



Banking is one of the most dynamic sectors in Ukraine

Ducks in a row

Keeping track of all your financial investments

The Ukrainian market is demonstrating strong performance and rapid growth. It is attractive for investors, especially in the financial services sector. According to Ukraine's State Statistics Committee, in 2007 the total volume of foreign direct investment flowing into Ukraine was \$29.5bn. The volume increases every year. This is primarily due to the investment attractiveness of Ukraine. From an investment perspective, Ukraine can be described as a country providing a significant number of opportunities for return on funds invested in the short term. Banking, real estate and consumer (wholesale and retail) are sectors that provide the greatest opportunities and are most attractive to investors.

Foreign investments in Ukraine are governed by a law entitled "On Foreign Investment Treatment", dated March 19, 1996 (as amended) and, where applicable, bilateral or multilateral investment treaties to which Ukraine is a party. In accordance with Ukrainian law, foreign investors' activities in Ukraine generally enjoy at least the same status, and are subject to at least the same benefits and restrictions, as those of domestic companies, unless Ukrainian laws or international treaties provide otherwise. While equal treatment is the general rule, there are certain privileges and benefits that are available only to foreign investors as well as strict regulations and procedures for the making and repatriation of the investment.

The law of March 19 specifies permitted types of foreign investment and states that they can be made in the form of: foreign currency; Ukrainian currency (in the case of reinvestment); any moveable or immovable property or property rights; stocks, bonds and other securities, as well as corporate rights; monetary claims and rights in respect of the fulfilment of contractual obligations; patent rights; rights to carry out commercial activity, including rights to use underground resources and exploit natural resources; or other assets in accordance with Ukrainian legislation.

The procedure for bringing foreign investments into Ukraine (direct and portfolio), as well as the process

for repatriation of foreign investments and income received from investment activities inside and outside Ukraine, are defined in detail by regulations of the National Bank of Ukraine (NBU).

BANKING SYSTEM (STRUCTURE): The Ukrainian banking system is considered to be one of the most dynamically developing sectors of the economy. The initial law entitled "On Banks and Banking Activities" was adopted in March 1991. In time Ukraine faced the need for more comprehensive and transparent banking laws which would conform to worldwide standards of banking regulation and on December 7, 2000 a new law entitled "On Banks and Banking" was adopted.

The law sets out the two-tier banking system structure that consists of the NBU and commercial banks of various types. The law regulates the relationships that arise in the course of the establishment, registration, operation, reorganisation and liquidation of banks. Provisions of the law are also applicable to representative offices of foreign banks operating in Ukraine, unless otherwise determined by international treaties ratified by the Verhovna Rada of Ukraine. The NBU serves as the Ukrainian central bank, pursuing a state monetary policy to ensure the stability of the national currency.

Banks in Ukraine should be established in the form of open joint stock companies or a cooperative bank. As to the field of specialisation, the law provides that a bank may operate either as a universal bank or a specialised bank. According to Article 4 of the law, a bank will acquire the status of specialised bank if more than 50% of its assets are of the same nature or origin. A bank will acquire the status of a specialised savings bank if more than 50% of its liabilities are deposits from private entities. Pursuant to the law, four types of specialised banks may be established: savings, investment, mortgage or clearing.

CURRENCY REGULATIONS: The Decree of the Cabinet of Ministers of Ukraine, "On the System for Currency Regulation and Currency Control", is the principal legislative act that deals with currency regulation. The



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Currency Control Decree establishes the regime for currency transactions and determines the general principles of regulation, the respective authority of state agencies, and parties' rights and obligations in currency relations.

PAYMENTS: The rules for payment in export and import operations are established by a law entitled "On the Procedure for Settlement in Foreign Currency", as well as by a number of instructions and resolutions of the NBU regarding currency operations. The currency legislation of Ukraine is structured around the general approach that Ukrainian currency is the only lawful currency for payment in Ukrainian territory which may be accepted without limitation for the settlement of debts and obligations. The Currency Control Decree provides that all commercial transactions between a resident and a non-resident in the sphere of "trade turnover" must be carried out in a foreign convertible currency and only through authorised banking institutions (banks that are registered and licensed in Ukraine).

It is also important to note that the Ukrainian currency is not freely convertible. Any remittance from Ukraine can be effected only through an authorised Ukrainian bank, pursuant to Ukrainian legal requirements regarding currency conversion and currency transfers. The principal state body responsible for currency control and regulation is the NBU. The NBU issues individual and general licences to conduct currency operations which fall within the scope of the licensing requirements of the Currency Control Decree.

General licences are issued for an indefinite period to commercial banks and other financial institutions for conducting currency operations. Banks and other financial institutions that hold a general NBU licence have the right to make a wide variety of foreign currency transactions including exchanges, transfers and so on. Individual licences are required for a range of operations provided under the Currency Control Decree.

The law "On the Procedure for Settlement in Foreign Currency" establishes deadlines for payments in the

course of export and import operations performed under conditions involving a delay in payment or delivery. Such foreign currency funds of Ukrainian residents must be transferred from abroad no later than 180 days from the date of export of the goods (including work or services). The date of export is confirmed by Customs declaration (for goods) or by a document certifying the performance of work or services executed between parties. The same 180-day rule applies to import operations. Imported goods must be brought into Ukraine no later than 180 days from the date of any advance payment made by a Ukrainian resident. If the 180-day term is exceeded, the law provides for the possibility of applying for a special extension of operations involving industrial cooperation, consignment, complex construction, tender delivery, guarantee maintenance, supplies of complex technical units and special-purpose goods. Failure to comply with the above terms results in a penalty of 0.3% of non-returned foreign currency proceeds or the amount of non-received goods (work or services) for each day of delay.

REAL ESTATE: Real estate is of great importance to the development and restructuring of the Ukrainian market and has attracted foreign investors in recent years. The market has been lively since the second half of 2004 and is not expected to be materially affected by the credit crunch on global financial markets. Essential legislation now in force has been adopted since the early 1990s, however, the Land Code of Ukraine and the Civil Code of Ukraine, which contain the basic regulation, stem from October 2001 and January 2003, respectively, replacing the prior versions of the Land Code and Civil Code used in Soviet times.

A major share of Ukrainian land is still held by the state and by municipalities. In principle, save for several exemptions, such property is sold by auction or tender procedures. The same also applies to the privatisation of land parcels for development purposes and the conclusion of land leases. Decisions on the sale of property are made by municipal councils or local administration generally depending on whether land or buildings are to be sold. Although in the past political discussions about the privatisation procedure have caused some constraints, the public sector is set to remain an important seller of real estate in coming years.

Foreign investors may purchase Ukrainian real estate, except for agricultural land and property that has not been privatised. While political debate on the sale of agricultural land has been vigorous and it has been stated repeatedly that the moratorium on the sale of agricultural land will be lifted, both domestic and foreign agricultural companies have built up so-called land banks that lease considerable agricultural land by concluding long-term leases.

As a result of privatisation already conducted, private developers and investors have entered a buoyant market. Joint ventures between domestic developers and international investors have been frequently sought and successfully established in recent years.

Especially in the larger cities such as Kiev, Lviv and Odessa, demand continues to exceed supply, leading



The country is planning for major infrastructure investment in its airports to prepare for Euro 2012

to a sharp rise in rental and real estate purchase prices. Available office and residential space is often outdated and needs to be renovated. Future developments will also focus on retail; despite active growth over recent years the Ukrainian retail sector remains underdeveloped in comparison to peer countries and is said to provide excellent prospects for investors. Shopping malls and logistical centres are generally the focus of new construction.

RIGHT TO PROPERTY: Real estate transactions in Ukraine are governed by a voluminous body of legislation. Applicable legislation treats buildings and other structures as forms of real estate in their own right; unlike many Western jurisdictions, immovable structures are not treated as an essential part of the land and may be subject to different laws. Legal rights in land comprise inter alia, property ownership and land lease; rights pertaining to buildings exist in the form of property ownership, apartment ownership and leasehold. Both land and buildings (including unfinished construction) can be mortgaged for financing purposes.

Various data concerning rights to real estate need to be registered to become legally binding. Although a unified registry of real estate has not been implemented yet and thus the data is recorded by several authorities in different registers, the registry system can be described as fairly reliable. Certain transaction documents, including sale and purchase agreements, and long-term tenancy agreements, require notarisation.

Alienation and development of land frequently requires revision of the zoning of the land. Such decisions typically involve several government bodies, and the law does not limit the time for such procedures. Construction legislation requires the landowner to obtain a building permit and a permit to conduct construction work. Construction performance contracts between the landowner and the construction company need to adhere to several administrative acts.

In practice tax-related questions play a major role in acquisition structuring. Foreign investors so far have

commonly acquired Ukrainian real estate by way of share deals, i.e. acquiring shares or interests in asset-owning special purpose vehicles. Recently direct purchase of the assets has been more frequently observed. **EURO 2012:** With its excellent long-term prospects the bustling economy of Ukraine makes the country the last major frontier in Europe. Despite inflationary turmoil and political unrest, the real estate market in Ukraine could yield significant returns through to 2012.

Ukraine has unveiled ambitious plans to attract significant foreign investment into the country. In particular, there are plans to build some 300 new hotels in Ukraine by 2012, an increase of 25% in current hotel numbers, and substantial funds have been earmarked for improving and upgrading existing infrastructure. The development and modernisation plan adopted by Ukrainian State Railways for 2008-2015 envisages investment outlays in excess of €12bn, with the lion's share to be spent by 2012. Key projects centre on high-speed links between Kiev and other host cities – first Poltava, Donetsk and Dnipropetrovsk, then Lviv, Odessa and Kharkiv. By 2012 Ukraine plans to build approximately 1000 km of new roads, modernise approximately 500 km and repair up to 3000 km. At the moment, the airports of Boryspil (near Kiev) and Donetsk are best prepared for the upcoming 2012 UEFA, but even they need major investment. The Transport Ministry anticipates expenditure of at least €560m over the next few years to modernise these and other airports.

In order to coordinate the preparations for Euro 2012 in Ukraine, a special governmental structure was established: the National Agency to Prepare and Host Euro 2012. One of the main objectives of this agency is to simplify the construction process and introduce a one-stop shop for obtaining construction permits. At present, various construction approvals and permits are issued by local and central government authorities – this makes the whole process cumbersome and contradictory, often resulting in unexpected additional funding requirements on the investor's side and unnecessary delays. Other governmental agencies are also keen to provide input for the development of Ukrainian legislation. The State Committee on Regulatory Policy and Entrepreneurship has already prepared a draft law entitled "On Amending Various Legislation to Simplify the Construction Permit Procedure".

Euro 2012-related projects will create hundreds of thousands of new jobs in Ukraine and Poland. Ukraine also has hopes that many of its employees currently working abroad will return home and join the labour force (approximately 1m Ukrainians are reported to be working in Russia alone). Ukraine will be in competition with Poland for workers, as Polish wage rates are generally higher. This might give rise to some work visa liberalisation in Ukraine, as it has already done in Poland.

If everything goes according to plan, the preparations for Euro 2012 should be in place in both countries in the first half of 2011. As with most major projects, some slippage should be expected but the mood is extremely upbeat that the championships will run according to plan and that both Poland and Ukraine

will benefit from the infrastructure boost and the developments in legislation for many years to come.

LABOUR LAW: Labour issues in Ukraine are governed primarily by the Labour Code of Ukraine, which regulates issues such as wages and salaries, holidays, employment agreements, collective bargaining agreements, termination and employee guarantees. Related issues such as social security, mandatory withholdings, taxation, pensions and work permits are regulated by a number of other legislative acts and regulations.

The Labour Code, being based on the old Soviet code, is slanted heavily in favour of workers' rights and protections. For example, the concept of "employment at will" is undeveloped in Ukrainian labour legislation. In addition, an employee cannot contractually waive many rights he or she may have under Ukrainian law. Therefore, provisions of the Labour Code will prevail over any less-favourable terms in the employment agreement. This becomes particularly relevant in the context of termination, given that the Labour Code permits termination only in specific and limited circumstances, the rules of which are described below.

EMPLOYMENT AGREEMENTS AND TERMS OF EMPLOYMENT: There are three types of employment agreements in Ukraine: (i) fixed term, (ii) indefinite term, and (iii) project-based agreements. The latter are entered into to fulfil a specific job or responsibility and terminate when the task has been completed. As a general rule, the employer may not demand that the employee perform duties not contemplated in the employment agreement.

A specific type of fixed-term employment agreement is the "labour contract", which may be utilised only in specific circumstances permitted by Ukrainian law. For instance, the Business Code of Ukraine permits a labour contract to be entered into with the "director of an enterprise", which, under currently effective professional classification codes, would potentially include the director of any entity. A labour contract may contain additional bases for termination beyond those permitted by the Labour Code (for example, breach of confidentiality obligations), as well as impose additional rights and obligations of the parties. The employer may wish to consider using the labour contract form of agreement to provide more flexibility in structuring its employment relationship with the director.

An employee may be hired for an initial trial or probationary period that generally should not exceed three months. During this trial, the employee's position can be terminated if he or she proves unfit for the job, with no prior notice. If the employee continues to work after expiration of the trial period, the employee is entitled to all rights and protections under the labour law.

Salary payments made by employers to Ukrainian residents are permitted only in local currency. In practice, salaries often are indexed to a foreign currency to protect against the risk of currency devaluation. By law, salaries should be paid twice a month within a period not exceeding 16 calendar days between payments.

According to the Labour Code, regular working hours may not exceed 40 hours per week, based on either



The Labour Code heavily favours workers' rights and safeguards their wages or salaries and holidays

five or six working days. However, the Labour Code also recognises a "non-normative" work schedule for certain classes of employees, such as managers and professionals, which allows extended work hours without additional remuneration. In all other cases, employees are entitled to overtime pay for working extended hours. Negotiated overtime may not exceed four hours in any 48-hour period or 120 hours annually. The Labour Code recognizes 10 national (paid) holidays, and also provides employees with the opportunity to take an additional three religious holidays with the understanding that the employee must later make up those days. In addition to national holidays, employees are entitled to at least 24 calendar days of paid vacation each year.

Depending on the employees' positions and qualifications, they may be entitled to additional vacation time. For example, employees working a "non-normative" schedule (i.e., over 40 hours per week) are entitled up to seven (7) calendar days of paid vacation above and beyond the 24 calendar days. Employees may not waive vacation time in exchange for salary compensation, subject to certain limited circumstances. Employees earn their annual vacation entitlement after a six-month period following the employment start date. Employees also are entitled to paid sick leave.

Termination of employment is strictly regulated under Ukrainian labour rules. During the initial probationary period, either the employer or the employee may terminate the employment relationship without cause and without prior notice. However, after this probationary period the employer's right unilaterally to terminate employment is limited to those cases expressly stipulated by the Labour Code.

In contrast, employees working under an indefinite term employment agreement have the right to terminate the employment relationship at any time, subject to two weeks' (and less in certain cases) prior written notice. The Labour Code also permits termination of the employment relationship by mutual agreement of the employer and employee.



Any foreign citizen seeking employment must obtain a work permit

Labour books typically contain information about the type of work performed, any awards, the duration of employment, etc, and serve as a basis for ascertaining the employee's work longevity with reference to social security and pension rights upon retirement. Although representative offices of foreign companies may employ Ukrainians, they are not permitted to make any entries in the labour books of such employees. Any entries made directly by the representative office would be declared invalid. Those books are submitted to and maintained by appropriate government agencies. In Kiev, that agency is the General Directorate for Servicing Foreign Representations (GDIP). The representative office must enter into an appropriate service agreement with GDIP and compensate GDIP for its services.

WORK PERMITS: Any foreign citizen seeking employment in Ukraine must obtain a work permit from the relevant state or local employment centre of the Ministry of Labour. However, the Ministry of Labour believes that local expatriate directors of representative offices are exempt from the requirement to obtain a work permit. It is the obligation of the employer to ensure that every foreigner working at the office obtains a work permit. A foreign citizen employed without a work permit is subject to immediate deportation from Ukraine at the employer's expense, and the stamp "persona non grata" will be entered into the passport of such foreign citizen. In addition, the director of the employing company may be liable to an administrative penalty.

Applications for work permits are submitted by the employer, and should include supporting evidence that there are no local employees who would be able to perform the work the foreigner would perform in Ukraine. Work permits are issued for a period of not more than one year but can be extended with few exceptions. There is no requirement as to the maximum period of uninterrupted stay of a foreign citizen in Ukraine for work.

UKRAINIAN TAXATION: Corporate profit tax (CPT) is assessed on worldwide income. The CPT standard rate of 25% applies to the taxable profit, which for these purposes is defined as gross income (taxable income) less deductible expenses (which are rather limited) and depreciation charges. Ukrainian withholding tax applies to Ukraine-sourced (including dividends, interest, capital gains, royalty, etc) income derived by a non-resident unless an applicable double-tax treaty provides otherwise. The withholding tax standard rate is 15%. This being said, income derived by a non-resident from the sale of goods, work and services (subject to certain exceptions) does not qualify as Ukraine-sourced income subject to withholding tax.

Dividends payable by a Ukrainian taxpayer would generally be subject to advance corporate tax (ACT) to be charged on top of such dividends at the standard CPT rate of 25%. The ACT is not withheld from the amount of dividends, but would have to be paid from the taxpayer's own funds. The ACT can be offset against the taxpayer's CPT liability. Note that if dividends are paid by a Ukrainian company generating more than 90% of its income from dividends payable by other Ukrainian companies, then the distribution of dividends by such Ukrainian company would not be subject to ACT. The ACT burden cannot be eliminated or reduced by virtue of an applicable double-tax treaty of Ukraine.

Value-added tax (VAT) at a rate of 20% applies to the supply of goods and services with the place of supply being Ukraine, and imports of goods. Sale of securities is not subject to VAT. The export of goods in Ukraine is taxed at a 0% VAT rate. The VAT due to the budget is calculated as a positive difference between VAT liability (i.e., output VAT collected from the customers for the sold goods, work or services) and VAT credit.

If a VAT payer has a negative difference, he or she can include the difference into the VAT credit of the following tax period. If in the following tax period the net VAT result is again negative, the VAT payer would be entitled to a VAT refund from the state budget amounting to VAT actually paid to suppliers of goods (services) in the previous tax periods. The taxpayer may opt for using the negative difference to offset against its VAT liabilities in future tax periods. Note that a VAT payer would not generally be eligible for a VAT cash refund if (i) he is registered as a VAT payer less than 12 calendar months prior to filing a claim for a refund, or (ii) he had VAT-able sales during 12 previous calendar months lower than the refund claimed, or (iii) he has carried out no activity within the last 12 months.

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Rates of social security contributions

No.	Type of mandatory social security	Rate of contribution, % of payroll	
		Employer	Employee
1.	Pension	33.2	2
2.	Unemployment	1.3	0.5
3.	Temporary disability*	1.5	1
4.	Accident at work	0.66-13.6 (depending on the class of professional hazard)	N/A

SOURCE: Salans

* Foreign individuals who temporarily reside in Ukraine are exempt from the liability to make mandatory contributions to the Unemployment Fund of Ukraine.