtelecom" (Ukrtelecom). In October 2013 Ukrtelecom was acquired by SCM, a leading Ukrainian financial-industrial group.

The *Law of Ukraine On Communications* (the *Communications Law*) dated 16 May 1995 was adopted by the Verkhovna Rada to provide the legal, economic and organizational frameworks for enterprises, associations and governmental authorities, which were part of the telecommunications and/or postal communications networks in Ukraine. The *Law of Ukraine On Telecommunications* (the *Telecommunications Law*) dated 18 November 2003 repealed the Communications Law.

The *Telecommunications Law* establishes the competence of the Ukrainian state authorities in regulating telecommunications activities, and determines the legal status of telecommunications operators,

providers, and consumers of telecommunications services. The *Telecommunications Law* also regulates various issues, including: access to the telecommunications market; the interconnection of the telecommunications networks; right of way; privacy of subscribers and telecommunications; authorizations; pricing policy; and methods of settlement. In particular, under the *Telecommunications Law* exclusively entities registered in Ukraine may render telecommunications services in Ukraine. The scope of application of the *Telecommunications Law* extends to fixed-line and mobile telephone communications; the maintenance and exploitation of on-air and cable broadcasting and television networks; and the leasing of electronic communications channels and communications services based on the Internet protocol (IP-telephony).The regulatory regime of the *Telecommunications Law* does not apply to those telecommunications networks which do not interact with the Public Switched Telecommunications Networks (PSTN), except for the use of such networks in a state of emergency or war.

Notably, the *Telecommunications Law* does not require abolishing charges for incoming calls for all kinds of telephone communications as it was previously prescribed by the *Communications Law*. However, after its adoption Ukrainian telecommunications operators have continued to abstain from levying charges for incoming calls on subscribers.

The adoption of the *Law On Principal Basis of Information Society Development in Ukraine for 2007-2015* (*the Information Society Development Law*), dated 09 January 2007, became the next significant step towards improvement of the telecommunications sector. According to the Information Society Development Law, Ukraine determined expansion, development and accessibility of telecommunication services among the most privileged and crucial issues for the promotion of Information Society.

In light of the Information Society Development Law, the Verkhovna Rada regularly updates the *Telecommunications Law*. For instance, following the amendments dated 01 July 2010, consumers are entitled

to keep their existing mobile numbers when they change their mobile service provider, though in practice such service shall be available only in the first part of 2016. Besides, mobile operators are obliged to render national roaming service in Ukraine provided that they have entered into the relevant agreements. The amendments to the *Telecommunications Law* dated 05 July 2011 facilitated access to the market by further limiting activities which are subject to licensing.

In February 2015 a tender for 3G communications frequencies was conducted and each of the three major Ukrainian mobile operators obtained a 3G-frequencies license. Currently, 3G communication services are provided in only the biggest Ukrainian cities. The national regulatory authority approved a plan to launch 4G (LTE) in Ukraine, which is expected to happen in 2017.

18.3.2 National Regulatory Authority

Under the *Telecommunications Law* the National Commission for the State Regulation of Communications and Informatization, the NCCIR, which acts under the Presidential Decree dated 23 November 2011 No 1067/2011, as amended, has assumed responsibility for: maintaining the Register of operators and providers of telecommunications and licensing issues; the allocation of radio frequencies and numbering resources; tariff regulation; the regulation of interconnection agreements; controlling quality of telecommunication services; and the resolution of disputes in relation with the interconnection agreements.

Within its authorities under the *Telecommunications Law,* on 15 April 2010 the NCCIR adopted *The Regulations on Quality of Telecommunication Services* in which specified the procedure for informing the public about quality of the telecommunication services in Ukraine and verifying the levels of quality of such services.

18.3.3 Radio Frequency Resource

On 1 June 2000, the Verkhovna Rada adopted the *Law of Ukraine On the Radio Frequency Resource of Ukraine* (the *Radio Frequencies*

Law). The *Radio Frequencies Law* provides comprehensive rules for the allocation, assignment, interrelation and use of radio frequencies in Ukraine, as well as the licensing of users of radio frequencies and other related issues. In addition, Decision of the NCCIR No. 625 "On Approval of the Procedure for Auctions and Tenders for Obtaining the Licenses for the Use of Radio Frequency Resource of Ukraine and Declaring Invalid the Decision of the National Commission on Regulation of Communications dated 06.09.2011 No. 911" dated 24 September 2013 sets forth a detailed procedure of auctions and tenders for the issuance of radio frequencies licenses.

The *Telecommunications Law* and *Radio Frequencies Law* prescribe obtaining a license for the use of radio frequencies in order to conduct telecommunication activities, which require use of radio frequencies. For this purpose the prospective licensee must file an application with the NCCIR, submit a set of documents, and following the decision of the NCCIR to grant the license it must pay the fee for issuance of the license. In addition, starting from the date of issuance the license and regardless whether the radio frequencies are actually used or not by the licensee, the monthly fee in the amount established in the Tax Code of Ukraine is to be paid for the use of radio frequencies. Failure to pay the monthly fee for six months leads to revocation of the respective license without any compensation.

18.3.4 Numbering Resource

Until 1 January 2005, the allocation of numbering resources was provided free of charge to telecommunications operators. Currently, according to Resolution No. 1147 of the Cabinet of Ministers of Ukraine "On the Approval of the Amount of Payment for the Allocation of Numbering Resources and the Payment Procedure" dated 27 December 2008, Ukrainian telecommunications operators have to pay state fees for the allocation of telephone numbering resources, depending on the types of services to be provided and the coverage area.

Telecommunications operators are required to pay the established fee for the allocation of the numbering resources within 30 days after receiving a decision on such allocation. Failure to pay the fee may result in the revocation of the relevant decision to allocate a share of the numbering resources.

The allocation of short telephone numbers for emergency services and for not-for-profit social services remains free of charge.

18.3.5 Licensing System

The *Telecommunications Law* provides for the licensing of the following types of telecommunications activities:

- Provision of local/inter-city/international fixed-line telephone communications services, with the right of maintenance and exploitation of telecommunications networks and leasing of electronic communications channels;

- Provision of local/inter-city/international fixed-line telephone communications services using wireless access to the telecommunications network, with the right of maintenance and leasing of electronic communications channels;

- Provision of mobile telephone communications services, with the right of maintenance and exploitation of telecommunications networks and leasing of electronic communications channels; and

- Provision of services on maintenance and exploitation of telecommunication networks, on-air and cable broadcasting and television networks.

In order to obtain the telecommunications license the statutory documents of the prospective licensee must foresee possibility to engage in the respective telecommunications activities.

In the event that it was decided to limit the number of telecommunication licenses, licenses are to be granted on a competitive basis. The number, terms, and conditions for obtaining such licenses are to be established and published in the mass media. Thereafter, licenses will be registered and lists of licenses granted will be published.

In addition to obtaining a license (if required), entities providing telecommunication activities in Ukraine have to be registered in the Register of operators and providers of telecommunications.

18.3.6 Import and trading in Radio-Electronic and Emitting Devices

Under Ukrainian law, the import, trading in and operation of radio-electronic and radio signal emitting devices in the territory of Ukraine may be performed provided that such devices are not included into the Register of Radio-Electronic and Radio Signal Emitting Devices Prohibited for Use and Import into Ukraine. The import of special-purpose radio-electronic and emitting devices can be performed only after obtaining the relevant permit from the General Staff of the Ukrainian Armed Forces in the procedure approved by the Cabinet of Ministers of Ukraine. Special-purpose devices are devices for special users (e.g., the Ministry of Defense, Ministry of the Interior, State Security Service).

18.3.7 Networks Interconnection and Settlements Between the Telecommunications Operators

According to the *Telecommunications Law* interconnection of the telecommunications networks is conducted under the interconnection agreements concluded between the operators, and the binding conditions for such agreements are set out by the NCCIR.

The procedure for telecommunication networks interconnection (with respect to PSTN only) as well as the binding conditions for interconnection agreements were determined by Decision of the NCCIR No. 155 “On the Adoption of the Rules of Public

Telecommunication Networks Interconnection" dated 8 December 2005 and restated on 31 March 2015.

Main conditions of settlement between operators which have entered into interconnection agreement were adopted by Decision of the NCCIR No. 1586 "On the Adoption of the Procedure for the Settlements Between the Telecommunications Operators for Services of the Access to the Public Telecommunications Networks" dated 9 July 2009.

18.3.8 ISP Services

At present, Internet service provider (ISP) services are not subject to a licensing regime in Ukraine. However, an interested party wishing to provide internet services has to be included into the Register of operators and providers of telecommunications mentioned above. The applicant has to submit the respective application to the NCCIR at least one calendar month prior to beginning of provisions of such services.

18.4 Electronic Commerce and Information Technologies

18.4.1 The Law of Ukraine "On Electronic Commerce"

On 3 September 2015 the Ukrainian Parliament adopted the Law of Ukraine "*On Electronic Commerce*" (the "*E-Commerce Law*"). The purpose of the E-Commerce Law is primarily to set the rules for preparing contracts in electronic form in the course of on-line transactions and to confirm the application of Ukrainian consumer protection regulations to such transactions.

The *E-Commerce Law* stipulates the following:

1. A contract may be prepared in electronic form by exchanging electronic messages with an offer (setting out the required material terms of the contract) and its acceptance, which may be delivered by (i) electronic message, (ii) designated

electronic form, or (iii) carrying out certain actions which are regarded as acceptance.

2. An offer to enter into an electronic contract may be made by (i) delivery of an electronic message regarded as commercial, or (ii) placement of such an offer on the Internet or other informational or telecommunication networks. Such commercial electronic messages must be delivered to the addressee only with his/her express consent, unless the addressee unsubscribes from receiving such messages.

3. A contract in electronic form may contain certain provisions in addition to those envisaged by the Civil Code of Ukraine, in particular: (i) the procedure for exchanging electronic messages, (ii) the procedure for amending a mistakenly sent message with acceptance of an offer, (iii) the procedure for making amendments and other terms.

4. To enter into a contract in the electronic system of the offering counterparty, the accepting counterparty must log into such system. The relevant system must allow the accepting counterparty to change the provided information prior to accepting the offer.

5. A contract in electronic form may be concluded by: (i) electronic signature or electronic digital signature, (ii) electronic identification signature (by exchanging randomly generated codes), and (iii) by application of analog of personal signature (signature stamp). An electronic contract based on one of the above methods is regarded as a contract executed in writing.

6. Settlements may be carried out using various payment instruments, electronic money, transfer of funds, provision of cash and by other means.

7. Sellers of goods and providers of services must disclose to consumers (via their websites or by other technological means) their full name, address, e-mail and/or web-site, EDRPOU code (state identification code for legal entities), taxpayer registration code for individuals, VAT tax registration certificate, information about any licenses and other information which is subject to mandatory disclosure.

8. Buyers making a purchase by virtue of an electronic contract must provide the information necessary to conclude a contract. The list of information to be provided is defined by the applicable laws or agreed by the parties to the transaction.

9. Internet service providers, domain name registrars, hosting providers and operators of payment infrastructure services ("ISPs") when involved in "mere conduit" activities receive absolute immunity from liability for all third party infringements subject to the following conditions: (i) the ISP does not initiate the transmission, (ii) the ISP does not select the recipient of the information, (iii) the ISP does not modify the information contained in the transmission.

To sum up the above, the *E-Commerce Law* was adopted to establish a consistent legal framework for preparing commercial contracts in electronic form. Its purposes include the following (i) addressing existing legislative uncertainties concerning formation and enforceability of electronic contracts and (ii) bringing Ukrainian legislation into line with EC Directive 2000/31 on electronic commerce. It is expected that the *E-Commerce Law* will boost the electronic commerce industry by bringing more certainty into this segment of the economy.

18.4.2 The Internet and Domain Names

Thus far Ukrainian legislation has seen little intervention by the Ukrainian Government in issues governing the Internet in Ukraine. Internet activities in Ukraine (including various Internet-based industries) have been developing on the basis of Ukraine's general

laws and regulations governing "off-line" or real-world life and business. However, numerous changes have taken place in this area, particularly following the entry into force of the *Law On Telecommunications* (the *Telecommunications Law*) on 23 December 2003 and the *Civil Code* on 1 January 2004.

The *Telecommunications Law* defines "domain" as a part of a hierarchic system of names incorporated in Internet addresses; a unique identifying name, which is served by a group of server domain names and administered centrally.

18.4.2.1 Protection of Intellectual Property Rights in Domain Names

On 10 April 2008, the Verkhovna Rada adopted the *Law of Ukraine On the Introduction of Amendments to Certain Laws of Ukraine on Intellectual Property Issues in order to Fulfill requirements on accession of Ukraine to the WTO* (the *Amendments Law*). The *Amendments Law* purports to enhance the applicability of some provisions of existing intellectual property laws to the Internet. Most importantly, the *Amendments Law* amends the *Law of Ukraine On the Protection of Rights in Trademarks and Service Marks* (the *Trademark Law*) in order to address the issue of protecting the rights of trademark owners in connection with the use of trademarks in domain names.

The *Trademark Law* defines a "domain name" as the name which is used for addressing computers and resources over the Internet. The exclusive rights of a registered trademark owner now include the use of its trademark over the Internet, and under amendments introduced by the *Amendments Law,* the use of a trademark in a domain name without the permission of the trademark owner shall constitute a violation of the trademark owner rights.

It should also be noted that an administrative procedure for protection of trademark owners is reflected in the "Policy on the .UA Domain", which is currently used for administering the Ukrainian country code top level domain name or .UA domain. In order to obtain a second-level domain name (*e.g.,* www.companyname.ua), it is necessary to

present a trademark registration certificate or a trademark license agreement for the exact name. However, this requirement does not extend to third-level domain names (such as www.companyname.com.ua or www.companyname.kiev.ua, *etc.*), which remain susceptible to abusive registration.

18.4.2.2 Administration of the Ukrainian ccTLD System

A number of organizational and legislative developments indicate the Ukrainian Government's increased awareness of issues related to the Internet in Ukraine. In particular, on 13 November 2002, the State Committee for Communications and Informatization of Ukraine (the Committee) announced the establishment of the Ukrainian Net Information Center (UANIC). The purpose of UANIC is to administer and to service the Ukrainian ccTLD system, as well as to adopt rules for the designation of the domain .UA. While this organization was founded by the Committee and by various associations of Internet service providers, the officials of the State Security Service of Ukraine (Ukraine's intelligence and counterintelligence agency) also participated in the decision to establish UANIC. On 22 July 2003, the Cabinet of Ministers issued Order No. 447-p, "On the Administration of the .UA Domain," which officially recognized UANIC's powers to administer Ukrainian ccTLDs.

Administered by a Ukrainian limited liability company, "Hostmaster", since the Ukrainian ccTLD. "UA" began functioning in January 1993, all matters concerning the registration and maintenance of domain names have been largely self-regulated by various public associations and Internet service providers.

In addition, from October 19, 2010 the registration of Cyrillic domain names became available in the domain zones com.ua and kiev.ua (компания.com.ua and имя.kiev.ua) in Ukraine and in 2013 a top level Cyrillic domain name .укр was launched.

18.4.2.3 Domain Name Dispute Resolution

The Internet Association of Ukraine has also established the Court of Arbitration for the resolution of various Internet-related disputes, including those related to domain names.

The Court of Arbitration, which is a typical third-party arbitration court, *i.e.,* not a state court, is presently the only specialized institution in this area in Ukraine. Domain name disputes may be referred to the Court of Arbitration by the mutual consent of the parties. The Court of Arbitration aims to help the parties reach amicable agreements, and keeps the subject matter of disputes confidential. Pursuant to the applicable Ukrainian legislation, decisions rendered by the Court of Arbitration are binding on the parties. Domain name-related disputes are also regularly heard by courts of general jurisdiction in Ukraine. In this case, no previous consent of the parties is required to send the case to a specific court (unlike the Court of Arbitration), and any interested party that believes that its rights are violated can turn to a court of general jurisdiction, provided the jurisdictional issues are complied with. The grounds for such domain name-related disputes are usually trademark infringement and incompliance with the "Policy of the .UA Domain".

18.4.3 Software Development and Protection

18.4.3.1 Protection of Rights in Software

In Ukraine, software is protected under the *Law of Ukraine On Copyright and Neighboring Rights* (the *Copyright Law*), dated 23 December 1993, as a literary work of authorship. Copyright protection extends both to operating systems and applications expressed in source and/or object code.

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

Copying a computer program without charge is permitted if one copy is made by the lawful user of the computer program for archival purposes, or for serving as a replacement of a lawfully acquired copy in case of loss or damage.

The free modification of a computer program is permitted for (i) attaining compatibility with the user's equipment and (ii) for correction of appreciable errors, unless otherwise provided by the agreement between the parties.

The free reverse engineering of a computer program is permitted with the intention of receiving the information necessary for attaining the compatibility of an independently-created computer program with other computer programs, provided that the following conditions are met:

- The act of reverse engineering is carried out by the lawful owner of a copy of the computer program;
- The information necessary for attaining such compatibility is not known to the person specified above from other sources prior to the act of reverse engineering;
- The reverse engineering is limited only to those elements of the computer program which are necessary for attaining compatibility; and
- The information obtained in the process of the reverse engineering (i) is used only for attaining the compatibility of the program with other software and (ii) can not be transferred to a third party, except for the purposes of attaining compatibility with other programs; (iii) cannot be used for the development of other software, similar to the decompiled software or (iv) for committing any other infringement.

18.4.3.2 Protection of Rights in Databases

Database rights are also protected under the *Copyright Law*. Pursuant to the *Copyright Law*, "databases" are defined as collections of works, data, or any other independent information, selected and arranged as a result of creative work, integral parts of which can be accessed by means of special search engines.

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

Pursuant to the Law of Ukraine *On Distribution of Copies of Audio and Visual Works, Phonograms, Videograms, Computer Programs and Databases* No. 1587-I, dated 23 March 2000, databases distributed on the territory of Ukraine on CDs and DVDs are subject to labeling (marking with control labels).

Illegal reproduction and/or distribution of databases and software may lead to civil, administrative and criminal liability under the applicable Ukrainian law.

18.4.3.3 Protection of Information in Information and Telecommunication Systems

The protection of information in automated databases is subject to the *Law of Ukraine On the Protection of Information in Information and Telecommunication Systems* (the *IT Systems Law*), 5 July 1994, with amendments. The *IT System Law* establishes the principles for the regulation of relations between the parties involved in the processing of information in information and telecommunication systems (the IT systems) and the use of such information by third parties. It also provides for the protection of the rights of the owners of the information processed in information and telecommunication systems.

The *IT Systems Law* defines "information and telecommunication systems" as the set of technical and program means, functioning as a

single whole, designed for the processing and exchanging of data. Information in IT systems and data processing software is subject to protection regardless of the means of expression of the information.

The *IT Systems Law* requires that access to the information in the information and telecommunications systems be subject to rules established by the owner of the processed information.

18.4.3.4 Outsourcing of Software Development

The outsourcing of software development has seen rapid development over the past decade in Ukraine.

Having regard for certain legal constraints related to the claiming of copyright in developed software products under the applicable Ukrainian legislation (see above), outsourcing of software development projects must be properly structured from a legal standpoint before being implemented in practice.

At the present time the most widespread business model used by foreign companies for outsourcing software development to Ukraine is the establishment of a local Ukrainian subsidiary or a special-purpose company to retain local programmers (as either employees or independent contractors) and coordinate their work. Such local company is required to ensure that all intellectual property rights in the software products developed by such programmers are properly transferred to it from the individual programmers. Thereafter, the corresponding scope of the intellectual property rights must be further transferred from the local company to its foreign parent pursuant to a written assignment agreement between them.

Alternatively, foreign companies may enter into corresponding outsourcing agreements with independent Ukrainian companies or directly with individual programmers. These types of arrangements, however, must be crafted with precision in order to ensure full and effective transfer of intellectual property rights.

18.4.3.5 Software Register

Over the past few years Ukraine has been subject to considerable international scrutiny on the issues of copyright protection. These have related principally to the protection of copyright and neighboring rights in compact disc (CD) manufacturing which, in turn, has related to the protection of rights in audio and video works and in software products. Ukraine has taken various legislative and practical measures to restore order in the protection of copyright in the above areas, with particular attention to the protection of copyright in software.

In particular, a special program on the protection of rights in software and counteracting piracy has been set out under Resolution No. 247-r of the Cabinet of Ministers of Ukraine, the "Concept of the Legalization of Software and Fighting Its Illegal Use," dated 15 May 2002. On the basis of the above resolution, on 8 January 2003 the Ministry of Education and Science of Ukraine (the Government agency responsible for protecting intellectual property rights in the country) adopted the regulations "On the Register of Manufacturers and Distributors of Software" approved by Order No. 8 (the Regulations).

In accordance with the Regulations, effective from 1 March 2003, a state authority (the Authority) designated by the State Service of Intellectual Property of Ukraine is charged with maintaining the Register of Manufacturers and Distributors of Software (the Register).

The Register serves a dual purpose: protecting the intellectual property rights of legitimate software providers, and publicizing information on such providers to potential customers. In particular, such customers include state authorities interested in purchasing software under government contracts. The information stored in the Register is made available through its publication and the maintenance of permanent web pages.

Any business entity, whether domestic or foreign, which manufactures and/or distributes software may, on a voluntary basis, submit the required data or documents for inclusion into the Register. Those

entities that distribute software on CDs are obliged to present a copy of the software license for manufacturing or importing CDs granted by the holder of the copyright in the relevant software. If the entity does not manufacture or import such CDs, it is obliged to submit a copy of such a license and a document evidencing the legal transfer of the ownership of the CDs from the manufacturer or the importer.

The Authority may request an applicant to supplement all missing or incomplete materials. The Regulations do not provide for the Authority to charge a fee for its services, nor do they mention the possibility of the denial of an application for entry. After a decision to enter the information is made an entity may obtain an official certificate evidencing its listing in the Register.

18.4.3.6 Encryption Technology

Currently, the *Law of Ukraine On the Licensing Types of Entrepreneurial Activity* adopted on March 2, 2015 as amended (the *Licensing Law*), provides that the provision of services in the sphere of cryptographic protection of information (except electronic signatures), and the trade in cryptosystems and encryption technologies are subject to licensing. Licenses are issued by the State Service for Special Communication and Information Protection of Ukraine (the State Service) for a term of five years. Licenses may be renewed upon their expiration.

Licenses are granted to "business entities," which are defined in the *Licensing Law* as duly registered legal entities engaged in business activities irrespective of their organizational forms or forms of ownership.

Qualification requirements for business entities for activity in the area of encryption, as well as the kinds of activities that may be conducted in the area of encryption that is subject to licensing and peculiarities of the licensing in the area of encryption are determined by regulations of the State Service. Under the applicable Ukrainian legislation, encryption technologies may qualify as dual-purpose

goods/technologies and certain restrictions may apply to their importation into or exportation from Ukraine.

In addition to the above, the "Regulations on Approval of the List of Services for the Cryptographic Protection of Information (except Electronic Signatures) and the Cryptosystems and Crypto-technologies for Protection of Information the Commercial Activities Related to which Are Subject to Licensing" approved by Decree No. 543 of the Cabinet of Ministers of Ukraine of 25 May 2011, set the list of services, cryptosystems and crypto-technologies which cannot be provided commercially without a license, and also establish a list of exceptions from mandatory licensing for cryptosystems and crypto-technologies that are available to the general public through the general retail system and in which the cryptographic functions can not be changed by the end-users themselves.

18.4.4 Personal Data Protection

The *Law of Ukraine On Personal Data Protection* adopted in 2010 ("PDP") outlines the general requirements and obligations related to the collection, processing and use of personal data by private bodies and by the government of Ukraine.

The PDP applies to the processing of personal data, i.e., any information about an individual who is identified or can be specifically identified (a "Data Subject").

The Constitutional court of Ukraine, in its decision N 2-rp/2012 dated January 20, 2012, held that "Personal Data" constitutes confidential personal information access to which is limited by a person himself/herself. Such confidential personal information may include data about the individual's nationality, education, marital status, religious beliefs, health, current address, date and place of birth, and property status. The list of confidential personal information is not exhaustive.

Under the PDP, processing of Personal Data is not restricted under the following circumstances (i) individuals processing Personal Data for

their own personal or domestic activities, (ii) processing of Personal Data solely for journalistic and artistic purposes, provided that the balance between the right to respect for private life and the right to freedom of expression are secured. In addition, the PDP does not apply to archived information from repressive totalitarian organizations within the territory of Ukraine from the period 1917-1991.

In addition, the main sources of Personal Data protection in Ukraine are: The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the Additional Protocol ratified by Ukraine in 2010; a number of regulations approved by the Commissioner; and relevant provisions of the *Code of Ukraine on Administrative Offenses* and the *Criminal Code* establishing liability for Personal Data offenses.

In July 2013, the Ukrainian Government adopted a draft law that introduced amendments to the *Personal Data Protection Law* in Ukraine. As a result, all Personal Data protection functions were transferred from the State Service of Personal Data Protection to the Ukrainian Parliament Commissioner for Human Rights (the "Commissioner") effective 1 January 2014.

The Commissioner was tasked to develop all Personal Data protection procedures, recommendations and enforcement practices that regulate matters related to Personal Data protection. To date the Commissioner has drafted and approved: Model Rules on Personal Data Processing; Rules on Exercising Control by the Ukrainian Parliament Commissioner for Human Rights over Compliance with the Laws on Personal Data Protection; Rules for Notification of the Ukrainian Parliament Commissioner for Human Rights on the Processing of Personal Data that Constitutes a Special Risk for the Rights and Freedoms of Data Subjects, On the Structural Department or Designated Individual Responsible for Work-Related Processing of Personal Data and the Publication of Such Information.

The transition has resulted in the absence of enforcement actions related to Personal Data regulations in Ukraine from approximately January 2014 up to August 2015. However, this trend may be beginning to change as most of the basic procedures and regulations necessary for enforcement have already been developed and approved by the Commissioner.

In addition, registration of databases containing Personal Data is no longer mandated; instead Data Controllers are required to notify the Commissioner of the processing of certain types of sensitive information.

Sensitive data includes Personal Data on: racial or ethnic origin, national origin, political, religious or philosophical beliefs, membership of political parties and or organizations, trade unions, religious organizations or community organizations with an ideological orientation, health, sex life, biometric data, genetic data, location and or means of transportation, facts related to administrative or criminal liability, criminal investigation measures related to a preliminary investigation and the measures envisaged by the Law of Ukraine "On investigation activity", and instances of violence against a person.

The PDP prohibits the processing of sensitive Personal Data unless certain conditions are met, including:

- a valid express consent obtained by the data collector from the data subject;
- an employer-employee relationship between the data collector and data subject;
- the data processing is necessary for protection of the life of the data subject or of a third party when the data subject is physically or legally incapable of giving consent;
- the data has evidently been made public by the data subject;

- the data is necessary to assert, exercise or defend legal claims;
- the data is processed by a religious organization, NGO, political party or trade union with respect to their members in the course of regular activities and such data would not be transferred to third parties;
- the data processing is necessary to establish a medical diagnosis, to provide healthcare services or medical treatment, under condition that the data processed is protected by the medical confidentiality rules;
- the data processing is conducted by law enforcement agencies and is related to criminal convictions, criminal investigations or counterterrorism activities.

The PDP requires legal entities and individuals processing sensitive data to file notifications with the Commissioner and appoint a personal data officer or establish a specific division responsible for Personal Data Protection.

18.5 Power and Renewable Energy Sectors

18.5.1 Introduction

Prior to the reforms introduced to the Ukrainian power sector by the President of Ukraine in 1994-1995, the Ukrainian power sector was exclusively state-owned. It operated through integrated utility companies responsible for generation, transmission and distribution, and was administered accordingly.

Ukraine's power sector is structured along the lines of major business activities: generation, transmission, distribution and supply of electricity.

Generation

Nuclear power plants account for the largest share of electricity generation. The operator of all Ukrainian NPPs is the state enterprise Energoatom, which can not be privatized. Energoatom is also responsible for the construction of two new 1,000 MW nuclear units at the Khmelnytskiy NPP site.

Thermal generating companies are the second largest electricity producers in Ukraine. Big TPPs are grouped into five large thermal generating companies – Centrenergo, DTEK Donbasenergo, DTEK Dneproenergo, DTEK Zahidenergo, DTEK Shidenergo. At the moment, four thermal generating companies (DTEK Donbasenergo, DTEK Shidenergo, DTEK Zahidenergo and DTEK Dneproenergo) are privately-controlled. Centrenergo is the only state-owned thermal generating company.

Large Ukrainian HPPs are concentrated in the Dnipro HPP Cascade and Dniester reservoir.

All HPPs of Dnipro Hydro Cascade and Dniester HPP-1, as well as Kyiv HPSP and Dniester HPSP, belong to the public JSC Ukrhydroenergo, which is protected from privatization. Ukrhydroenergo is a key player in the hydroelectric generation segment, providing around 95% of total hydroelectric generation.

There are also a number of combined heat & power plants (CHPs). Some of these are operated by local power distribution companies and other institutions while others became separate enterprises. In addition, small electricity producers (small hydroelectric and wind power plants) operate in Ukraine, but their share of total electricity production is insignificant.

Renewables represent a rapidly rising share in Ukraine's power sector mainly due to the recently introduced incentives for stimulation and development of renewable energy sources, which are discussed in more detail in sub-section 16.5.4 ("Green Energy: Incentives for Stimulation and Development in Ukraine").

Transmission

The transmission of electricity via main and interstate electricity networks is unbundled from the generation, distribution and supply of electricity and is performed by the national TSO, which is also responsible for centralized dispatch management. TSO's functions are performed exclusively by the state enterprise NEC Ukrenergo.

Distribution and Supply

Distribution is carried out via 27 regional distribution and supply companies (so-called Oblenergos).

Supply is conducted by Oblenergos (suppliers at regulated tariff) and independent (non-regulated tariff) suppliers.

Electricity distribution networks are owned and operated by Oblenergos, which holds two NEURC licenses simultaneously – (i) for electricity distribution and (ii) for electricity supply at regulated tariffs. Independent suppliers must enter into a contractual relationship with Oblenergos to use their networks for electricity distribution and pay for these services on the basis of tariffs approved by the NEURC.

Sector's Regulation and Management

Regulation of the sector is performed by the National Energy and Utilities Regulatory Commission (NEURC), which acts on the basis of Presidential Decree No. 715/2014 "On the National Commission for State Regulation in the Energy and Utilities Sectors" adopted on 10 September 2014.

NEURC performs state regulation in the power sector by means of (i) issuing licenses for each type of activity in the power sector, (ii) forming the tariff policy, and (iii) exercising control over the business activity of energy companies in the power sector.

NEURC issues licenses for the following activities in the power sector:

- electricity generation;
- combined heat and electricity generation;
- electricity transmission and supply;
- heat generation by CHPs and units using alternative or renewable energy sources.

NEURC approves electricity prices (tariffs), tariffs for electricity transmission, distribution and supply, heat tariffs for CHPs, TPPs, NPPs and co-generation units and units using alternative or renewable energy sources, gas price limits for entities generating heat for domestic needs.

The Ministry of Energy and the Coal Industry ("MECI") is the principal management body of the Ukrainian power sector that is responsible for the implementation of state policy in the sector. MECI currently acts on the basis of the Regulation on the Ministry of Energy and the Coal Industry of Ukraine approved by Presidential Decree No. 382/2011 on 6 April 2011.

MECI manages NEC Ukrenergo, Energoatom and the Energy Holding Company of Ukraine, which in turn manages the state's stakes in state-owned power companies.

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

18.5.2 Wholesale Electricity Market

Currently the model upon which the wholesale electricity market operates in Ukraine is the so-called "Single Buyer Model". Under this

model, a specialized legal entity (State Enterprise "Energorynok") purchases all bulk electricity generated by electricity generating companies and simultaneously acts as the sole wholesaler of electricity to electricity supply companies. The purchase and sale of electricity in the wholesale electricity market is carried out in accordance with the Market Rules approved by NEURC.

To ensure organizational functioning of the wholesale electricity market, wholesale electricity market members (*i.e.*, electricity generating and distribution companies) and wholesale electricity suppliers entered into the Wholesale Electricity Market Members Agreement approved by NEURC.

On 24 October 2013 the Verkhovna Rada adopted Law of Ukraine No. 663 "On the Basis of the Functioning of the Electricity Market of Ukraine" (the "**Electricity Market Law**"). In brief, the Electricity Market Law calls for the full-scale liberalization of the wholesale electricity market of Ukraine by way of gradually transitioning from the existing Single Buyer Model to a bilateral contracts market, the "day ahead" market, and a balancing market, which will regulate the imbalances caused as a result between electricity market players, the ancillary services market and the retail market.

The Electricity Market Law is a part of the "European package" adopted in order to ensure the implementation by Ukraine of the requirements of (i) EU Directive No. 2003/54 EC concerning common rules for the internal electricity market, and (ii) EC Regulation No. 1228/2003 on the conditions for accessing networks for cross-border exchanges of electricity.

The Electricity Market Law lays down the main rules for the organization and functioning of each of the above-mentioned segments of the electricity market, which require further elaboration and development to become operational.

Although the Electricity Market Law became effective on 1 January 2014, certain provisions related to opening the market will be

implemented gradually and under the conditions that the legal and regulatory framework is developed and adequate measures and systems are in place. The full-scale liberalized electricity market should become operational on 1 July 2017. During the transition period (from 2014 to 2017), the electricity market will operate as the currently existing wholesale electricity market, retail market and ancillary services market.

18.5.3 Privatization

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

In an attempt to reduce Ukraine's considerable external debt, privatization of power companies was initiated at the end of 1999. The Decree of the President of Ukraine No. 944/99 "*On Certain Issues Concerning Privatization of Facilities in the Electricity Sector*", dated 2 August 1999, provided for the sale of controlling stakes in power distribution companies and blocking stakes in power generation companies through tenders.

Further privatization in the electricity sector of Ukraine was promoted by Presidential Decree No. 1169/2001 "*On Additional Measures for Reforming the Electricity Sector*" of 3 December 2001. Accordingly, in 2002, controlling shareholding packages (*i.e.,* more than 50%) of 12 power distribution companies and blocking shareholding packages (*i.e.,* more than 25%) of seven power distribution companies were identified to be sold through open tenders.

The outstanding indebtedness of nine of these power distribution companies was one of the obstacles to be resolved prior to the privatization tenders. On 31 July 2002, the Cabinet of Ministers approved unified conditions for holding tenders on the sale of blocks of shares of these power distribution companies. These conditions stipulated a number of qualifying criteria (aimed at ensuring the stability of the power industry) to be met by potential bidders.

The Cabinet of Ministers of Ukraine adopted Resolution No. 794 "*On Creation of National Joint Stock Company "Energy Company of Ukraine*", dated 22 June 2004 (the "Resolution"). According to the Resolution, state-owned blocks of shares in 13 regional energy distribution companies were to be transferred to the charter fund of the new National Joint Stock Company "Energy Company of Ukraine". These blocks of shares varied from 25% plus 1 share to 75% of the shares of the 13 regional energy distribution companies.

The transfer of the state-owned blocks of shares in energy distribution companies to the charter fund of the newly created National Joint Stock Company "Energy Company of Ukraine" effectively meant keeping these shares in state ownership under one umbrella.

New steps in the privatization process were taken on 3 November 2010, when the Cabinet of Ministers of Ukraine adopted Resolution No. 999, by which the Ukrainian government reconsidered the list of objects in state ownership that are strategically important for the economy and security of Ukraine. Pursuant to these changes, all regional distributors ("*oblenergos*") can now be privatized.

Moreover, according to Decree of the President of Ukraine No. 1118/2010 "*On Decisions of the National Security Council*", dated 22 October 2010, and "*On the Status of Privatization of State Property*", dated 10 December 2010, the ban on privatization of the largest producers of electric energy was lifted.

On April 2011 the Cabinet of Ministers of Ukraine adopted Decree No. 310-p "*On Approving of List of Energy Generating and Supply Companies, State Shares of which are Subject to Sale in 2011 - 2012*", pursuant to which the shares of 13 oblenergos were to be sold into private ownership. In 2012 this list was supplemented with three more companies.

As of now, shares of 9 from 16 oblenergos have been sold to investors. During 2012, tenders for the sale of seven more oblenergos were announced. However, only 75% of the shares of Volynoblenergo

were sold in 2013. A large scale sale of shares in oblenergos was planned for 2014, however only 25% of the shares of Zakarpattiaoblenergo, Vinnytsiaoblenergo and Chernivtsioblenergo were sold in November 2014. Recently, the State Property Fund of Ukraine announced its intention to privatize the rest of oblenergos by the end of 2016.

18.6 Green Energy: Incentives for Stimulation and Development in Ukraine

The new legal framework recently adopted in Ukraine established certain incentives for the operation and development of renewable energy sources in Ukraine.

One of the most important incentives for the development of renewables is the introduction in 2009 of the "green" tariff or feed-in tariff (as this term may be known in other jurisdictions). The feed-in tariff for green projects in Ukraine is one of the highest in the world, which makes investment in this sector very attractive.

NEURC establishes green tariffs for each renewable energy sources producer (the "RES Producer") and for each type of RES and for separate units of a generating facility. The following types of RES are eligible for the green tariff:

- wind;
- solar;
- biomass;
- small hydroelectric power plants (with a generating capacity not exceeding 10 MW);
- biogas-based generating facilities commissioned from 1 April 2013.

Green tariffs are established until 1 January 2030 and are reviewed by the NEURC on a monthly basis with a guaranteed "minimum floor" set in EUR.

Green tariffs are applied to new construction projects as well as existing renewable energy plants.

However, green tariffs will be decreased for RES units commissioned or substantially modernized in 2014, 2019 and 2024, by 10%, 20% and 30%, respectively.

On 4 June 2015 Verkhovna Rada of Ukraine approved Law of Ukraine No 514-VIII "On Amendment of Certain Laws of Ukraine to Ensure Competitive Terms of Electricity Production from Alternative Energy Sources" (the "**Amendment Law**") providing for a decreased fixed rate of the feed-in tariff until 1 January 2017 for solar energy producers with a generating capacity exceeding 10 MW and commissioned before 1 July 2015.

Local Content Incentive

The Amendment Law incentivizes RES Producers to use equipment produced in Ukraine. The RES commissioned between 1 July 2015 and 31 December 2024 can benefit from the surcharge to feed-in tariff, if they use equipment produced in Ukraine. The RES Producers are entitled to a 5% surcharge if at least 30% of the equipment they use is produced in Ukraine and a 10% surcharge if 50% or more of the equipment they use is produced in Ukraine. The NEURC sets the surcharge in a monetary equivalent on each date the fixed minimum rate of the feed-in tariff is recalculated.

Guarantees Provided to RES producers

The state provides RES producers with certain guarantees if they do not manage to sell the electricity produced from RES directly to customers or to the electricity supply companies:

- the Wholesale Electricity Market Operator is obligated to purchase the electricity produced from RES at the green tariff rate established for the relevant RES producer; and

- the Wholesale Electricity Market Operator is obligated to pay the full price for such electricity produced from RES when due.

VAT/Customs Duties Exemption

Importation of the following equipment into Ukraine is exempt from Ukrainian customs duties and VAT:

- equipment and materials that will be used for the production of electricity from RES;

- raw materials, equipment and components that will be used in the production of electricity from RES.

Temporarily, until 1 January 2019, the following operations will not be subject to VAT:

- supply of RES equipment and facilities on the territory of Ukraine;

- importation of RES equipment and facilities into Ukraine that will be used for the reconstruction of existing and construction of new facilities that will produce biofuels as well as for production and reconstruction of technical and transportation means for biofuel consumption, provided such products are not produced in Ukraine and there are no similar products, equipment or facilities in Ukraine.

Funding the connection of RES facilities to electricity networks

Starting from 1 January 2013 connection of the RES producers to the electricity networks is to be financed by 50% of the funds included in the transmission tariffs and 50% as refundable financial aid provided

to the RES producer by the electricity transmission company. NEURC will establish the terms, which may not exceed ten (10) years, for returning such financial aid.

The electricity transmission company will be obligated to prepare the project and cost estimate documentation for connecting the RES generating facility to the electricity networks.

Changes for Renewable Energy Sources (RES) Producers introduced by the Electricity Market Law

- RES Producers may sell "green" electricity at prices established by the bilateral contracts market, the "day ahead" market and the balancing market; or

- RES Producers may sell "green" electricity at the "feed-in" tariff rate to the Guaranteed Buyer (the state enterprise "Energorynok") which shall purchase "green" electricity from the RES Producer and sell it on the "day-ahead" market provided that the RES Producer and the Guaranteed Buyer are in the RES Producers balancing group. The obligation of the Guaranteed Buyer to purchase "green" electricity and pay the RES Producer the "feed-in" tariff rate will be effective until 1 January 2030;

- the Cost Imbalance Allocation Fund will compensate the Guaranteed Buyer the difference in price for the electricity purchased by the Guaranteed Buyer from RES Producers at the "feed-in" tariff rate and the price of "green" electricity it sold on the day-ahead market. The Cost Imbalance Allocation Fund, created as a non-commercial state organization for a term until 1 January 2030 for "adjusting the competitive environment", will compensate the losses caused as a result of trading electricity at prices lower than market prices to: (1) the Guaranteed Buyer; (2) guaranteed suppliers; and (3) combined heat and power producers through the funds obtained from: (1) nuclear power plants; (2) hydroelectric

power plants; (3) electricity importers; and (4) the transmission company;

- RES Producers (save for wind and solar power plants) will be obligated to reimburse the cost of the imbalance caused as a result of their "green" electricity trades in the amount of: (1) – 0% in the first year after launch of the full-scale market; (2) – 50% in the second year; and (3) - 100% in the third year;

- RES Producers with an installed capacity that exceeds 5MW (except for those that have concluded their grid connection agreements prior to 1 July 2014) will be eligible for the "feed-in" tariff rate provided that the construction of the RES is compliant with the plan (in addition to the requirement to comply with the "local content requirement"). The System Operator decides whether the proposed construction of the RES is compliant with the Plan;

- should the RES construction project prove to be compliant with the Plan, the RES Producer will be eligible for the "feed-in" tariff and for the 50%/50% funding scheme for the grid connection according to which 50% is covered by the transmission tariff and the other 50% through the refundable financial aid provided by the transmission company;

- should the RES construction project prove to be non-compliant with the Plan, the RES Producer will not be eligible for the "feed-in" tariff rate and the connection of the RES project to the grid will be performed under the general procedure established for non-standard connections and the RES Producer will be obligated to pay the connection fee.

18.7 Natural Resources, Mining, and Oil & Gas

18.7.1 General

The principal legislative acts governing mining and oil and gas exploration activities in Ukraine are the *Code of Ukraine on the*

Subsurface (the "*Subsurface Code*"), and the *Laws of Ukraine* "*On Oil and Gas*", "*On Production Sharing Agreements*", "*On Mining in Ukraine*", "*On Gas (Methane) of Coal Fields*", "*On Pipeline Transportation and the Functioning of the Natural Gas Market*".

The *Subsurface Code* defines the subsurface as "*a part of the earth's crust underlying the land surface and the bottom of bodies of water and stretching to the depths accessible for geological survey and development*". The subsurface is the exclusive property of the people of Ukraine and may be granted to Ukrainian and foreign legal entities and individuals for use only.

18.7.2 Licenses and Permits

Business entities and/or individuals seeking to engage in use of Ukrainian subsurface resources must follow the established procedure for obtaining the necessary licenses (for certain types of natural resources), permits and mining allotments.

18.7.2.1 Licenses

Current Ukrainian legislation stipulates that business entities and/or individuals must obtain licenses only for the mining of precious metals and precious stones, organogenic precious stones and/or semi-precious stones on the territory of Ukraine (i.e., no business activity license is required for extraction of other natural resources). According to Resolution of the Cabinet of Ministers of Ukraine No. 1698 "*On Approval of the List of Licensing Authorities*", dated 14 November 2000, licenses for the extraction of precious metals and precious stones, organogenic precious stones and/or semi-precious stones are issued by the State Geology and Subsurface Service of Ukraine. Such licenses are issued for an unlimited term. The mining of other types of natural resources does not require a license.

18.7.2.2 Permits

Under Resolution of the Cabinet of Ministers of Ukraine No. 615 "*On Approval of the Procedure for Issuance of Special Permits for Subsurface Use*" of 30 May 2011, subsurface use rights are granted in

the form of a special permit for subsurface use, which can be issued for the following types of activities:

- geological survey of mineral deposits, including scientific and industrial development of deposits (for up to five years), geological survey of oil and gas fields, including industrial development onshore and in the exclusive economic (maritime) zone (for up to 10 years);

- extraction of minerals (for up to 20 years); extraction of oil and gas on the continental shelf and in the exclusive economic (maritime) zone (for up to 30 years);

- geological survey of oil and gas deposits, including the scientific and industrial development of hydrocarbons with further extraction of oil and gas (for the validity terms of special permits for geological survey and extraction, but for a maximum of 20 years for onshore and 30 years for the continental shelf and exclusive economic (maritime) zone;

- construction and use of underground facilities unrelated to mineral extraction (for up to 20 years);

- construction and use of underground oil or gas storage facilities (for up to 50 years); and

- performance of production sharing agreements (for the term of such agreements).

The applicable legislation provides that subsurface use rights are, as a rule, granted on a competitive basis, i.e., through auctions[12]. However,

[12] We use "auction" as a common term for the procedure for issuance of special permits on a competitive basis. However, due to the absence of a unified approach, Ukrainian legislation also uses the terms "tender" and "competition" for issue of special permits for subsoil use.

there are several cases when a special permit may be granted without going through the auction procedure, which include:

- extraction of minerals (1) if the applicant, upon the results of geological exploration of a subsurface area at its own expense, calculated the mineral reserves and this calculation was approved by the State Commission of Mineral Reserves of Ukraine (the "SCMR") or (2) if the applicant using its own funds obtained approbation of the mineral reserves from the SCMR in event of further approval of the mineral reserves by the SCMR within a five-year period starting from the date of issue of a special permit for subsurface use (in case of subsurface use onshore and in the exclusive economic (maritime) zone – within a ten-year period);

- expanding the boundaries of an area previously provided for subsurface use with aim of its geological exploration or placement of an underground storage facility by not more than 50 percent and in case of increase of extraction of minerals by expanding the boundaries of a subsurface plot, by not more than 50 percent of the reserves previously identified in a special permit, subject to the condition that the adjacent plot is not in use;

- geological exploration, including research and industrial development of mineral deposits of national importance or extraction of minerals, if pursuant to the applicable legislation the applicant owns or leases (has in concession) an integrated property complex, built (reconstructed) with the aim of extraction and processing of minerals from the subsoil area for which the special permit is issued;

- construction and operation of underground facilities not related to the extraction of minerals, including facilities for underground storage of oil, gas and other substances and materials, disposal of hazardous substances and industrial waste, discharging of waste water;

- extraction of minerals from deposits that contain small reserves, being approved by the SCMR on criteria established by Resolution of the Cabinet of Ministers of Ukraine No. 1257 "*On Approval of the Criteria for Identifying Small Mineral Reserves*" of 11 August 2000; and

- performance of production sharing agreements.

A subsurface user is not authorized to bestow, sell or otherwise transfer the rights granted by a permit. The transfer of such rights to the charter capital of entities (even if created by such subsurface user) or their transfer into joint activity are also prohibited. The validity of a special permit for subsurface use, however, is not affected by the change of ownership of the permit holder. For this reason, in practice a special permit is often obtained by an interested party through acquiring control over the licensee (i.e., by purchasing the relevant shares or participatory interest).

The conditions for the use of natural resources must be set forth in an agreement between the permit holder and the authorized governmental agency. The permit holder must start use of the subsurface area within two[13] years after the issuance of a special permit (180 days for oil and gas deposits).

18.7.2.3 Mining allotments

Pursuant to Article 19 of the *Subsurface Code*, a permit holder must obtain a certificate approving ies right to use the defined subsurface area, which is called the "mining allotment act" (the "Mining Allotment"). The procedure for issuance of Mining Allotments is regulated by Resolution of the Cabinet of Ministers of Ukraine No. 59 "*On Approval of the Procedure for Issuance of Mining Allotments*", dated 27 January 1995.

[13] The *Law of Ukraine* "*On Gas (Methane) of Coal Fields*" requires the start of the activities prescribed in a special permit for exploration and extraction of gas (methane) of coal fields within one year of issue of such permit.

In order to apply for a Mining Allotment an applicant should have a relevant special permit for subsurface use and a duly approved extraction project. A Mining Allotment is issued in accordance with the borders of the subsurface area specified in a special permit. A subsurface user is not authorized to transfer the rights granted by the mining allotment act (in full or in part) to a third party.

Business entities and/or individuals seeking to extract minerals of national importance or to construct and use underground oil or gas storage facilities must file an application for a Mining Allotment with the State Employment Service of Ukraine. If wishing to extract minerals of local importance, business entities and/or individuals at the location of the relevant deposit should apply to: (i) the regional council; or (ii) the city council in the cities of Kyiv or Sevastopol, or (ii) the Ministers' Council of the Autonomous Republic of Crimea.

A decision on issuance of a Mining Allotment should be made within 21 calendar days.

18.7.3 Payments for Subsurface Use

Under the applicable Ukrainian legislation[14], the following mandatory payments are required for subsurface use:

- subsurface use payments;
- payment for subsurface use not connected with extraction of natural resources; and
- royalty payments for extraction of oil, gas and gas condensate[15].

[14] Article 28 of the *Subsurface Code*.

[15] Starting from 1 January 2013 royalty fees for extraction of oil, gas and gas condensate are no longer charged and the relevant amounts are included into the subsurface use payments by increasing of the established rate of such payments. At the same time, no charges have been introduced into the *Subsurface Code* yet.

In the event of extraction of natural resources, the taxable object will include: (1) the amount of mineral resources extracted from the subsurface on the territory of Ukraine, its continental shelf and the exclusive (maritime) economic zone; (2) the amount of mineral resources produced from mine waste; and (3) the amount of reclaimed mineral resources.

When subsurface use is not related to the extraction of natural resources, the taxable object will comprise the amount of subsurface to be used and will depend on the goals and method of use thereof. Also, the *Tax Code of Ukraine* provides an exemption from the subsurface use payment for underground constructions at a depth of less than 20 meters.

Moreover, the *Tax Code of Ukraine* envisages royalty payments for the transportation of oil and oil products through oil pipelines and oil-products pipelines, as well as for the transit transportation of natural gas and ammonia through pipelines.

18.7.4 Production Sharing Agreements

In most cases, if engaged in mining activities through a Ukrainian company with foreign investment, the investor will fall under the general requirements of the applicable Ukrainian legislation. The applicable Ukrainian legislation envisages certain incentives for investors that undertake mining activities directly pursuant to agreements on the sharing of the output of such activities (a "Production Sharing Agreement" or "PSA").

The basic legal requirements with respect to PSAs are set forth in the Law of Ukraine "*On Production Sharing Agreements*" (the "*PSA Law*"), dated 14 September 1999, and further restated in a new version on 02 October 2012.

The *PSA Law* envisages that relations arising in the course of prospecting, exploration and mining operations, distribution of production and its transportation, processing, storage, use, sale or disposition as well as construction and operation of related industrial

facilities, pipelines or other objects shall be governed by a PSA, which shall be concluded in accordance with the *PSA Law*. Moreover, in case of any legal discrepancies between the *PSA Law* and other Ukrainian laws, the provisions of the *PSA Law* shall prevail.

Under the *PSA Law*, the Cabinet of Ministers of Ukraine on behalf of the state and the investor(-s) may enter into a PSA whereby the investor agrees to undertake certain mining activities at its own expense and risk, and is entitled to reimbursement of its expenses and to a certain share of the relevant output. When entering into a PSA a foreign investor must establish a representative office in Ukraine within three months of the date of signing the PSA.

The deposits for a PSA are selected under the relevant decision of the Cabinet of Ministers of Ukraine. Then the investors are selected through an auction held by the permanently established inter-agency commission.

Also there are several cases when a PSA may be entered into without an auction, including:

- if there is a deposit with insignificant reserves of minerals and the Cabinet of Ministers of Ukraine, together with the relevant local self-government authorities, approved entering into a PSA for such deposit without a competition; and

- if the subsurface user that already holds a special permit for subsurface use and has commenced works on subsurface use expressed a will to enter into a PSA.

The PSA may be concluded for a period agreed by the parties, however, this period may not exceed 50 years. The term of validity of the PSA may be prolonged at the investor's initiative if the investor fulfils the obligations under the PSA. Such prolongation is performed through conclusion of an additional agreement. Simultaneously with the signing of the agreement on prolongation of the PSA, the licenses and other permits issued in order to perform the PSA are also

prolonged. The agreement on prolongation of the PSA is subject to state registration.

Minerals extracted under a PSA should be distributed between the state and the investor in accordance with the PSA terms. Until such distribution the state retains the ownership of all minerals extracted under the PSA. The investor gains ownership rights to the cost recovery and the profit portion of the minerals determined by the PSA at the moment of their distribution. The outstanding portion of the minerals remains state-owned.

The quarterly cost recovered portion of the extracted minerals may not exceed 70% of the total quarterly production until the investor has recouped its investment.

The investor is free to use and dispose of the portion of the extracted minerals owned under the PSA and it is not subject to any license or quota requirements. The investor may be obliged to sell its share of the extracted minerals within Ukraine only if it is expressly required by the PSA. If so required the sale price of the extracted minerals may not be lower than the price for such minerals established on international markets. No other limitations of the investor's rights are permitted unless expressly specified in the PSA or follow from the conditions of the competition.

The title to the assets created or acquired by the investor while performing its obligations under the PSA is transferred to the state on the date when the value of such assets is completely covered by the cost recovery portion of the minerals, or whenever the PSA is terminated. However, during the validity of the PSA, the investor enjoys a pre-emptive right to further use such assets.

The rights and obligations under the PSA may be assigned by the investor to a third party only with the prior consent of the state, and only if such third party possesses sufficient financial and technical capacity and experience for performance of the PSA. The state is deemed to have consented to the assignment if it fails to provide the

investor with its answer within 90 days after the date of the investor's request for consent.

Issues related to the taxation of the investor under the PSA are regulated by a separate chapter of the *Tax Code of Ukraine*. The most significant features of the taxation regime under a PSA include the following:

- during validity of the PSA the investor is exempt from paying state and local taxes (save for VAT, CIT and subsurface use payment), which shall be replaced by distribution of output production under the PSA between the state and the investor(s);
- CIT shall be paid exclusively by monetary means; and
- in case of import of goods and other property into the customs territory of Ukraine for the purposes of the PSA, no taxes are payable at the customs clearance of goods under the customs regime of import (excluding excise taxes).

For the duration of the PSA the investor enjoys, inter alia, the following incentives:

- the investor and its subcontractors are exempt from licensing and quota requirements when importing the equipment necessary for their performance under the PSA; the same applies when such equipment is shipped out of Ukraine upon the termination of the PSA;
- any product obtained by the investor is subject to VAT when sold within Ukraine, but it is not subject to any VAT, other tax or customs duties when exported out of Ukraine;
- depreciation rates, other than those provided by the applicable legislation, may be established in the PSA;

- profits received under the PSA are exempt from the profit repatriation tax;

- funds received under the PSA are exempt from any restrictions on conversion into Ukrainian or foreign currency, and may be repatriated abroad under the terms and conditions of the PSA; any requirements for the mandatory sale of foreign currency are not applicable to such funds;

- the investor enjoys a flexible regime for use of foreign currency for PSA purposes, which includes exemption from restrictions on settlements under export and import contracts (the "180 days rule"[16]); registration of loan agreements with the National Bank of Ukraine (the "NBU") and maximum interest rate limitations; transfer of foreign currency to the account of other investors in Ukraine and obtaining the relevant NBU license for this;

- compulsory withdrawals of funds from bank accounts, opened by the investor in Ukraine in order to finance its operations under the PSA, are not permitted;

- the state will issue work permits to an investor's foreign employees or foreign employees of an investor's contractors solely upon the investor's application with an attached list of the relevant foreign workers. The requirements for submission of any other documents required by Ukrainian legislation shall not apply; and

- during the period of the PSA the rights and obligations of an investor will be regulated under legislation in force at the time

[16] Under the Law of Ukraine "*On the Procedure for Settlements in Foreign Currency*", revenues in foreign currency received by the resident shall be transferred to their bank accounts in foreign currency within the contractual terms but not later than 180 calendar days from the date of customs clearance of the exported products. Exceeding such term requires approval from the Ministry of Economic Development and Trade of Ukraine.

of signing of the PSA (except for legislation that reduces taxes or fees or cancels them, simplifies the regulation of economic activity for exploration and mining operations, reduces state supervision over economic activity, including procedures for customs, currency, tax and other state control, or reduces the responsibility of an investor, which legislation shall be applied from its date of enactment). However, the above-mentioned guarantees for constancy of legislation do not apply to changes in legislation relating to defense, national security, public order and environmental protection issues.

18.7.5 Pipeline Transportation

The pipeline transportation system of Ukraine consists of a trunk pipeline (high pressure) transportation system and an industrial pipeline (low pressure) transportation system.

The trunk pipeline transportation system is of paramount importance to the national economy and security and is run by the state. The state-owned trunk pipeline transportation companies are not subject to privatization or any other actions leading to private use of such enterprises. However trunk pipelines constructed at the expense of municipal or private commercial entities are owned by such companies.

The following activities are subject to licensing:

- Transportation of oil and oil products by trunk pipeline;
- Transportation of natural, oil and coalfield gas (methane) by pipeline, as well as its distribution;
- Supply of natural and coalfield gas (methane) at regulated or non-regulated tariffs; and
- Storage of natural and coalfield gas (methane) in amounts that exceed the threshold determined by the licensing conditions.

Licenses are issued by the National Commission for State Regulation in the Energy Sphere of Ukraine (the "NKRE").

A number of obligatory standard agreements were approved by the NKRE, namely, on sale and purchase of natural gas (between owners and suppliers), transportation of gas via trunk pipelines, storage (pumping-in, storage and pumping-out) of natural gas, connection to the gas system, supply of natural gas at a regulated tariff and other activities related to operating elements of the Unified Gas-Transportation System of Ukraine (agreements between pipeline owners and gas-transportation or gas-distribution enterprises). No such obligatory agreement is approved for the sale and purchase of natural gas between "traders" (i.e., without subsequent supply of natural gas to consumers).

Moreover, the Law of Ukraine "*On the Legal Status of Land in the Safety Zones of Trunk Pipelines*" of 17 February 2011 sets the legal regime for the safety zones of trunk pipelines with a view to ensuring their smooth functioning, rational use of land within the established safety zones, the regime for economic and other activities, environmental safety and protection, as well as protection of trunk pipelines from the effects of possible accidents.

A separate section of the *Tax Code of Ukraine* regulates the royalty payments for payers operating trunk pipelines and rendering services for transportation of oil, oil products and gas via trunk pipelines in Ukraine[17]. For the transportation of oil and oil products, the taxable object will be the actual amount of transported oil and oil products during the taxable period (calendar month). For natural gas and ammonia the amount of tax will depend upon the type of product (natural gas or ammonia), its amount and the distance it is to be transported.

[17] Royalty payments for transit of natural gas through the territory of Ukraine are paid by the enterprise specifically authorized by the Cabinet of Ministers of Ukraine to transport natural gas through Ukrainian territory

A significant step in regulation of the gas sector in Ukraine was taken on 9 April 2015 , when the Law of Ukraine "*On the Natural Gas Market*" was adopted. This law established new principles of operation for the natural gas market, limited the permitted state control in the gas sector of Ukraine and regulated relations between natural gas suppliers and consumers.

18.8 Pharmaceuticals and Healthcare

18.8.1 General overview

The production and circulation of pharmaceuticals and medical devices in Ukraine is subject to strict control. The statutory framework for the regulation of pharmaceutical products and medical devices in Ukraine is complex and comprises a network of specific laws and regulations.

The formal basis of the Ukrainian healthcare system is laid out in the Law of Ukraine "On The Fundamentals of Ukrainian Laws on Healthcare" (the "Fundamentals"), dated 19 November 1992, as amended. The principal legislative act setting forth the basic requirements for the development, registration, production, quality control and distribution of pharmaceuticals in Ukraine is the Law of Ukraine "On Pharmaceuticals" (the "Pharmaceuticals Law"), dated 4 April 1996, as amended. A new law on pharmaceuticals is expected to be adopted in 2016.

Other laws that are also important for the pharmaceuticals and healthcare sector include the Law of Ukraine "On Technical Regulations and Assessment of Conformity" (the "Law on Technical Regulations"), dated 1 December 2005, governing the processes of development, adoption and implementation of technical regulations, conformity assessments, requirements for bodies that conduct conformity assessments, their duties and appointment procedures; the Law of Ukraine "On Advertising", dated 3 July 1996, as amended (the "Advertising Law") governing advertising of pharmaceuticals and medical devices; the Law of Ukraine "On Licensing of Types of

Economic Activity" (the "Licensing Law"), dated 2 March 2015, governing licensing in Ukraine.

The reform of the healthcare sector in Ukraine has been actively discussed in the last two years. The Strategy of Sustainable Development "Ukraine - 2020", approved by Order of the President of Ukraine No. 5/2015, dated 12 January 2015, envisages the realization of 62 reforms and programs for country development, including, *inter alia*, in the healthcare and public procurement spheres. According to this strategy, healthcare reform is a top priority and it should be guided by the EU Health Strategy - 2020 . The main objective of healthcare reform in Ukraine is guaranteeing patients free choice of medical service suppliers of proper quality, creating a business-friendly healthcare market , etc.

The main regulatory authority for the healthcare system, pharmaceuticals and medical devices in Ukraine is the Ministry of Health of Ukraine (the "MOH") and a number of governmental agencies empowered by it. The pharmaceutical sector is also administered and regulated by the Cabinet of Ministers of Ukraine (the "CMU"), the State Administration of Ukraine on Pharmaceutical Products (the "State Service for Pharmaceuticals"), the activities of which are directed and coordinated by the CMU through the MOH, the State Expert Center of the MOH (the "State Expert Center"), the State Service on Control of Narcotics, the Anti-Monopoly Committee of Ukraine, and a number of other state agencies.

18.8.2 Registration of Pharmaceuticals

The *Pharmaceuticals Law* defines "pharmaceuticals" as "substances or combinations of substances (of one or more active pharmaceutical ingredients ("API") and excipients) that have properties and are aimed at the treatment or prophylaxis of illnesses of humans, or substances or combinations of substances (of one or more APIs and excipients) that can be used for preventing pregnancy, restoration, correction or alteration of a physiological function in a human by way of pharmacological, immunological or metabolical impact or for

reaching a diagnosis". The above definition includes APIs, in-bulk, ready-to-use pharmaceuticals, homeopathic products, products used for the detection and removal of pathogens or vermin, cosmetics with medicinal properties, and medicinal additives to food.

Pharmaceuticals may be used in Ukraine only after their official state registration by the MOH (i.e., marketing authorization). The above rule exempts from the mandatory registration regime those pharmaceuticals that are prepared in pharmacies in accordance with medical prescriptions for individual patients or in accordance with orders placed by healthcare institutions, provided that such pharmaceuticals are prepared from active and auxiliary substances allowed for use in Ukraine. Official state registration involves a three-step procedure consisting of pre-clinical research, clinical trials, and the filing of an application in the form of a "registration dossier" for the registration with the MOH.

Data Exclusivity

If an original pharmaceutical product is registered in Ukraine for the first time through the procedure of submission of the full dossier, then the state registration of another pharmaceutical with the same active substance(s) is possible no earlier than five years from the date of the registration of the original product, unless the second applicant has submitted its independently developed full dossier for an original product or has received the right to refer to or use the data from the first applicant's dossier.

The data exclusivity period applies solely if the application for state registration in Ukraine was submitted within two years from the date of the first ever registration of the original pharmaceuticals product in any country in the world. The five-year data exclusivity period may be extended to six years, if, within the first three years after registration of the original product, the relevant Ukrainian authority approves the use of this product for one or more indications that have a special advantage over the previously known (and registered) indications

(however, the criteria for indications that have a special advantage have not yet been defined by the MOH).

In exceptional cases, to protect the health of the people of Ukraine, the CMU may allow the use of the information by a generics manufacturer without the consent of the original applicant.

The intellectual property rights of the owner of the original pharmaceutical will be recognized (and protected from the generics manufacturers under IP, administrative and criminal laws) only if it has obtained a patent in Ukraine or has a patent that is valid in Ukraine. The owner of the original pharmaceutical may use the existence of such patent to object to registration of a generic on the grounds that such registration will violate the patent.

Pre-Clinical Research

Pre-clinical research is mandatory for all pharmaceutical products, except those eligible for simplified registration. Pre-clinical research is designed to prove the efficacy and safety of a pharmaceutical product for human use, its therapeutic effectiveness, the optimal dosage, any short-term and long-term side-effects, and, after registration and market entry, its therapeutic significance, the strategy for its further use, the incidence of side effects, and its effect when combined with other pharmaceuticals. The results of the pre-clinical research are submitted to the MOH, which decides whether clinical trials of a pharmaceutical product may be permitted.

Ukrainian legislation requires that the pre-clinical research (including chemical, physical, biological, microbiological, pharmacological, toxicological and other scientific studies) be carried out by specialized research establishments in order to determine the specific activity and safety of a given pharmaceuticals product. The detailed requirements for the conduct of such pre-clinical research are determined by the MOH under Order No. 944 “On the Approval of the Procedure for Conducting the Pre-Clinical Research of Pharmaceuticals and of the Review of Materials for the Pre-Clinical Research of

Pharmaceuticals", dated 14 December 2009. There is no statutory requirement for establishments conducting pre-clinical research to be authorised or licensed, but they must be able to demonstrate an appropriate scientific and methodological level, and ensure the humane treatment of any animals used in the tests.

Clinical Trials

Under the *Pharmaceuticals Law*, a pharmaceutical product may be admitted for clinical trials if its pre-clinical research showed positive results, and the expected benefits of using the pharmaceutical significantly outweigh the risks of side effects. Clinical trials are conducted by specialized medical institutions determined by the MOH. Based on the results of the clinical trials, the institutions that conducted the trials decide whether the product should be recommended for medical use. If the product is not recommended for medical use, it cannot be registered with the MOH in the Register of Pharmaceuticals. The procedures for clinical trials are set forth in the "Procedure for Conducting Clinical Trials of Pharmaceuticals and the Examination of Materials on Clinical Trials and Model Regulation on the Ethics Commission" approved by MOH Order No. 690 on 23 September 2009, as restated by Order No. 523, dated 12 July 2012.

The purpose of clinical trials is to determine the safety of a given pharmaceutical, its therapeutic effectiveness, optimal dosage, short-term and long-term side-effects, and, after registration and market entry, its therapeutic significance, the strategy for its further use, the incidence of side effects, and its action when combined with other pharmaceuticals. The application for clinical trials must be accompanied by the pharmaceutical's general product information, the results of its pre-clinical research, specimen of the pharmaceutical, and outline of the clinical trial program. The applicant is required to obtain insurance policies to cover the lives and health of patients (volunteers) before the commencement of the clinical trials. The MOH will order the clinical trials to be halted in cases of danger to the health and life of a patient or volunteer, the ineffectiveness of a pharmaceutical, or a breach of any ethical norms. Clinical trials of

pharmaceuticals for treatment of illnesses of children and the mentally disabled are expressly permitted in Ukraine.

Registration of pharmaceuticals

The state registration of a pharmaceutical product requires the filing of an application with the MOH according to the provisions of the *Pharmaceuticals Law*, further detailed in Resolution No. 376 of the CMU "On the Approval of the Procedure for the State Registration (Re-Registration) of a Pharmaceutical Product and the Fees for the State Registration (Re-Registration) of a Pharmaceutical Product" (the Registration Resolution) dated 26 May 2005.

Pharmaceuticals are registered by the MOH on the basis of an examination of the "registration dossier" and quality control by the State Expert Center. An application for state registration of a pharmaceutical product must contain information on the applicant and the pharmaceutical product, specifying inter alia: its indications and contraindications, the name of the APIs, its dosage, storage and sale conditions, packaging, registration in other countries, etc. In addition, the application must be accompanied by: reports on the pre-clinical research and the clinical trials of the pharmaceutical product, the pharmacopoeia description or information on quality control methods, a description of the production technology, samples of the pharmaceutical product and its packaging, and a receipt evidencing payment of the registration fee. Based on the amendments introduced in 2015, the list of documents which must accompany the application differs for the following types of pharmaceuticals: (1) pharmaceuticals intended exclusively to treat tuberculosis, HIV/AIDS, viral hepatitis, oncological and rare diseases, which are registered by competent authorities in the USA, Switzerland, Japan, Australia, Canada and European Union as a pharmaceutical, and (2) pharmaceuticals which are subject to public procurement pursuant to procedures conducted by a specialized organization.

The applicant for state registration must also provide: (1) for products manufactured in Ukraine, a copy of the manufacturing license, and (2)

for imported pharmaceuticals (save for the API) a certified copy of the document confirming compliance of the manufacturing process with the good manufacturing practice ("GMP") requirements applicable in Ukraine. Confirmation of compliance is issued by the State Service for Pharmaceuticals. For producers located in the PIC/S countries, such confirmation is issued upon a review of an application with certain accompanying documents. PIC/S is the abbreviation and logo used to describe both the Pharmaceutical Inspection Convention (PIC) and the Pharmaceutical Inspection Co-operation Scheme (PIC Scheme) operating together in parallel with respect to the GMP. Ukraine has been a member of PIC/S since 2011. For manufacturers from other countries, such confirmation may be issued only upon inspection of the production lines by certified specialists of the State Service for Pharmaceuticals.

If a pharmaceutical is related to an item of intellectual property registered in Ukraine, a copy of a valid patent or a license agreement permitting the manufacture and sale of the registered pharmaceutical must be submitted. Generic versions of original products that were previously registered in Ukraine are subject to simplified state registration procedures, that is, without the need for pre-clinical tests and clinical trials, provided that the manufacturer is able to prove that the generic's therapeutic equivalence conforms to the original or reference product that was previously registered in Ukraine.

Materials submitted for the state registration of the pharmaceutical are examined by the State Expert Center. The examination of materials submitted for state registration of pharmaceuticals is regulated by the "Procedure of Examination of Registration Materials for Pharmaceuticals, Which are Submitted for State Registration (Reregistration), as well as Examination of Materials on Amending Registration Materials While Registration Certificate is in Force", approved by MOH Order No, 426, dated 26 August 2005, as amended.

Examination by the State Expert Center of the materials submitted for state registration of the pharmaceutical takes:

(1) up to 210 business days for: (i) pharmaceuticals submitted for registration pursuant to a full dossier (independent dossier), (ii) immunobiological pharmaceuticals (including vaccines), and (iii) biosimilars;

(2) up to 90 business days for: (i) pharmaceuticals submitted for state registration in accordance with other types of applications not covered by (1) and (3), (ii) pharmaceuticals submitted for re-registration, (iii) APIs, (iv) pharmaceuticals produced pursuant to approved prescriptions, (v) changes that require a new registration, and (vi) immunobiologicals reclassified into a pharmaceuticals category for their registration as pharmaceuticals;

(3) up to 45 business days for (i) pharmaceuticals licensed by the European Medicines Agency under a centralized procedure, (ii) original pharmaceuticals for the treatment of socially dangerous diseases (tuberculosis, HIV/AIDS, hepatitis), and pharmaceuticals with original molecules for curing rare and oncologic diseases, which have been registered in a country whose regulators apply high quality standards corresponding to those recommended by the WHO (i.e., FDA, EMA pursuant to a centralized procedure, Swissmedic, PMDA, MHRA and TGA), (iii) pharmaceuticals for the treatment of tuberculosis and HIV/AIDS which have undergone a procedure of pre-qualification and are included in the WHO list of pre-qualified pharmaceuticals, and (iv) vaccines and antitoxins which went through the WHO prequalification process and are included in the list of pre-qualified vaccines and antitoxins by the WHO.

Examination by the State Expert Center of the amendments to a registration dossier takes:

(1) up to 60 business days; this period may be shortened due to urgency issues related to the safety of a pharmaceutical;

(2) up to 45 business days for changes to seasonal, pre-pandemic and pandemic vaccines for prophylaxis of influenza; and

(3) up to 20 business days for procedures to correct mechanical mistakes and re-registration of APIs.

In the course of its examination of the application materials the State Expert Center can request an examination of the production facilities, if the State Expert Center deems this to be necessary. Based on the results of the examination, the State Expert Center prepares its conclusions regarding the effectiveness, safety, and quality of the pharmaceutical and recommends either to register the pharmaceutical or to refuse registration. A decision on state registration or refusal of state registration should be adopted by the MOH within one month of the State Expert Center's conclusion. This term is shortened to 7 working days for pharmaceuticals which are intended exclusively to treat tuberculosis, HIV/AIDS, viral hepatitis, oncological and rare diseases, which are registered by competent authorities in the USA, Switzerland, Japan, Australia, Canada and European Union as pharmaceuticals and for pharmaceuticals which are subject to public procurement pursuant to procedures conducted by a specialized organization.

The registration will be refused if the effectiveness and quality of the given pharmaceutical product are not proven or if such registration violates the intellectual property rights of a third party that are protected by patent.

If registration is approved, the MOH will issue a registration certificate for a term of up to five years. The validity of registration certificates for pharmaceuticals which are subject to public

procurement pursuant to procedures conducted by a specialized organization is limited to 31 March 2019. After state registration, the pharmaceutical product is included in the State Register of Pharmaceuticals, at which time an applicant also receives a registration certificate. Throughout the term of the validity of the registration certificate, the certificate holder will be responsible for the quality of the pharmaceutical product and must report any proposed change of the product registration materials to the MOH, stating the reasons for the change and its effect on the product. The State Service for Pharmaceuticals may prohibit, fully or temporarily, the marketing of a registered pharmaceutical product if the product causes previously unknown dangerous effects or otherwise fails to comply with applicable Ukrainian requirements, including the quality parameters set out in the registration dossier.

Upon expiry of the registration certificate, the pharmaceutical product may be authorized for further use in Ukraine, provided that the application for its re-registration is submitted within one year before the expiration date, but not later than 90 calendar days before the expiry date of the previous registration certificate (in which case some test data will not be required).If the application is filed less than 90 days before the expiration date, the re-registration will entail the same procedure as the initial registration.

Pursuant to amendments of the Pharmaceuticals Law, which became effective on 5 November 2014, marketing of a pharmaceutical after the first renewal of its registration is not limited in time. In other words, the requirement to have the registration renewed every five years after its first renewal was abolished. Further, any product supplied to the market during the period when the respective pharmaceutical is allowed to be marketed in Ukraine may continue being offered until the expiration date indicated on its packaging. Respective amendments to MOH Order No. 809 “On Approval of the Procedure for Suspension (Temporary Suspension) and Renewal of Circulation of Pharmaceuticals on the Territory of Ukraine”, dated 22 November 2011, became effective on 23 January 2015.

18.8.3 Licensing of Pharmaceutical Activities

The Licensing Law and the Pharmaceuticals Law provide for the mandatory licensing of the manufacture, import, wholesale or retail sale of pharmaceuticals, and the handling of narcotic and psychotropic substances and precursors. In addition, the processing and storage of donor blood and its components as well as sale of pharmaceuticals manufactured therefrom also require a license.

The Licensing Law became effective on 28 June 2015 and it abolished the Law of Ukraine On the Licensing of Certain Types of Economic Activity, dated 1 June 2000. The Licensing Law introduced a simplified procedure to obtain a license, introduced the possibility to obtain a license with territorial effect, abolished fees for reissuing a license, established new grounds for canceling a license (*e.g.* an act of documentary confirmation of control over activities of licensees by other entities from countries which conduct armed aggression against Ukraine), etc.

Pursuant to the Resolution of CMU "On Optimization of Central Executive Bodies System" No. 442, dated 10 September 2014, the State Service for Pharmaceuticals and the State Service on Control of Narcotics should be reorganized by way of a merger into the State Service for Pharmaceuticals and Control of Narcotics. The reorganization is not yet completed and pending its completion each of the State Service for Pharmaceuticals and the State Service on Control of Narcotics will continue to perform its functions, including issuing relevant licenses. Licenses to handle narcotic and psychotropic substances and precursors are issued by the State Service on Control of Narcotics, licenses for the manufacture, import, and wholesale or retail sale of pharmaceuticals are issued by the State Service for Pharmaceuticals, and licenses for the production of pharmaceuticals from donor blood and its components are issued by the MOH.

The State Service for Pharmaceuticals issues licenses for the manufacture, import, wholesale or retail sale of pharmaceuticals after examining the application documents within a maximum period of ten

business days, provided that the applicant has complied with all of the licensing conditions.

Licenses for the manufacture, import and wholesale or retail sale of pharmaceuticals and for processing and storing donor blood and its components as well as the sale of pharmaceuticals manufactured therefrom are issued for an indefinite term. Licenses for the handling of narcotic and psychotropic substances and precursors are issued for a period of five years. Upon issue of a license, the license holder is subject to control by various state authorities as to its compliance with the licensing conditions. Failure to comply with the licensing conditions may lead to the cancelation of the license.

The license holder is required to apply for the reissuance of the license in the case of changes to its name (if the change of name is not related to the reorganization). Such application must be filed within one month after the relevant changes take place. Additionally, the license holder is obligated to notify the licensing authority of any changes to the information that was submitted in its licensing application not later than within one month after the changes took place.

Compliance with the licensing conditions for the manufacture, import and wholesale or retail sale of pharmaceuticals is verified by planned or ad hoc audits conducted by the State Service for Pharmaceuticals, including through its branches in various regions of Ukraine. Following an audit, a report is produced identifying any violations, which are classified as critical, substantial or insignificant (with reference to specific licensing conditions). The auditors must issue an instruction to rectify any violations identified within five days of the audit. If critical violations have been identified the manufacturer's license may be withdrawn or a decision made on the temporary suspension of production or recall of products. Following suspension, the manufacturer may only resume production when the State Service for Pharmaceuticals informs the manufacturer in writing that it has accepted the manufacturer's report on the measures adopted to rectify the violations. If the license has been withdrawn, an application for a new license may only be filed after one year.

18.8.4 Manufacturing of Pharmaceuticals

Pharmaceutical products may not be manufactured without a license for the manufacture of pharmaceuticals issued by the State Service for Pharmaceuticals. Detailed licensing requirements are set forth in the "Licensing Conditions for the Production, Wholesale and Retail Sale of Pharmaceuticals " (the Manufacture and Sale Licensing Conditions), approved by Order No. 723 of the MOH dated 31 October 2011. The draft CMU Resolution on the new licensing conditions for economic activities of the manufacture, wholesale and retail sale of pharmaceuticals as well as import of pharmaceuticals (except APIs), which should unify all types of economic activities connected with pharmaceuticals and replace licensing conditions adopted by MOH Order No. 723, dated 31 October 2011, and Order No. 143, dated 20 February 2013, is currently under public review.

To obtain a manufacturing license, an applicant must possess the necessary material and technical resources, employ qualified specialists and establish quality control procedures for pharmaceutical products. Prior to issuing the license, the State Service for Pharmaceuticals inspects the compliance of the applicant's material and technical resources, the qualifications of its personnel and the conditions for quality control with the applicable requirements. The appendices to the manufacturing license specify the forms of pharmaceuticals that the applicant is licensed to manufacture, as well as any special conditions for carrying out production.

The industrial manufacture of pharmaceuticals can be carried out provided that the manufacturer has an approved manufacturing unit and processes which comply with the requirements of the valid State Pharmacopoeia of Ukraine and/or other regulations applicable to the pharmaceutical product, its packaging, the terms and conditions of storage and quality control methods.

The industrial manufacture of pharmaceuticals must be carried out in compliance with the GMP requirements, including those for the bulk manufacture of pharmaceuticals. Compliance with GMP has been a

pre-condition to obtaining a license to manufacture pharmaceutical products in Ukraine since 2011. The Manufacture and Sales Licensing Conditions also contain further specific and detailed requirements applicable to the manufacture of pharmaceuticals.

18.8.5 Wholesale and Retail Sale of Pharmaceuticals

Under the Pharmaceuticals Law, pharmaceuticals may be sold in Ukraine either pursuant to a doctor's prescription or over-the-counter, that is, without a prescription. The lists of the various categories of prescription pharmaceuticals and the rules for issuing prescriptions are approved by the MOH. The current regulations provide that prescriptions should be made using the INN, rather than a brand name, apart from biosimilars or pharmaceuticals for which an INN is not available.

Wholesale and retail sales of pharmaceutical products are subject to licensing, save for the sale by manufacturers of pharmaceuticals of their own production which is done on the basis of their manufacturing license. The State Service for Pharmaceuticals issues the license after examining the application documents within a maximum period of ten business days, provided that the applicant has complied with all of the licensing conditions. Detailed licensing requirements are set forth in the Manufacture and Sale Licensing Conditions. To obtain a license for wholesale and/or retail trade in pharmaceuticals, an applicant must possess the necessary material and technical resources and qualified specialists. The State Service for Pharmaceuticals checks compliance with the applicable requirements prior to issuing the license.

The wholesale distribution of pharmaceuticals must be carried in compliance with the effective good distribution practices (GDP) and storage practices, which are harmonised with EU legislation.

The wholesale distribution of pharmaceuticals may only be done through a pharmaceutical warehouse and retail sales through pharmacies and their outlets save in exceptional cases in rural areas without any pharmacies. Any form of distance selling, such as via the

Internet, by post or through any other organisations, is prohibited. The owners of such pharmacies must ensure they hold the minimal mandatory assortment of pharmaceuticals and observe the proper conditions for their storage, production and sale.

Under the Pharmaceuticals Law and the Manufacture and Sales Licensing Conditions, a given pharmaceutical product may be admitted for sale in Ukraine only if its quality is certified by its producer, as confirmed by the State Service for Pharmaceuticals. Such a certificate of quality confirms the compliance of each series of the pharmaceutical product with the requirements set during its state registration. Quality of pharmaceuticals during wholesale and retail sale is also subject to control as set out in Order No. 677 of the MOH "Procedure for the Control of the Quality of Pharmaceuticals During Wholesale and Retail Sale" dated 29 September 2014.

The Pharmaceuticals Law requires that the following information appear on the label and the outer and inner packaging of pharmaceutical products: the name of the product, the name and address of the manufacturer, the registration number, the series number, the consumption method, the dosage of the active ingredient in each product unit, the number of units per package, the use by date, the storage conditions, and restrictions on use.

In addition, all pharmaceuticals in circulation must be accompanied by appropriate instructions for medical use containing the required information.

As a rule, all labels of pharmaceuticals distributed in the territory of Ukraine must be in Ukrainian and in a regional language (that is, another language which is recognised as traditionally used in the relevant region of Ukraine (if any)). At the discretion of the manufacturer the label or the accompanying leaflet may additionally contain a translation into another language.

The external packaging of pharmaceutical products must provide the following information in Braille for sightless individuals: the name of

the product, the dosage, and the form of the product. For some pharmaceuticals the MOH may require that only the name of the product be indicated in Braille.

18.8.6 Import and Export of Pharmaceuticals

Only pharmaceuticals registered in Ukraine may be imported into Ukraine, subject to the receipt by an importer of an import license and the availability of a quality certificate issued by the manufacturer for every series of a pharmaceutical (batch release). The procedure for quality control of imported pharmaceuticals is established by Resolution of the CMU No. 902, dated 14 September 2005, as amended. In particular, a quality certificate (certificate of analysis) is required (batch release), in addition to the confirmation of compliance of the manufacturer with the GMP requirements issued by the State Service for Pharmaceuticals.

A license for the import of pharmaceuticals into Ukraine has been required since 1 March 2013, while the import of APIs is exempt from the licensing requirement starting from 1 February 2015.

The issuance of the import license is performed based on the licensing conditions approved by Order of the MOH No. 143 "On Approval of the Licensing Conditions for Conducting Business Activities related to the Import of Pharmaceuticals", dated 20 February 2013 (the "Import Licensing Conditions"). The Import Licensing Conditions gradually tighten the requirements for licensees, with additional requirements having become effective as of 1 December 2014 (regarding internal audits, among other things), and they will be further tightened effective as of 1 March 2016 (regarding agreements on quality control with manufacturers, stability studies, and regulation of outsourcing activities, among other things). In particular, importers must maintain (and disclose in the event of any audit) a Site Master File detailing the quality management system policy, including procedures for the storage and quality testing of imported medicines at various stages of their importation and policies on personnel, premises, equipment, storage, product recalls and handling customer complaints. As of 1

December 2014, importers must implement (a) controls over the preparation of internal documents, including the process of drafting, approval, review, archiving and the format of its documents, and (b) implement an internal audit system. As of 1 March 2016, importers will be required to have Quality Assurance Agreements with manufacturers of imported pharmaceuticals, which should stipulate the obligations of each party in case of receipt of adverse reaction reports or other complaints from patients; the actions to be taken by each party in case of voluntary or involuntary product recalls, including obligations to destroy the relevant medicines; the storage of archive specimens (in particular, both the manufacturer and the importer should retain samples from each batch); the conditions for transportation of the pharmaceuticals; and other quality assurance obligations, including a requirement to conduct GMP-compliant stability tests after the product has been released into the market; in addition, if the holder of the registration certificate and the importer are different entities, there should be a contract between them, and with the manufacturer, concerning the performance of the quality control responsibilities.

To obtain an import license, an applicant must possess the necessary material and technical resources, employ qualified personnel and establish quality control procedures for pharmaceutical products; the State Service for Pharmaceuticals checks compliance with the applicable requirements prior to issuing the license. The importer must compile and maintain an "importer's dossier". The import license contains a list of the pharmaceuticals which the license holder is permitted to import, and any special conditions for carrying out its activities. If any additional products need to be imported, the license holder must apply for an amendment to the license.

Unregistered pharmaceuticals may be imported into Ukraine for the purpose of conducting pre-clinical research and clinical trials, pharmaceutical development, state registration in Ukraine, exhibitions, conferences, and similar purposes without the right of distribution, for personal use by individuals, for use by foreign military units stationed in Ukraine, or as technical assistance and

humanitarian aid in the case of disasters, catastrophes or epidemics. Any import of unregistered pharmaceuticals requires a special permit of the MOH. The import of unregistered pharmaceuticals is regulated by Order No. 237 of the MOH "On the Procedure for Import of Unregistered Pharmaceuticals, Standard Samples and Reagents into the Territory of Ukraine", dated 11 August 2011, as amended.

No license is required for export of pharmaceuticals from Ukraine, except for the export of pharmaceuticals from donor blood and its components, which may be exported from Ukraine only after having obtained a special permit which is issued by the CMU on an annual basis.

18.8.7 Medical Devices

On 1 July 2015, new marketing authorization requirements for medical devices became effective: the state registration of medical devices was abolished and replaced by the procedure of the national conformity assessment to technical regulations and marking with the national conformity sign.

The technical regulations provide a transition period lasting until 1 July 2016, during which they will not be applicable to medical devices that were registered and included in the State Registry of Medical Devices: (i) until 1 July 2016 for medical devices the registration certificates for which were issued for an unlimited term or expire after 1 July 2016, and (ii) until expiration of the term of validity of the state registration certificate for those medical devices the registration certificates for which expires prior to 1 July 2016. Such medical devices are allowed for sale and use in Ukraine until expiration of term of their validity without undergoing the procedure of conformity assessment and marking with the national conformity sign.

As a matter of further harmonization of the law and performance of obligations under the Association Agreement, the new Law "On Technical Regulations and Assessment of Conformity" was adopted on 15 January 2015. It will become effective on 10 February 2016 and replace the current Law on Technical Regulations. Pursuant to CMU

Resolution No. 1101 "On Amending Certain CMU Resolutions", dated 23 December 2015, which shall become effective on 1 July 2016, but not before the new Law on Technical Regulations comes into force, the national conformity mark shall be renamed "mark of conformity to technical regulations".

The conformity assessment procedure for medical devices is regulated by the following technical regulations, all of which became effective on 1 July 2015 (together, "the Technical Regulations"): (i) the Technical Regulation for Medical Devices approved by CMU Resolution No. 753 dated 2 October 2013; (ii) the Technical Regulation for *in vitro* Diagnostic Medical Devices approved by CMU Resolution No. 754 dated 2 October 2013, and (iii) the Technical Regulation for Active Implantable Medical Devices approved by CMU Resolution No. 755 dated 2 October 2013. The Technical Regulations are based on EU Directives 93/42/EEC, 98/79/EC and 90/385/EEC, respectively.

The Technical Regulations divide medical devices into various classes and the conformity assessment procedure significantly differs for each class of medical devices, ranging from self-declaration applicable to medical devices of class I (which are non-sterile and are not measurement tools) to conformity assessment procedures involving authorized bodies through on-site inspections or conformity assessments of each batch.

Starting from 7 July 2016, a simplified procedure of conformity assessments of technical regulations for medical devices purchased under public procurement through international organizations will be applicable according to CMU Resolution No 1163, dated 30 December 2015.

If the State Service for Pharmaceuticals or tax authorities establishes that the product was marked in violation of specific requirements or was not marked contrary to the obligation to do so under technical regulations, the manufacturer or its representative must bring into compliance the medical devices. If the violation is not eliminated, the

circulation of medical device on the market can be restricted or abolished.

18.8.8 Promotion

The only type of promotion of pharmaceuticals and medical devices that is currently specifically regulated by Ukrainian law is "advertising". Ukrainian legislation contains few provisions that specifically regulate practices (other than simple advertising) aimed at the promotion or marketing of pharmaceuticals and medical devices.

Pursuant to the Advertising Law dated 3 July 1996, the advertising of pharmaceuticals and medical devices on the territory of Ukraine may be carried out provided that the relevant products have been registered in Ukraine. Furthermore, advertising of a pharmaceutical is allowed provided that it is an over-the-counter product ("OTC") and it is not on the list of OTCs whose advertisement is prohibited. The regulations applicable to the advertising pf pharmaceuticals have been tightened in Ukraine during the last few years. Advertising of prescription pharmaceuticals ("Rx") and pharmaceuticals included in the list of pharmaceuticals which may not be advertised is prohibited. The MOH has established criteria for prohibition of the advertisement of pharmaceuticals in Order No. 422, dated 6 June 2012, pursuant to which the following pharmaceuticals may not be advertised, among others: Rx, pharmaceuticals containing narcotic and psychotropic substances and precursors, pharmaceuticals aimed exclusively at pregnant or breastfeeding women or children under the age of 12, as well as pharmaceuticals for treating tuberculosis, cancer, insomnia, and diabetes. The MOH decides whether or not to put a given pharmaceutical on the list of pharmaceuticals which may not be advertised when the pharmaceutical is registered for use in Ukraine (or when the registration is renewed). Information on whether a pharmaceutical can be advertised should be entered into the State Register of Pharmaceuticals (which is available online). Additionally, on 21 November 2012 in Order No. 876 the MOH approved the list of the OTCs whose advertisement is prohibited.

Any advertisement of pharmaceuticals and medical devices must contain: objective information on the relevant product which makes it clear that the relevant information is an advertisement, a requirement to consult a doctor before using the product, a recommendation to review the instructions for the pharmaceutical, and at least 15% of the text (or of the duration, as the case may be) of an advertisement must contain a warning that self-treatment could be dangerous to health.

Advertisements of pharmaceuticals and medical devices may not contain, among other things: comparisons with other products intended to enhance the advertising effect; references to actual cases of successful application; recommendations or references to the recommendations of medical professionals, scientists or medical establishments; images and/or names of popular personalities, movie, TV or cartoon characters, or well-known organizations; images or recordings of physicians or people resembling physicians; any information that may imply that there is no need to consult a doctor if the product in question is consumed; suggestions that the eventual medical effect of the product is guaranteed. Furthermore, an advertisement of a pharmaceutical product may not contain information that it is generally accepted as a food or cosmetic product or other consumable product.

Certain other restrictions apply when placing advertisements on television, radio, in the printed media, over the telephone, and other electronic means of communications. Sale of pharmaceuticals and medical devices the usage of which requires special knowledge and training via television is prohibited. Manufactures and distributors of pharmaceuticals and medical devices may become sponsors of television and radio programs by providing information of a promotional nature regarding the name and trademark of the relevant product, save for prescription pharmaceuticals and medical devices the usage of which requires special knowledge and training. There is no specific regulation on the advertising of pharmaceuticals on the Internet; as a result, the general legislative provisions governing the types of information allowed for dissemination must be observed (that

is, those applicable to advertisement of pharmaceuticals as set out in the first paragraph of this section).

The above requirements of the Advertising Law are not applicable to the advertising of pharmaceuticals and medical devices which is placed in specialized publications targeting hospitals and doctors and which is distributed at seminars, conferences and symposia on medical topics. Order No. 177 of the Ministry of Health "On the Approval of Legislative Acts Governing the Advertising of Pharmaceuticals", dated 10 June 1997, establishes additional requirements for advertising pharmaceuticals when targeting minors and/or professional medical specialists/establishments.

18.8.9 State Procurement and Price Regulation

State Procurement

Under Ukrainian law, any purchase of products from state funds should be carried out pursuant to an approved procedure which, in most cases, requires public tenders. The CMU approved the list of medicines produced domestically and abroad that can be purchased by healthcare institutions using full or partial financing from state or municipal funds (the "List of Pharmaceuticals") by its Resolution No. 1071, dated 5 September 1996.

On 19 March 2015, the Law of Ukraine "On Amending Certain Laws of Ukraine for Securing Prompt Patients` Access to Necessary Pharmaceuticals and Medical Products Through State Procurement Involving Specialized Organizations Which Conduct Procurement", was adopted. It provides for a special and temporary procedure of public procurement of pharmaceuticals and medical products through international organizations which will be effective until 31 March 2019. International organizations are defined as specialized foundations, organizations and mechanisms of the United Nations, International Dispensary Association, Crown Agents, Global Drug Facility, Partnership for Supply Chain Management, which provide services to state governments and/or central state executive bodies of organizing and conducting procurement procedures of

pharmaceuticals, medical products and related services under respective agreements and according to internal rules and procedures of these organizations. CMU established an additional list of criteria for choosing international organizations in Resolution No. 622 "On Certain Issues of State Procurement of Pharmaceuticals and Medical Products Involving Specialized Organizations Which Conduct Procurement", dated 22 July 2015 (e.g. technical and organizational ability of an organization to perform procurement and supply, the terms and conditions of the order and delivery, terms of payment, etc.). The list of pharmaceuticals and medical devices which may be purchased in 2015 on the basis of the procurement agreements with specialized organizations, which conduct procurement was approved by CMU Resolution No. 787, dated 8 October 2015.

Pharmaceuticals and medical products purchased under state procurement through international organizations are subject to special regulations. For instance, the amendments to the Registration Resolution provide for a specific registration procedure of such pharmaceuticals, which is further regulated by the "Procedure of Examination of Authenticity of Registration Materials for Pharmaceutical Which is Submitted to State Registration for its Procurement by Specialized Organization" established by MOH Order No. 721, dated 3 November 2015. The pharmaceuticals and medical products are also exempt from regulations under provisions of CMU Resolution No. 240, which establishes an obligation to declare the prices. In 2015, MOH signed agreements with several international organizations on state procurement of pharmaceuticals and medical products, in particular, the Memorandum with UNICEF (12 October 2015), the agreement with UNDP (27 October 2015) and the agreement with Crown Agents (6 November 2015).

Price Regulation

Certain pharmaceuticals and medical devices, both imported and domestically produced, are subject to price regulation by the CMU by way of setting maximum permitted wholesale and retail mark-ups and by way of declaration of changes in prices.

Pursuant to CMU Resolution No. 955 dated 17 October 2008, the following rules apply to maximum mark-ups on pharmaceuticals and medical devices: (i) for pharmaceuticals which are included in the National List of Essential Pharmaceuticals (which was approved by CMU Resolution No. 333, dated 25 March 2009) and in the mandatory minimum (social welfare) range of pharmaceuticals and medical devices for pharmacies approved by the MOH, the maximum permitted retail mark-ups are up to 25% and the maximum wholesale mark-ups are up to 10% including taxes, and (ii) for pharmaceuticals and medical devices the prices of which are included in the register of wholesale and retail prices for pharmaceuticals and medical devices that can be partially or fully purchased using state or municipal funds, the maximum wholesale and retail mark-up is 10% from the declared change of price (including taxes and levies). In an effort to deregulate the Ukrainian pharmaceutical market and unify various existing lists of pharmaceuticals, the list of mandatory minimum (social welfare) ranges of pharmaceuticals and medical devices for pharmacies was abolished by MOH Order No. 660, dated 9 October 2015. Pursuant to CMU Resolution No 1134, dated 9 December 2015, effective from 12 January 2016, the National List of Essential Pharmaceuticals and Medical Products was renamed the National List of Essential Pharmaceuticals. The new National List of Essential Pharmaceuticals is currently being developed and it is expected to be adopted in 2016.

On 22 April 2015, the CMU adopted the new version of Resolution No. 240 “On Declaring a Change in Wholesale Prices for Pharmaceuticals and Medical Products”, dated 2 July 2014. Pursuant to this resolution, changes in prices (excluding taxes and levies) for pharmaceuticals included in the List of Pharmaceuticals, and certain medical devices which are purchased using state or municipal funds, must be declared pursuant to the procedure established by this resolution. Healthcare institutions which are fully or partially financed by state or municipal budgets may purchase the relevant pharmaceuticals and medical devices at prices which do not exceed the level of declared changes to wholesale and retail prices.

In March 2014 the CMU approved a pilot project on state price regulation for insulin pharmaceuticals, which was planned to be launched in 2015. However, it was postponed until 1 April 2016. The project provides for the establishment of maximum permitted wholesale and retail prices for the relevant pharmaceuticals based on the reference prices. The MHO should develop and provide to the CMU for approval a draft resolution on the reimbursement system for insulin pharmaceuticals which should become effective on 1 April 2016. Additionally, MOH should approve regulation on the register of patients who require insulin therapy, the register of reference prices on insulin and the procedure for amending it. The register of reference prices (reimbursement prices) on insulin shall be published before 1 April 2016. The project should be financed by local budgets.

19. International Trade and Commerce

19.1 World Trade Organization

On 16 May 2008 Ukraine officially became the 152nd Member of the World Trade Organization (WTO). Ukraine filed its application with the WTO in 1994, which is one of the longest negotiation processes in WTO history. Ukraine's commitments and obligations are established in the Protocol on the Accession of Ukraine to the WTO dated 13 February 2008 and the Report of the Working Party on the Accession of Ukraine dated 25 January 2008.

Taking into account Ukraine's export-oriented economy, its desire to become a member of the WTO and as a result to liberalize its international trade regime is self-explanatory. Ukraine sought WTO membership in order to integrate with the world economy, stimulate the efficiency of domestic industry, remove barriers to trade, promote greater access to foreign markets and increase exports.

Despite the global economic crisis, since Ukraine's accession to the WTO the geographical distribution of Ukrainian exports has become more diverse and its structure has improved. For the past five years Ukraine has managed to gain liberalized access to world markets for its products. Ukraine has started reforming its trade policies in order to meet the requirements of WTO rules. In the last few years the Ukrainian Parliament has adopted a number of laws aimed at deregulating the country's economy.

The major achievement of Ukraine's accession to the WTO was integration into the European and global economic community, helping Ukraine become an attractive partner for international businesses. Ukraine's WTO membership was an essential condition to successful negotiation and signing of the Association Agreement between the EU and Ukraine.

Furthermore, Ukraine entered the WTO dispute settlement mechanism, which has allowed the defense of Ukrainian trade

interests. The WTO dispute settlement procedure is based on clearly defined rules of trade, compliance with which is mandatory for all member states. Ukraine has already sought consultations and dispute settlement with Armenia, Georgia, Moldova and Australia regarding trade barriers within the WTO dispute settlement framework. The most acute trade disputes considered by the WTO are between Ukraine and the Russian Federation. In 2013 Ukraine raised the issue of bans on Ukrainian confectionary and diary products imported by the Russian Federation before the WTO. Taking into account that the issues still remain unresolved, Ukraine is expected to bring a claim against the Russian Federation at the beginning of 2016. In October 2015 Ukraine brought a claim against the Russian Federation before the WTO related to restrictions on the import of Ukrainian train carriages and turnouts that the Russian Federation has been repeatedly imposing since 2013. The claim is expected to be considered under the WTO dispute settlement mechanism in 2016.

19.2 EU-Ukraine Trade Regime

19.2.1 General

On 27 June 2014, Ukraine and the EU signed the Association Agreement, which was then ratified on 16 September 2014 by the Parliament of Ukraine and the European Parliament.

The regulation of trade is set forth in Part IV of the Association Agreement. This part contains the provisions of the Deep and Comprehensive Free Trade Agreement (the "DCFTA"), which aims to progressively establish free trade between the EU and Ukraine. As a core element of the Association Agreement the DCFTA is expected to accelerate business development and promote crucial restructuring and modernization of the Ukrainian economy. The DCFTA has a much wider approach and goes far beyond the classic understanding of a free trade agreement. It envisages not only mutual opening of markets but also alignment of Ukrainian legislation with the EU norms and standards in trade and related areas.

According to the DCFTA, Ukraine and the EU countries commit to eliminating or substantially reducing all tariffs and barriers in the areas of trade in goods and the provision of services originating from both Ukraine and EU countries. Ukraine undertakes to eliminate or reduce the duties and barriers gradually within a period of not more than 10 years, whereas the EU will do so immediately. Both Ukraine and the EU undertake to afford national treatment to the goods and services of each other.

Free trade between the EU and Ukraine became effective on 1 January 2016.

19.2.2 Generalized Scheme of Preferences

The EU's Generalized Scheme of Preferences (the "GSP"), designed specifically for developing countries and allowing them to export their products to the EU market at reduced tariffs is applicable to Ukraine. Ukraine may benefit from the use of the GSP in cases when a particular quota is exhausted. The GSP will be abolished for Ukraine on 1 January 2018.

19.2.3 Rules of Origin

The proof of origin must be supported by a EUR 1 certificate or invoice declaration (for consignments of a value not exceeding EUR 6000 or by an approved exporter). An invoice declaration should be made by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document. A EUR 1 certificate should be issued by the customs authorities of Ukraine in one of the official EU languages.

In order to benefit from preferential tariff treatment under the GSP and export goods into the EU, Ukrainian exporters must obtain GSP Form A certificates endorsed by the Ukrainian Chamber of Commerce and Industry or its regional branches proving the origin of goods.

19.3 Ukraine Sanctions Legislation

In response to the military aggression of the Russian Federation and the annexation of Ukrainian territory the Verkhovna Rada adopted the Law of Ukraine *"On Sanctions"* dated 14 August 2014 (the **"Sanctions Law"**), which became effective on 12 September 2014. The law may also affect international trade and commerce since it sets forth trade and trade-related sanctions against persons involved in terrorist activity.

19.3.1 Scope and grounds of application

The Sanctions Law establishes the grounds and mechanism for Ukraine applying special trade and trade-related restrictive measures (sanctions) . According to the law, sanctions may be introduced by Ukraine against a foreign state, a foreign legal entity, a legal entity controlled by a foreign entity or an individual, foreign individuals, stateless persons, as well as against other persons involved in terrorist activity based on:

1. the actions of the persons indicated above, which:

    (a) create a real and/or potential threat to the national interest, security, sovereignty and territorial integrity of Ukraine;

    (b) contribute to terrorist activity, violate human rights, public and state interests;

    (c) result in occupation of territory, expropriation or limitation of property rights, economic damage; and

    (d) block the sustainable economic development, rights and freedoms of the citizens of Ukraine;

2. the actions listed in item 1 above conducted in relation to a foreign state, its citizens and/or its legal entities;

3. resolutions of the United Nations General Assembly and Security Council;

4. resolutions and regulations of the EU Council; or

5. violations of the Universal Declaration of Human Rights and of the United Nations Charter.

19.3.2 Types of sanctions

The Sanctions Law provides both personal and sectorial sanctions including:

1. restriction of trade transactions;

2. restriction, partial or full termination of transit of resources through the territory of Ukraine

3. suspension of economic and financial obligations;

4. prohibition or restriction of entry of foreign non-military and military marine vessels into the territorial waters of Ukraine, its internal waters and ports;

5. termination of trade agreements, joint projects and industrial programs;

6. annulment of licenses and permits issued by the state authorities of Ukraine.

This list of sanctions is not exhaustive and allows for the introduction of other measures not directly provided by the Sanctions Law but corresponding to the objectives and principles of the Sanctions Law. Moreover, the majority of the sanctions referred to above may be broadly interpreted and further include a wider range of restrictive measures.

The Sanctions Law does not contain a list of persons (either natural persons or legal entities) subject to sanctions but provides for a separate procedure on the approval of such lists.

19.3.3 Effective sanctions

On 16 September 2015 Ukraine imposed personal sanctions against 388 individuals and 105 companies in connection with Russian aggression in the Eastern Ukraine and the Crimea. The sanctions are introduced for a period of one year and were brought into force by the President of Ukraine who enacted[18] the decision of the National Security and Defense Council of Ukraine of 2 September 2015.

Various types of sanctions apply to specific legal entities and individuals. The list of sanctions includes such measures as freezing assets, restrictions on trade operations, restrictions on removal of capital from Ukraine, suspension of performance of economic and financial obligations, prohibition on participation in public procurement, denial and cancellation of visas, prohibition on entering Ukraine and other restrictions.

The sanctions were introduced against citizens of Russia, Ukraine, Poland, the United Kingdom, Italy, Greece, Serbia, Spain, France, Bulgaria, Israel, etc.

The sanctions also apply to 105 legal entities, mostly to illegal militarized organizations operating in Eastern Ukraine and Russian legal entities operating in banking and finance, the military-industrial complex, aviation, telecommunication and IT sectors.

[18] Presidential Decree No. 549/2015 approving the Decision of the National Security and Defense Council of Ukraine dated 2 September 2015 (the **"Decree"**).

20. EU-Ukraine Association Agreement

On 27 June 2014 Ukraine and the EU signed the Association Agreement, which was then ratified on 16 September 2014 by the Parliament of Ukraine and the European Parliament.

The Association Agreement will enter into force upon its ratification or approval by all parties to the Agreement, including all member states, on the first day of the second month following the deposit date with the General Secretariat of the Council of the European Union of the last instrument of ratification or approval. As of January 2016, 25 out of 31 signatories have fully ratified or approved the Association Agreement.

The key elements of the Association Agreement are: (i) common values and principles (rule of law, democracy, respect for human rights, sustainable development, etc.); (ii) trade and trade-related matters (Deep and Comprehensive Free Trade Agreement); (iii) judicial freedom and security (mobility of workers, movement of persons, protection of personal data, money laundering and financing terrorism, the fight against crime and corruption, etc.); (iv) economic and sectoral cooperation (28 key policy areas); (v) cooperation in the field of foreign and security policy; and (vi) energy (energy efficiency, integration of energy markets, renewable energy sources, etc.).

The EU-Ukraine Association Agreement envisages the comprehensive approximation of Ukrainian legislation with EU legislation and, where relevant, with international norms and standards. The approximation will affect, *inter alia*, the following areas: company law, banking law, insurance law, financial services law, custom and tax law, accounting and auditing standards, information and telecommunications law, agricultural law, consumer protection law, environmental law, employment law, etc. The Association Agreement sets forth specific timelines for approximation of legislation in each area. Such timelines range from two to ten years.

On 17 September 2014 the Cabinet of Ministers of Ukraine adopted a plan of measures to implement the Association Agreement in 2014-2017. The plan covers various aspects of the planned implementation ranging from security matters to specific details of consumer protection and financial services regulations.

On 1 November 2014 the provisional application of the Association Agreement, which is envisaged by Art. 486 of the Association Agreement, commenced. In accordance with the provisional application, most Annexes and selected provisions of Parts I-III (political issues), V-VI (economic issues) and Part VII (institutional issues) of the Association Agreement became effective. The provisional application fosters important reforms pertaining to various fields of the Ukrainian economy. These include corporate governance and accounting standards, customs and taxes, the energy sector, the environment, financial services, agriculture, etc.

On 1 January 2016 the trade and trade-related part of the Association Agreement (the Deep and Comprehensive Free Trade Agreement) entered into force.

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