

AUSTRALIA AND UKRAINE:
CROSS BORDER PRIVATE AND BUSINESS
TRANSACTIONS



Introduction

It goes without saying that 2014 was a year of fundamental change for Ukraine.

Having ousted a corrupt government and participated in a hybrid war with neighbouring Russia, Ukraine is in the process of accelerated change to realign itself with EU standards of law and policies.

In the past private and commercial transactions between Australia and Ukraine have been limited despite the potential benefits for both Australian and Ukrainian private and commercial entities.

This publication has been prepared for the use of our Australian clients to provide the key background information in respect of cross-border private and business transactions with or in Ukraine. It is of use if you are dealing with a Ukrainian counterparty, outsourcing work to Ukraine or establishing a business or buying assets or a business in Ukraine. It also outlines the key principles to minimise your risks when dealing with or in Ukraine.

This publication focuses on the key issues of cross-border private and business transactions with or in Ukraine from Australian clients' perspective. However, it is not a substitute for a legal advice particular to your circumstances. Should you wish to discuss your specific circumstances and requirements, please contact:

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Pavuk Legal can assist you with a full range of legal services in respect to your business transactions with or in Ukraine, including guiding you through the negotiation process and helping you to understand cultural background and business conventions of your Ukrainian business counterparty, drafting your cross border contracts in both the English and Ukrainian languages to meet statutory requirements, advising you on Ukrainian and Australian law applicable to your contract arrangements, introducing you to a reputable Ukrainian legal firm to assist locally with your legal inquiries, if required, and ensuring a smooth and effective liaison with them, advising you strategies to resolve disputes and enforce your contract.

Pavuk Legal also assists private clients with property transfers and other property dealings in Ukraine, including preparation of Powers of Attorney and other documentation in English and Ukrainian as required. Pavuk Legal also advises and assists trustees, executors and beneficiaries of estates with assets in Ukraine in the context of private Australian family and succession matters, probate of estates and beneficiary entitlements of Australian or Ukrainian beneficiaries. Pavuk Legal also provides assistance with insurance claims relating to Ukraine.

With the right processes, necessary knowledge and assistance your intended business can receive a head start and your existing business can significantly improve in Ukraine.

For the full range of Legal Services that Pavuk Legal offers please visit our web-site at www.pavuklegal.com.

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Australia and Ukraine: Cross Border Transactions and Doing Business

1. Overview

1.1 Language and Culture

Ukrainian is an Eastern Slav language. It is written using the Cyrillic script. Ukrainian is the official language of Ukraine. Russian is widely spoken, especially in the south and east of the country. Ethnic Ukrainians make up approximately 78% of the population; Russians 17%; other ethnic groups include: Tatars, Belarusians, Romanians, Jews, and Hungarians.

It is important to understand cultural differences existing in different parts of Ukraine. Ukraine is a bilingual country and is working hard to become more inclusive society toward association with the European Union. Many parts of Ukraine have bilingual speaking citizens who speak Ukrainian or Russian as a first language. Depending on the region, Ukrainian may or may not be spoken as the first language. Therefore, you may need different language skills to deal with different parts of Ukraine.

Cross border contracts and documents need to be drafted in both English and Ukrainian language to meet the requirements of Section 19 of the Act of Ukraine “On State Language Policy Foundations”. Nevertheless, some citizens of Ukraine may require documents to be translated into Russian as well as English.

In formal conversations and correspondence with Ukrainian counterparties and authorities, the first name as well as patronymic name of the addressee should be used as a polite form of address. Understanding such protocols may enhance your credibility.

1.2 Geography and Strategic Value

Ukraine is the second largest country in Europe. With a land area of 603,700 km², it borders on Belarus to the north, Russia to the north and east, and Romania, Moldova, Hungary, Slovakia, and Poland to the west. For over 2,800 km to its south it forms the northern coast of the Black Sea and the Sea of Azov.

The capital is Kyiv (Kiev), with a population of 2.6 million. Other major cities are: Kharkiv (1.47 million), Dnipropetrovsk (1.07 million), Odessa (1.03 million), Donetsk, Zaporizhia, and Lviv. This country, a land of approximately 46 million people with substantial human, technical, and natural resources, is in a strategically important location at the crossroads of Central Europe, Russia, Central Asia, and the Middle East. As such, it has great potential for developing into an important new market for foreign trade and investment. A significant number of large multinational companies and smaller foreign investors are present in the country. Ukraine's ultimate trade and investment potential will depend largely on the success of its attempts to accelerate the movement toward a market economy and to develop a more conducive business environment.

1.3 History

With the end of the Russian Civil War and the establishment of Soviet rule, Ukraine became a constituent republic of the USSR in 1922. With the collapse of the USSR in 1991, Ukraine declared independence on 24 August 1991.

Despite Ukrainian tragic history, Ukraine is now going fast to the West. In the 20th century, Ukraine has been starved by Stalin, decimated by Hitler, scorched by Chernobyl, subjected to 70 years of incompetent Soviet rule, looted by its own government and, most recently, involved in a hybrid war with Russia.

Therefore, Ukraine is currently dependent on financial assistance from the IMF, USA and EU. Crimea has been annexed, the eastern provinces of Donetsk and Luhansk are caught in a frozen conflict and its chief antagonist, Russia, controls its gas supply.

1.4 Government and Politics

Ukraine is a presidential parliamentary republic. The President is directly elected for a five year term, The President is the head of state and has significant executive powers. A 450-member, unicameral parliament (the Verkhovna Rada) is elected every four years. The Parliament appoints the Prime Minister, the Minister of Defence and the Minister of Foreign Affairs is nominated by the President. Other members of the Cabinet of Ministers of Ukraine are nominated by the Prime Minister and appointed by the Parliament.

1.5 Currency

The national currency of Ukraine is the Hryvnia (UAH), which is divided into 100 kopyyky. As of 19 November 2015, the Hryvnia was officially quoted by the National Bank of Ukraine at EUR 1 = UAH 25.50623 and USD 1 = UAH 23.913585.¹

1.6 Time, Weights and Measures

Ukraine uses Eastern European Time (EET), which is two hours ahead of Greenwich MeanTime (GMT +2). From March to October Ukraine switches to summertime which is GMT+3. Ukraine uses the metric system (gram, metre, litre). Temperature is measured in degrees Celsius.

1.7 Market Overview

Ukraine is a market economy in the Eastern Europe. It has become an increasingly important market for foreign trade and investment.

Ukraine's resources and economic strengths include rich agricultural land, a strong scientific establishment, an educated and skilled workforce, and significant mineral reserves. Ukraine has achieved significant progress in opening its market to exports and investment. Its gross domestic product (GDP) in 2014 was officially UAH 1 567 000 million, comprising heavy and light industry, oil and gas transit, coal and mineral extraction, oil refining, chemicals, agriculture, and food processing.

In 2008 Ukraine became the 152nd country to join the World Trade Organisation (WTO).

1.8 Ukraine EU Association

On 27 June 2014 Ukraine signed an Association Agreement with the European Union. The Association Agreement will become effective upon its ratification by the national parliaments of the EU Member States (as of the date of this publication it has been ratified by a majority of EU Member States). The Agreement provides for approximation of policies and legislation of Ukraine with the European Union. The parties commit to co-operate and converge policy, legislation, and regulation across a broad range of areas, including visa-free movement of people, cooperation in the economic area, justice, and the modernisation of Ukraine's energy

¹ Exchange rate of Ukrainian Hryvnia against the Euro available at <http://www.bank.gov.ua/control/en/curmetal/detail/currency?period=daily>.

infrastructure. The free trade area between Ukraine and the European Union is to be established for a 10-year transition period after the Association Agreement becomes effective. The EU agreed to provide Ukraine with political and financial support and access to EU markets.

On 23 April 2014 the EU unilaterally introduced the autonomous preferential trade regime for Ukrainian goods applying zero import duties for Ukrainian exporters up to 31 December 2015.

1.9 Transaction Challenges in Crimea

The unlawful annexation of Crimea and Sevastopol by the Russian Federation took place following the unlawful referendum on 16 March 2014 on the future status of the territory announced by the Supreme Council of the Autonomous Republic of Crimea after the Russian military occupied the peninsula. On 27 March 2014 the United Nations' General Assembly adopted Resolution Number 68/262 on the Territorial Integrity of Ukraine Recognizing Crimea and Sevastopol as part of Ukrainian territory,² with 100 countries voting in favour of it. During the period of illegal annexation of Crimea and Sevastopol, Russian law applies de facto in Crimea and Sevastopol. The Law of Ukraine "On Legal Guarantees of People's Rights and Freedoms on the Temporarily Occupied Territories of Ukraine" dated 15 April 2014 defines the status of Crimea and Sevastopol as the Ukrainian territory that is temporarily illegally occupied by the Russian Federation.

According to the Law of Ukraine "On Creation of a Free Economic Zone of Crimea and Economic Activity in the Temporarily Occupied Territory of Ukraine", the free economic zone (FEZ) Crimea was introduced in the Autonomous Republic of Crimea and Sevastopol for 10 years. In the FEZ Crimea, Ukrainian taxes and charges, as well as the charge for mandatory pension insurance, are not levied. Individuals or legal entities having tax addresses in the territory of FEZ Crimea are considered non-residents for tax purposes.

1.10 Transaction Challenges in Donetsk and Luhansk Regions

Part of the Donetsk and Luhansk regions of the self-proclaimed Donetsk and Lugansk "People's Republics" was recognized as temporarily occupied territory. In the part of the Donetsk and Lugansk regions anti-terrorist operation regime has been introduced (ATO). Doing business in these areas is very complicated. According to the Law "On Temporary Measures for the Period of the Anti-terrorist Operation" dated 2 September 2014, Ukraine established a moratorium on carrying out inspections of businesses in the ATO area, charging of fines, payment for the use of state and municipal property, and so on. If necessary, the Chamber of Commerce and Industry of Ukraine provides proof of force majeure circumstances in the ATO territory.

1.11 Data Storage

Ukraine has no forced localization policies or requirements for foreign information technology (IT) providers to turn over any source code or provide backdoors into hardware or software applications. Ukraine's overall regulation of IT infrastructure and Internet Service Providers is unusually free and unregulated – so much so that Internet piracy is rampant and the use of unlicensed software is even evident in the government.

1.12 Right to Private Ownership and Establishment

The Constitution of Ukraine guarantees the right to private ownership, including the right to own land (non-agricultural). Ukraine's Law "On Ownership" recognizes private ownership and stipulates that Ukrainian residents, foreign individuals, and foreign legal entities may own

² United Nations, *Resolution Adopted by the General Assembly on 27 March 2014 – Territorial integrity of Ukraine*, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262.

property in Ukraine. Property owners, including foreign investors and joint ventures, may use property for commercial purposes, lease property, and keep the revenues, profits, and production derived from its use. However, the law is not comprehensive, and mechanisms for transferring ownership rights are weak. Some difficulties have arisen when foreigners acquire majority control of enterprises, with the government or the current management in some cases continuing to exercise effective control of company decisions.

Foreign companies are restricted from owning agricultural land, manufacturing carrier rockets, and some publishing activities. The Land Code of Ukraine provides for foreign ownership of non-agricultural land, clarifies the rights of foreign investors, and addresses the right of individuals to own, inherit, buy, and sell land. It classifies land into seven categories based on potential use, including agricultural, industrial, and natural reserve lands. While industrial-use land can be bought, sold, and mortgaged, Ukraine's parliament has set a moratorium on the purchase of agricultural lands through 1 January 2016. Ukrainian-registered land management companies for the purchase of non-agricultural and management of all types of land are permitted. The Land Code sets out the state's right to oversee private land transactions via registration, the court system, and dispute mediation, as well as broad government/state rights to 'influence' the land market.

1.13 Real Property Rights

The title and encumbrances to immovable property (land and on-land structures) are subject to state registration. Starting from 2013 the title to land and buildings is registered in a single State Register of Rights to Real Estate. In November 2014 information from the State Register became publicly available. All transactions involving transfer of title to real estate and long-term (3 years and longer) leases of non-residential property must be certified by a notary.

The State Register of Rights to Real Estate is maintained and registration of title to land and immovable property is carried out by the State Registration Authority of the Ministry of Justice of Ukraine.

The Land Cadaster Law of July 2012 provided for a single land registry. Its 2013 launch marked an improvement in land ownership protection. Local media estimated that 5 percent of land in Ukraine does not have clear title. Ukraine has improved its ratings in registering property in the World Bank Doing Business ratings from No. 64 in 2015 to No. 61 for 2016.³

1.14 Intellectual Property Rights

Ukraine was designated a "Priority Foreign Country" in the 2013 USTR's Special 301 Report and is on the Priority Watch List in 2015 due to the lack of progress in IPR Enforcement.⁴ IPR protection in Ukraine has continued to deteriorate. Recent government efforts have not yet gone far enough to demonstrate a commitment to resolving long-standing problems.

Collection Management: Ukraine has recognized that it has a significant problem with the operation of illegal or "rogue" collecting societies, i.e., organizations that collect royalties by falsely claiming they are authorized to do so. Such organizations tend to operate without adequate transparency and rarely disburse the funds they collect to the rights holders entitled to the royalties. The government has not prosecuted any of these societies.

Software Piracy: The Government of Ukraine acknowledges that a significant percentage of the software used by the government itself is unlicensed, and has issued repeated official documents calling for the use of legal software as far back as 2002. In general, the situation remains unchanged.

³ World Bank Group Doing Business rankings available at <http://www.doingbusiness.org/data/exploreeconomies/ukraine>.

⁴ United States Trade Representative, *2015 Special 301 Report*, p. 55 available at <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

Internet Piracy: The United States has repeatedly raised its strong concerns about the significant and growing piracy of copyrighted content. Online piracy now has significant and growing consequences for both the Ukrainian market and for international trade. Ukraine has been working on a draft Internet Piracy Law without progress; neither were there any online piracy-related convictions in Ukraine in 2014 under existing statutes.

Patents and Trademarks: Trademarked and copyrighted goods must be registered for a fee in the Customs Service's rights holder database in order to be guaranteed protection. Counterfeit goods, including products containing protected trademarks, remain common and openly sold throughout Ukraine. The amount of counterfeit pesticides, in particular continues to increase. Industry has reported that criminal prosecution for counterfeiting is stalled and ineffective, and that seized goods are not disposed of or released in a timely manner.

Judicial System for IPR Protection: Civil IPR lawsuits remain rare because of a general lack of confidence in Ukraine's legal system, and because few judges are properly trained in IPR law. Law enforcement officials and industry also complain that too many IPR cases result only in small fines, which do not deter illegal activity. In some cases, infringing companies have won dubious and non-transparent court decisions that appear to violate the rights of patent and trademark registered holders.

Customs officers have ex-officio right authority to seize and destroy counterfeit goods. To destroy the counterfeit goods customs needs a request from the rights holder or consent of shipment owner. During three days rights holder and shipment owner decide on further steps and shipment is either destroyed or sometimes relabelled. Goods may also be "donated."

Generally, the rights holder is financially responsible for the storage and destruction of counterfeit goods, but sometimes the shipment owner may pay if agreed to in advance. Storage of confiscated goods is problematic. Some counterfeit goods, i.e. agrochemicals, can't be destroyed in Ukraine because there are no facilities for such. In general, Ukrainian customs lacks expertise in detecting counterfeit goods, especially when destruction is needed.

Counterfeit goods are prevalent in the market place. Textiles, apparel, and wardrobe accessories are the most prevalent counterfeit goods. Counterfeit mobile phones (i.e. Apple iPhones running the Android operating system) are also prevalent throughout Ukraine. The more nefarious counterfeit products are pharmaceuticals and agrochemicals that pose health and safety hazards to the population.

2. Market Opportunities

2.1 General Information

There are good reasons to structure arrangements with or invest in Ukraine. Ukraine is an attractive country for business. Highly qualified and relatively cheap labour, developed transportation and communications infrastructure, and a favourable geographic location make Ukraine attractive for companies interested in this part of the globe. Promising sectors include: oil and natural-gas extraction; energy efficiency technology; telecommunications; travel and tourism; the provision of computer software and services; the retail trade; and the manufacture of: oil and gas-field machinery; electrical power systems; agricultural machinery; pharmaceuticals; food processing and packaging equipment; computers and peripherals; agricultural chemicals; automotive parts/services equipment; building materials. In the near future there may be significant investment opportunities for investors in the gas and oil industry, energy efficiency, electrical power systems, telecommunications, commercial real estate, transportation infrastructure development, and commercial banking. The country is also an attractive place to deploy manufacturing sites and service centres for customers located in the European Union and Russia. In fact, Ukraine's geographic location, communications infrastructure, and improving political and economic environment make it an effective transportation corridor between the European Union and the Commonwealth of Independent States (CIS) countries.

Consider the following facts about Ukraine:

- Largest country in Europe
- Population of 42.8 million people⁵
- Adult literacy rate of 99.7%⁶ with more than 60% of young people completing 3-5 years of higher education courses after the high school
- About 2.3 million students studying at 846 higher education institutions (HEI)⁷
- Ukrainian software development market was estimated at USD 6.6 billion in 2013, with IT outsourcing services accounting for 50% of that amount, or USD 1.8 billion⁸

2.2 13th Ranking by Science and Technology Capabilities

According to the Good Country Index,⁹ a new study on countries' contributions to the "common good of humanity", Ukraine is 13th in Science and Technology category among other 124 countries, including Australia (16th).

The 1st place in this category goes to Great Britain. Ukraine's neighbours in the innovation category were Germany and France (11th and 12th respectively), as well as Denmark and Belgium (14th and 15th respectively). Ukraine has left behind Belarus (36th), Russian Federation (41st) and even such developed economies as the Netherlands (18th) and the USA (26th).

⁵ Estimated existing population of Ukraine (without annexed Crimea) as at 1 August 2015 according to the State Statistics Service of Ukraine at http://database.ukrcensus.gov.ua/PXWEB2007/ukr/news/op_popul.asp.

⁶ Total adult literacy rate 2008-2012 according to UNICEF Statistics at http://www.unicef.org/infobycountry/ukraine_statistics.html.

⁷ As per the Report published by the European Commission, *Higher Education in Ukraine*, p. 4 available at http://eacea.ec.europa.eu/tempus/participating_countries/overview/ukraine_tempus_country_fiche_final.pdf.

⁸ As per EY World Finance Review May 2015 available at [http://www.ey.com/Publication/vwLUAssets/EY-Ukraine-Investment-Ukraine-2015-Romanishin/\\$FILE/EY-Ukraine-Investment-Ukraine-2015-Romanishin.pdf](http://www.ey.com/Publication/vwLUAssets/EY-Ukraine-Investment-Ukraine-2015-Romanishin/$FILE/EY-Ukraine-Investment-Ukraine-2015-Romanishin.pdf).

⁹ The Good Country Index for Science and Technology statistics available at <http://www.goodcountry.org/category/science-technology>.

The Good Country Index measures what each country contributes to the common good of humanity, and what it takes away. Seven categories were taken into consideration, including science and technology, culture, health and wellbeing, etc. In “Science and technology” category the following parameters were evaluated:

- the number of international students;
- the number of technology journals for export;
- the number of international and scientific publications;
- the number of Nobel laureates.

The Good Country Index used data from United Nations, the World Bank and other international institutions. The study is a joint effort of several institutions including Bill and Melinda Gates Foundation, Accenture, Development Initiatives, Global Footprint Network, and others.

The other rating project called Innovation Cities Index 2014: Global stated that such Ukrainian cities as Kyiv, Lviv, Odesa, Kharkiv, Dnipropetrovsk and others are in the list of the innovative cities in the world.¹⁰

2.3 Key Advantages for R & D Intensive Stages

Ukraine can offer major labour cost savings for businesses based overseas.

Additional advantages include:

- *No language barriers.* High skills in technical English among IT-specialist (with other European languages available for communication);
- *Culture.* High aspirational approach to business, management and standards as in the Western Europe);
- *Traditions.* World-famous scientific schools, established system of hundreds of specialized research institutions and technology development centres;
- *Higher quality.* Projects that best suit Ukrainian software companies are generally not the ones with basic coding processes; you'd rather prefer the ones with higher demand for internal optimization, innovative solutions and intensive R&D activities.

Full impact of those advantages are to be seen not in simple cost-saving offshoring of selected tasks, but in full-scale development projects (such as *outsourced product development, OPD*). Of course, best results are usually reached in long-term technological partnerships with established expert teams in specific field (such as interactive web & 3D solutions in case of Program-Ace).

¹⁰ The Innovation Cities Index statistics available at <http://www.innovation-cities.com/innovation-cities-index-2014-global/8889>.

3. Market Entry Strategies for Ukraine

The geographic size of Ukraine and its relatively high level of population dispersion make establishing a viable distribution network of great importance to foreign investors. Having a local representative and competent distributor are essential, since strong business information networks and transparent market rules have yet to develop. Companies considering entering this market should seek legal counsel before and while doing business in Ukraine. Given the tenuous commercial environment and weak legal infrastructure, it is essential to obtain legal advice regarding structuring a company's investment and/or commercial plans.

The most common business vehicles used by foreign investors in Ukraine are representative offices and limited liability companies (LLCs). It is also possible for a foreign investor to establish a Ukrainian joint stock company (JSC), but this form is used less often because a Ukrainian joint stock company is subject to restrictive securities regulations. Other company forms are possible, but are rarely used and generally are of little interest to foreign investors.

3.1 Representative Office

In contrast to the Ukrainian LLC and JSC forms, which are separate legal entities, a representative office is considered to be a structural part of its foreign parent company and is therefore not incorporated under Ukrainian law. A representative office is a type of organisation that represents the foreign parent entity in Ukraine. (Branches, per se, are not registered in Ukraine.)

Ukrainian tax law recognises two types of representative offices:

- those that engage in commercial activity (in other words, they execute contracts, accept payments for goods and services, and so on); and
- those that do not carry out commercial activity and are limited to representing a foreign company in Ukraine.

The tax status of a representative office is important and affects registration procedures and the opening of accounts in Ukrainian banks. A representative office is registered as follows: the documents (application, a resolution of the parent company on registration of the representative office, an extract from the trade register of the parent company, a power of attorney for the head of the representative office, and so on) must be submitted to the Ministry of Economy of Ukraine. These documents must be notarised and legalized with an apostille (authentication and legalisation) in the country of issue. When the Ministry of Economy receives the registration documents, the applicant is provided with a bank account number to pay a state fee of USD 2,500. The registration process in the Ministry of Economy takes 60 working days. Within 10 calendar days after registration with the Ministry of Economy, the representative office must be registered with other authorities (statistical authority), the tax authority, and the pension fund.

To register the representative office of a foreign company in Ukraine, it is necessary for the parent company to appoint a head of the representative office. The head of a representative office can be a citizen of Ukraine or a non-Ukrainian. The head of the representative office derives his/her authority from a power of attorney issued by the parent company. If a non-Ukrainian is appointed as the head of the representative office, Ukrainian law requires that person to have a service card (no work permit requirement applies).

Establishing a representative office allows: easy control of the representative office, simple procedures for employing non-Ukrainians, and direct financing. However, using a representative office results in: unlimited parent company liability for representative office debts (unlike an LLC or JSC) and high state registration fees (as noted, approximately USD 2 500).

3.2 Limited Liability Company

3.2.1 Foundation and Registration Formalities

An LLC may be founded by a single founder, which can be an individual or a company that is either Ukrainian or foreign. However, a Ukrainian LLC cannot have a single investor (also referred to as a participant) that is a company with one equity holder. An LLC is restricted to a maximum of 100 participants. To establish an LLC, the founder must draft and file the following documents with the local State Registrar: a resolution to establish an LLC and proof of the founder's identity, a charter (articles of association) of the LLC, and a standard registration form. The share capital can be paid during the first year after the registration.

After registration with the State Registrar, the newly established LLC is automatically registered as a taxpayer with local tax authorities and the State Pension Fund. The entire registration procedure takes a few days.

3.2.2 Share Capital

There are no minimum share capital requirements for an LLC. Capital contributions can be in cash or in kind (but not in services). The share capital of an LLC may be increased but any such changes must be registered with the State Registrar.

3.2.3 Shares

Company participants own equity in the limited liability company, their ownership is expressed in terms of a percentage of ownership.

The company charter may restrict transfers of equity by a participant. Other participants have pre-emptive rights to purchase equity offered for sale by a participant.

3.2.4 Management Structure

The participants have ultimate authority over policy matters governing the LLC and they exercise this authority at general meetings of participants. The executive body (a single director or management board) is responsible for day-to-day management of the LLC (a 'one-tier board'). Non-Ukrainian employees can be employed, but they need to obtain work permits in advance under the general rules for employment of non-Ukrainian persons.

3.2.5 Directors' Liability

The managers and officers may be held liable to the LLC for their actions or to third parties for acts of the LLC. An officer must act in the interests of the LLC, reasonably and in good faith, and may not exceed his/her authority. In practice it is difficult for the LLC to hold a manager liable for a breach of these duties, unless the applicable liability is set out in detail in a corporate charter or similar document or in the labour agreement with the director. In addition, the managers and officers may incur liability for a breach of labour, administrative, or criminal laws applicable to the LLC.

3.2.6 Parent Company Liability

In general, liability of a parent company of an LLC is limited to the value of its capital contributions. Parent companies are not liable for debts of their subsidiaries (except as a guarantor of the debts of their subsidiary). As one exception from the general rule, a parent company may be liable for debts of its subsidiary incurred before the formation of the subsidiary. There is also an exception when the holding company (joint stock company, which owns shares in two or more subsidiaries) causes bankruptcy of a dependent subsidiary; in this case, the holding company is responsible for the debts of the subsidiary.

3.2.7 Reporting Requirements

An LLC must provide the State Registrar with information, such as changes in the LLC charter and changes related to representative offices, liquidation and bankruptcy proceedings, and so on. In addition, the LLC must provide financial reports and other regular reports to the tax authorities, and to other authorities.

3.3 Joint Stock Company

A joint stock company is a business entity whose share capital is comprised of shares of equal nominal value. Like the LLC, the shareholders of a JSC are not liable for the obligations of the company and the liability of the shareholders is limited to each shareholder's investment. The statutory minimum share capital of a JSC is 1,250 times the minimum monthly salary (in other words, the minimum statutory capital should be, in total, approximately EUR 66,000). A joint stock company may be established by one or more natural persons or legal entities, whether or not residents of Ukraine.

According to the Law of Ukraine 'On joint Stock Companies' (the "JSC Law") there are two types of JSCs: "private" and "public" joint stock companies. (Ukrainian law used to refer to them as "closed" and "open" JSCs).

3.3.1 Private Joint Stock Company

The maximum number of shareholders a private JSC may have is 100. Initially the shares of a private JSC may only be offered through private placement to founders of the JSC.

The shareholders of a private JSC have pre-emptive rights to purchase shares offered for sale by other shareholders, if the JSC charter grants such rights.

The General Meeting of Shareholders is the supreme body of the company. The executive body (a single director or management board) is responsible for day-to-day management of the company.

According to the JSC Law, a supervisory board is required for every Ukrainian JSC with 10 or more shareholders (a "two-tier-board"). If there are less than 10 shareholders, a supervisory board is optional. If a supervisory board is established, the members of the board are to be elected by the shareholders based on proportional representation or by "cumulative voting." Cumulative voting is where the amount of voting rights of one shareholder is multiplied by the number of members of the supervisory board to be elected. Shareholders may cast all their votes for one supervisory board candidate or may distribute their votes among a number of candidates. The effect of cumulative voting is to strengthen the voice of minority shareholders.

3.3.2 Public Joint Stock Company

A public JSC may have an unlimited number of shareholders. The shares of a public joint stock company are offered through private placement initially among the founders; after that they are offered by public placement. Public JSC shares may be traded freely, as shareholders have no pre-emptive rights. Shares of a public JSC may be traded on a stock exchange. The members of a public JSC supervisory board must be elected by cumulative voting. All public JSCs are required by law to have a website that must contain information about the company as set out in the JSC Law (the charter, regulations related to the management board, corporate governance rules, annual financial reports, and so on).

4. How to Reduce Your Risks

Doing business in any emerging market can be extremely rewarding yet challenging. Ukraine is no exception. Unfortunately, corruption and illegal seizure of assets may be often practised in emerging market countries. To prosper in doing business in Ukraine, Australian businesses need to be vigilant.

By following certain basic asset protection principles Australian businesses can mitigate risks and prosper. There are a number of principles that should be considered to reduce risk and prosper in doing business in Ukraine.

4.1 Principle 1 – Proposed Changes That May Affect Your Business

This usually takes the form of assessing both external and internal threats to your business. In assessing external risks consider carefully who may threaten your business interests. In Ukraine, the risk of corruption may unfortunately come from a governmental or municipal agency or from a joint venture national entity or individual that understands the legal and commercial landscape better than a foreign entity wishing to do business in Ukraine.

Furthermore, understand the legislative system and how it may affect business decision making in the country you intend to do business in. In Ukraine, if success of your business depends on a favourable resolution of the Cabinet of Ministers or a governmental agency, changes in government personnel or a government's agency's management may result in legislative or regulatory change which may significantly affect your business or result in your business venture becoming commercially not viable.

Access to a practitioner with local knowledge of the foreign jurisdiction, but available locally may assist to reduce your legislative risk of doing business in a foreign country.

4.2 Principle 2 – Structure Your Business to Protect Your Assets

Separate business assets, including intellectual property, from your trading entity. When a trading entity is subject to a court claim, or in the event of a creditor claim, assets of the business may be awarded in favour of the predator or creditor. Separating assets from the trading entity can also help you to sustain long-term control of your business assets.

Where possible and depending on the assets of your business keep your assets in an offshore jurisdiction to ensure better protection. Assets in an offshore jurisdiction may be better protected from claims and business risks by the limitations regarding the order of seizure of assets, as well as by legal and practical impossibility of their recovery from offshore entities in foreign jurisdictions.

A resolution on the seizure of assets of an entity may be a powerful tool for a creditor. Therefore select a jurisdiction that has limited liability corporate entity status and also protects individuals. Neither an offshore entity nor its director can be forced by a domestic (national) personal creditor to assign assets or to distribute funds. Furthermore, stay anonymous or ensure that you are not personally controlling the business entity in a foreign domicile such as Ukraine or engaged in the business of the offshore entity.

4.3 Principle 3 – Understand the Commercial and Legal Landscape of the Foreign Entity

This includes not only the commercial and legal system and practice of your domiciled entity but also the landscape of the cross border region, such as Ukraine, in which you intend to do business.

Ukraine has a developed codified legal system as opposed to Australia which has developed a legal system based on the common law. The primary sources of law in Ukraine and the Russian Federation are codified enactments of core principles by respective parliaments together with delegated legislation adopted and frequently changed by various ministerial agencies and municipal bodies. There is no deference to common law as it is understood in Australia. In fact, continental law is so different that you need legal assistance from a

practitioner who has extensively dealt with the codified legal system of Ukraine and Australian context of doing business in those countries.

Establishing trust is fundamental in any business relationship. Transacting across borders is no different. It is common practice for a Ukrainian business to get to know their prospective business partner, both in a formal and casual context. Recommendations from a reputable source and from a party of good standing of their intended overseas counterparty is only the start of the business relationship. Of equal importance is an understanding of the “local knowledge” or the “mores” and “conventions” of doing business. Local knowledge of the cross border jurisdiction should best be accessed within your own jurisdiction as well as accessed and checked within the cross border jurisdiction you intend to do business in. Once the relationship of trust and confidence is established, business and legal issues tend to resolve themselves quicker and painlessly.

4.4 Principle 4 – Ensure Your Commercial Arrangements Are Enforceable in the Jurisdiction of Your Choice

If you choose to do business in Ukraine, the law of an Australian jurisdiction as the governing law of your contract with a Ukrainian counterparty maybe legally and commercially acceptable to you and even your counterparty. Nevertheless be careful. You still have to consider the applicable requirements of Ukrainian law as to the content and form of your contract to ensure the contract is enforceable in Ukraine and cannot be invalidated by judicial order of Ukraine as an entailed course of action.

A carefully drafted contract with your Ukrainian counterparty has to comply with the Ukrainian language protocol and requirements to execution of the contract. Such a contract cannot be executed just in the English language and should also include its Ukrainian version. Otherwise, it may be declared void by a Ukrainian court. A Ukrainian version of the contract should always be prepared because of third party involvement as it is often needed to duly perform the contract, receive money in Ukraine from overseas or send money from Ukraine overseas.

Further careful consideration has to be given to a dispute resolution clause of your contract so that you can enforce your rights in Ukraine if a need be. Overseas arbitration has become a vital component of any international contract involving a Ukrainian party because a judgement of a foreign court is often not enforceable in Ukraine. Ukraine together with 148 countries is a signatory to the Convention of the Recognition and Enforcement of Foreign Arbitral Awards (also known as ‘New York Arbitration Convention’). It is common practice to provide for an arbitration dispute resolution and choose one of the overseas well established and known international arbitration institutions to have its decisions enforced in Ukraine under New York Arbitration Convention.

5. Private Transactions

5.1 Power of Attorney

Acting on your behalf in Ukraine including liaising with local notaries and banks, making enquiries with state regulators, filing documents with administrative bodies, signing legally binding documents, or legal actions in court requires a correctly drafted Power of Attorney issued by you to your proxy.

Generally, a Power of Attorney from an individual needs to be notarized. For a long time irrevocable Powers of Attorney were not allowed. Currently they are permitted only when expressly provided by law and such cases are very limited.

A Power of Attorney for utilisation in Ukraine should be prepared in Ukrainian and English languages. Furthermore, for a Power of Attorney executed by you in Australia to be accepted in Ukraine, it needs to be signed before an Australian public notary and then 'legalised' by apostille by a local office of the Department of Foreign Affairs and Trade of Australia.

5.2 Estate Planning and Other Private Dealings

Private dealings of Australian clients' may involve transfers of their real property to family members or other beneficiaries in Ukraine as part of their estate planning. If the property has not been transferred during their life time, it may be that an executor of Australian estate has to distribute the assets to Ukrainian beneficiaries.

The other common private dealings include sale and acquisition of land and other real property in Ukraine and issuing Powers of Attorney to Ukrainian proxies to deal with the property already owned by Australian residents in Ukraine.

6. Business Transactions

6.1 Limits on Foreign Control

In general, the regulatory framework for the establishment and operation of business in Ukraine by foreign investors is similar to that for domestic investors (apart from the ownership of agricultural land). Investment permits are not required, but all enterprises must be established according to the form and procedure prescribed by law and registered with the appropriate state authorities. Foreign companies are restricted from owning agricultural land, manufacturing carrier rockets, producing bio-ethanol, and some publishing activities. In addition, Ukrainian law authorizes the government to set limits on foreign participation in "strategically important areas," but the wording is vague and the law is rarely used in practice. Generally, these restrictions limit the maximum permissible percentage of foreign investment into Ukrainian firms in these sectors.

6.2 Company Officers' Authority

Doing business with or in Ukraine, you should always identify who you are dealing with and establish their authority to act on behalf of a Ukrainian entity. The authority of a person acting as a representative of a Ukrainian company must be carefully verified regarding both proper appointment and scope of authority. Such verification requires the review of company's charter and relevant corporate minutes, as well as a power of attorney (if one deals with company's representative other than the chief executive) dated as closely to the date at issue as possible. Potential customer companies should also be requested to provide a recent (within a month) excerpt from the State Register of Legal Entities evidencing that the person acting on behalf of the company has no restrictions on his or her authority. Due to the predominant absence of corporate secretaries in Ukrainian companies, incumbency certificates are not commonly issued.

Generally, a power of attorney from a legal entity generally does not require a notarization, unless it is for a transaction, which itself needs to be notarized. A mere signature of the legal entity's CEO is sufficient. For a long time irrevocable powers of attorney were not allowed. Currently they are permitted only when expressly provided by law and such cases are very limited. This restriction often affects the transaction structure, especially in secured financings.

6.3 Labour Relations and Working Conditions

Labour relations and working conditions in Ukraine are regulated by the Constitution, the Labour Code of Ukraine of 1971 as amended and Law on Employment, which provide considerable safeguards for employees. These laws apply to all employers, regardless of whether the employee is foreign or domestic.

The main spheres governed by the Labour Code of Ukraine include the following:

- protection of working young persons and pregnant women,
- maximum weekly working hours,
- minimum paid annual leave,
- minimum notice periods on termination of employment, and so on.

The standard working day in Ukraine is eight hours with a five day working week or seven hours with a six day working week. The normal working week is 40 hours, Monday to Friday. Employees have an annual paid leave of 24 calendar days.

The Ukrainian labour legislation also provides for different employee guarantees, such as:

- wages for time spent off work while performing a trade union mission, appearing in court, voting, and fulfilling other state or social responsibilities;
- the right to keep one's position when on a training program;
- wages while hospitalised for medical examination (when such examination is prescribed by law);
- severance payments in certain cases.

Employees are entitled to organise trade unions and to participate in the management of a company (though in practice this rule is not too strictly applied).

Salaries cannot be lower than the minimum monthly salary as set by law. Currently, the minimum monthly salary is UAH 1,378 (approximately EUR 53).

Ukrainian and foreign individuals are employed under an employment agreement, which is often formalized not as one written agreement, but rather as an exchange of an application signed by the employee and an order issued by the company's executive and appointing the employee to the appropriate position. The employment agreement may not deviate from labour law and reduce protections offered to the employee by the law. Grounds for dismissals are limited and social guarantees for many categories of employees are generous. Certain categories of employees may not be dismissed or laid off at all or without guaranteed subsequent employment. Oral or even factual (i.e., based on actual performance of job functions) employment agreements are permitted.

Only the so-called "*employment contracts*" can modify the default rules of employment law if the parties expressly agree so in writing. However, employment contracts can only be used where they are expressly authorized by law and for this reason they cannot be used with a vast majority of employees. One major exception is the CEO of a company: the Labour and Commercial Codes specifically authorize companies to enter into employment contracts with their top managers (CEOs). The difference between employment agreements and employment contracts is quite important and until recently unless there was a written document signed with the CEO entitled "*employment contract*" with relevant dismissal clauses the employer was not able to dismiss the CEO at will even in case of discovered irregularities, lack of confidence or conflicts. However, in 2014 the Labour Code was amended to allow an employment dismissal (within or without an employment contract) of corporate officers (including CEOs) upon termination of their respective corporate functions. The latter may be terminated on the grounds included in the company's charter.

Ukrainian employees are required to submit a formal employment record (labour books) to employers for proper registration of employment. Labour book information is used for hiring purposes and, along with centralized records of mandatory social security contribution, for calculation of pensions. Trade unions are traditionally strong and have a number of important functions in the termination and dispute resolution procedures.

Employment of foreigners, including executive officers, is generally possible only after obtaining work permits from the Labour Inspectorate. The application fee is 4 minimum wages and a fine for commencing work prior to obtaining a permit is 20 minimum wages (current minimum wage, which is often used in calculation of various financial variables under Ukrainian law, equals UAH 1,378 per month).

Some of the most common labour and employment issues include employment planning for start-up businesses (drafting employment contracts with company's management and employment agreements with employees, including benefit packages and incentive programs), employment of foreigners, including work permits and management services agreements, reorganizations and redundancies, correlation of corporate elections and employment formalities, wage arrears and compensation plans, payroll tax planning, mandatory preferential treatment for junior and senior employees and women, structure of work time and vacation

time, termination and severance payments, workers' compensation and workplace safety, and pensions and unemployment benefits.

A draft new Labour Code purportedly designed to inject more flexibility into employment relations and to better suit Ukraine's market-based economy is under consideration in the Ministry of Social Policy of Ukraine pending its submission to the Parliament. Since the current Code, designed in the Soviet era of a controlled economy, fails in many respects to meet the needs of current times, both employers and many employees would welcome a new, more flexible and up-to-date code.

7. Finance and Investment

7.1 Banking and Local Finance

The current banking system of Ukraine began to take shape in 1991 after the adoption of the Banks and Banking Act. It is a two-tiered structure with the National Bank of Ukraine (NBU) at the top and a number of commercial banks under various forms of ownership below the NBU. NBU is the central bank of the country; its main task is to implement and pursue a uniform monetary policy. NBU sets the rules for commercial banks with regard to transactions, as well as accounting and reporting requirements. It also issues the national currency and licenses banks.

The rate of interest charged by the NBU to commercial banks was set at 30% on 4 March 2014.

There are about 150 licensed commercial banks in Ukraine (including 51 banks with foreign capital), the largest of which are: Privatbank, UniCredit Bank (Ukrsotsbank), Raiffeisen Bank Aval, Oshchad Bank, Ukrexim Bank, and Ukrsibbank.

Under Ukrainian law, commercial banks in Ukraine may be incorporated as public joint-stock companies or as cooperative banks. Foreign banks are allowed to have representative offices or subsidiaries in Ukraine. Banks must guarantee confidentiality as to their customers' accounts, deposits, and transactions.

A commercial bank intending to operate in Ukraine must have a minimum capital of UAH 120 million (approximately EUR 4.7 million) on the day of registration. The minimum capital is to be gradually increased to UAH 500 million by 2025.

Banks may not accumulate capital the source of which has not been definitively established, and written NBU authorisation must be obtained (at each stage) for a legal or natural person to own 10%, 25%, 50%, or 75% of the share capital of a bank.

To prevent money laundering, a bank must identify all entities conducting "dubious operations" and/or operations in amounts of over UAH 150 000 (approximately EUR 5 887). Dubious operations include the following:

- Operations conducted under extraordinary circumstances or circumstances that are unreasonably complicated;
- Operations conducted in excessive amounts, including the following:
- International money transfers from or into numbered accounts, or
- International money transfers in cash with the requirement to pay the recipient in cash. Banks must retain all identifying documents for five years.

A Ukrainian legal entity or individual may open accounts at any bank and have any number of accounts. All banks, as well as all taxpayers, are obliged to inform the tax authorities when opening or closing bank accounts.

Representative offices of non-residents may have either "N" or 'P' type accounts. Accounts of the "N" type are opened only for financing the representational needs of non-residents without commercial activity in the country. "P" type accounts are opened to collect the proceeds of the commercial activities of representative offices.

Ukrainian banks employ an advanced system of electronic payments that was introduced in 1994.

7.2 Accounting and Audit Requirements

Accounting principles and procedures in Ukraine are regulated by the Accounting and Financial Reporting in Ukraine Act of 1999. Under the Act, the system of accounting is based on National Accounting Standards set in compliance with international standards. Reporting practices have also been more closely aligned with International Accounting Standards.

All legal entities and individuals engaged in business activities are obliged to keep a set of books and follow a prescribed chart of accounts. All accounting records and primary documents are to be retained for three years, but annual financial statements must be retained for 10 years.

A calendar year is assumed as the accounting period for all entities. The financial statements are to be prepared as of the last day of the accounting period. For entities maintaining double-entry bookkeeping, the financial statements include: a balance sheet, income statement, cash-flow statement, a statement of shareholders' capital, and notes to the financial statements. Quarterly reports must be submitted not later than the 25th day of the month after a reporting quarter. Annual reports must be submitted not later than 20 February in the year after the reporting year. A newly registered entity must submit its first report within 12 to 15 months of registration. According to national standards, the mandatory audit of Ukrainian entities may be performed only by certified Ukrainian auditing companies. For financial reports that are to be officially published, an audit is mandatory for confirming the completeness and accuracy of the annual balance sheet and financial statements of commercial banks, stock exchanges, funds, enterprises, and other entities irrespective of their form of ownership. Issuers of securities and derivatives, public JSCs, issuers of bonds, securities traders, financial institutions, and other legal entities that are obliged to make public disclosure of their financial statements according to Ukrainian legislation, excluding state legal entities that are financed by state budget, are subjected to mandatory audit.

On 18 April 2003 the Ukrainian Chamber of Auditors accepted the International Auditing Standards (ISA) and the Ethics Code of the International Federation of Accountants (IFA) instead of Ukrainian Auditing Standards. Since then, ISA and the Ethics Code have been obligatory for all certified auditors in Ukraine.

7.3 Exchange Controls

Ukraine has strict currency control rules. Recently, attempts have been made to lift excessive state regulation in this area. For instance, settlements between residents and non-residents of Ukraine in trade transactions are allowed in both foreign currency and UAH (previously settlements in UAH between residents and non-residents were not allowed). However, there is still a broad range of administrative instruments that govern the Ukrainian currency market.

7.3.1 Limitations on Purchase of Foreign Currency

Foreign currency can be purchased for the following main purposes:

- payment to foreign suppliers for goods/works/services,
- payment of dividends, interest, and royalties abroad,
- repayment of foreign currency loans registered with the NBU, and so on.

On 3 March 2015 the National Bank of Ukraine issued Resolution N16O "On Settlement of the Situation in the Monetary and Foreign Exchange Markets of Ukraine", which sets the requirement for mandatory conversion of 75% of foreign exchange earnings and the temporary ban on paying dividends to non-residents. This provision is to apply until 3 June 2015, unless it is amended or extended.

7.3.2 Individual Licensing of Certain Currency Transactions

A Ukrainian company is required to obtain an individual NBU license in respect of the following transactions:

- making an investment abroad, including establishment of a subsidiary company in another country and transferring capital to finance its operation,
- crediting funds to bank accounts opened abroad,
- purchasing shares of non-residents in cash, and so on.

7.3.3 “180-day” Rule

Payments from Ukrainian companies to non-residents for imported goods/services, and so on, usually do not require an individual NBU License. However, if a Ukrainian company makes an advance payment to a foreign company on account of future supplies, the Ukrainian company must effect the actual importation of the goods or services concerned within 180 days following the date of the advance payment. The 180-day period may be extended only if the Ministry of Economic Development and Trade grants specific permission. Failure to comply with the 180-day requirement may result in severe penalties for the Ukrainian company (0.3% per day, but not more than the pre-paid amount).

Similarly, in case of the export of goods or services to a non-resident, the Ukrainian exporter should receive full payment for such goods or services within 180 days.

NBU may, for a period of up to 6 months, set a different mandatory period for settlements, other than 180 days. Thus, as a temporary measure, until 3 June 2015 the NBU has shortened the term to 90 days.

7.4 Investment Incentives

There are no special investments incentives introduced in 2014.

7.5 Trade Regulations and Standards

One of key the acts regulating legal treatment of goods moving through the customs border of Ukraine is the Customs Code of Ukraine. It establishes different types of customs regimes, namely: import/export, re-import/re-export, transit, temporary export/import, processing of goods in/outside the customs territory of Ukraine, bonded warehouses, special customs zones, duty-free trade stores, and rules related to the destruction of goods and to abandonment of goods in favour of the state.

An importer/exporter of goods is required to file a customs declaration and submit it to the customs authorities prior to customs clearance of goods. The customs declaration usually includes details about the goods, including a description, customs value (which may differ from the purchase/sales value), volume, customs treatment, and so on.

The customs value of imported goods indicated on the customs declaration should be determined at arm's length. Otherwise, the Ukrainian customs authorities may introduce adjustments to the declared customs value of the goods.

As a general rule, customs duties and charges are calculated and paid based on data in the submitted customs declaration. If the total customs value of goods crossing the customs border of Ukraine does not exceed EUR 300 (for an individual), a customs declaration need not be filed with the customs authorities.

8. The Tax System

In Ukraine, taxes and statutory charges are levied in accordance with the Tax Code of Ukraine (effective from 2011). From 1 January 2015 the Tax Code was amended significantly. The major taxes and compulsory payments are:

- corporate income tax (CIT)
- value added tax (VAT)
- personal income tax (PIT)
- unified social contribution (USC)
- temporary “military charge” (effective from 3 August 2014 till completion of the reforms of the Armed Forces of Ukraine)
- excise tax
- property tax
- duty
- rental fee

Taxation accounts for around 72% of government revenues. More than three-fourths of this is collected through CIT, VAT, and PIT.

All taxpayers are required to register with the State Tax Agency (STA) and to obtain a tax identification (ID) number. Registration is undertaken through the local tax office where the business is located. Representative offices of foreign entities (both commercial and non-commercial) are also required to follow the tax registration procedure.

Without a tax ID number it is not possible to open a bank account in Ukraine.

9. Taxes on Business

9.1 Corporate Income Tax

9.1.1 Tax Rates

As of 1 January 2014 the basic CIT rate is 18%.

Agricultural businesses may qualify for a simplified tax regime. Special tax treatment also applies to insurance companies.

In Ukraine, CIT administration is centralised and no additional corporate income taxes are imposed at regional or local levels. For each reporting period, CIT is calculated on a self-assessed basis.

CIT is paid in advance monthly based on 1/12 of the previous year's CIP. The monthly payment must be made within 20 days of the end of reported month. Beginning 2013 CIT returns must be filed on an annual basis.

The following legal entities are not obliged to pay CIT in advance:

- new legal entities
- agricultural entities
- non-profitable legal entities
- legal entities with total income for the previous fiscal year of less than UAH 20 million (approximately EUR 784 929) Taxable base

CIT is levied on residents of the Ukraine on their gross worldwide income and it is levied on non-residents on their Ukraine-sourced income. The taxable base for CIT is calculated as Ukraine and foreign-sourced income, which is determined by adjusting (increasing or decreasing) the financial result before tax (profit or loss), as defined in the financial statements in accordance with national accounting regulations (standards) and IFRS, for differences arising under the provisions of the Tax Code. Income includes any income from the sale of goods/works/services, capital gains, foreign exchange gains, free-of-charge transfers, and other taxable receipts in cash, in kind, or in the form of intangibles accrued within the reporting period.

Ukraine uses an accrual method for tax accounting. Income is realised in the tax period when the transfer of ownership title to goods/ services/works occurs, while deductible expenses (forming the cost of production of sales) is recognised on the date when the relevant goods/services/works were supplied.

9.1.2 Income Exempt from CIT

The following types of income are not included in taxable profit:

- capital contributions
- contributions in cash or in kind under contracts of joint activity where the activity is to be conducted in Ukraine (without incorporation in Ukraine)
- share premiums realised by an issuer of shares
- dividends received from residents of Ukraine and non-residents under the recipient's control, and so on. Allowable deductions

Most business-related expenses are deductible for CIT purposes. However, the deductibility of certain expenses is specifically limited (for example, interest payable to related non-residents; royalties paid to non-residents).

9.1.3 Transfer Pricing

The amount of taxable profit received by a taxpayer from one or more controlled operations is considered to be at “arm’s length” if the determination of the taxpayer’s income or cost in the operation, as appropriate, is calculated in a manner that is no different from the way it is determined for comparable transactions between unrelated parties.

9.1.4 The List of Controlled Operations

For purposes of transfer pricing, controlled operations are defined as the following types of transactions, so long as the total income of the taxpayer and/or its related persons exceeds 20 million UAH per year and the volume of business transactions of the taxpayer with one counterparty exceeds 1 million UAH or 3% of income for the corresponding year:

- Business transactions conducted between the taxpayers and related parties that are non-residents;
- Business transactions amounting to the sale of goods through non-resident agents;

Business transactions where one of the parties is a resident registered in a state that is included in the list of countries approved by the Cabinet of Ministers of Ukraine, so long as the corporate tax rate is at least 5% lower than in Ukraine, or one of the following applies:

- the countries do not publicly disclose the ownership structure of the entities,
- the transaction involves a party from a country that Ukraine does not have an international agreement on exchange of information with. (The list of such countries is published by the government.)

9.1.5 Methods of Price Calculations in Controlled Operations

There are a few different methods taxpayers may use to set prices with respect to transactions with controlled operations:

- Comparable uncontrolled price
- Resale price
- Cost plus
- Net profit
- Profit allocation

A taxpayer may use any method that it reasonable believes is most suitable, however, in case where it is possible to apply the comparable uncontrolled price method and any other method, the comparable uncontrolled price method should be used. To determine the most comparable price under the “arm’s length” principle for import and export of commodities traded on exchanges (for example, grain, metals), the average price for such commodities on the exchange for the 10 days preceding the transaction with the controlled operation must be used.

9.1.6 Annual Reporting and Penalties

For transfer pricing purposes, the reporting period is the calendar year. Taxpayers having transactions with controlled operations during the reporting period with one counterparty in

amount exceeding 5 million UAH should submit a report on controlled operations to the tax authority before 1 May of the following year.

The penalty for not submitting, or for late filing, of a report of controlled operations is 100 times the minimum salary amounts set as of 1 January of the reporting year (in 2015 it is EUR 4 780), for non-declared transactions the fine is 5% of non-declared transactions, and for failing to submit required supporting documentation the fine is 3% up to a maximum of 200 times the minimum salary (in other words EUR 9 560).

9.1.7 Withholding Tax

Any income received by (and paid to) a non-resident company is subject to a withholding tax (WHT) in Ukraine at a rate of 15%. Such income includes dividends, interest, royalties, capital gains, lease payments, brokerage and agency commission, and so on. Income received as consideration for goods/services/works provided to a resident is mostly WHT exempt. Different WHT rates apply to certain types of income paid to non-resident's (for example, freight, insurance premiums paid abroad, and advertising fees). Withholding tax rate may be reduced under an international taxation convention (Appendix 1).

9.1.8 Taxation of Permanent Establishment

A permanent establishment (PE) is a fixed place of business through which economic activities of non-residents in Ukraine are carried out wholly or partially, in particular: a place of management; branch; office; factory; workshop; installation or structure for the exploration of natural resources; mine, oil/gas well, a quarry or any other place of extraction of natural resources; warehouse or premises used for the delivery of goods, computer servers.

PEs are subject to normal corporate income tax. However, an exemption may be available if the activities of the non-resident do not lead to creation of a PE under the Tax Code or the relevant tax treaty.

With regard to corporate income tax, taxable profits of a PE can be determined based on direct or indirect methods. According to the direct method, profits are determined as gross income (received offshore or onshore) less allowable expenses incurred by the PE. However, if it is difficult to determine expenses attributable to the PE, a tax deduction for deemed expenses can be calculated as gross income multiplied by 0.7.

9.1.9 Thin Capitalisation

For a debtor whose debt obligations from transactions with non-resident related parties exceed the amount of equity by more than 3.5 times (or by more than 10 times for financial institutions and companies involved exclusively in [leasing activities]), the debtor's financial result before tax is increased by the excess amount of interest on loans, borrowings, and other debt obligations over 50% of the financial result before tax, interest, and the depreciation charges, based on the financial statements of the reporting tax period in which the interest is accrued.

Interest that exceeds this limit will increase the financial results before tax. Thereafter, in the future tax reporting periods, the taxpayers may reduce their financial result before tax by the amount of such increase decreased annually by 5%.

9.1.10 Tax Incentives

The Tax Code provides a number of tax incentives and tax holidays for different businesses, including for small companies. In particular, companies incorporated from 1 April 2011 to 1 January 2016 will be entitled (subject to certain limitations) to a zero corporate income tax rate provided that their aggregate annual income does not exceed UAH 3 million (approximately EUR 117 739) and the accrued monthly salary of each employee is not less than twice the

minimum monthly wage (currently approximately EUR 96/ month) over a given reporting period.

9.2 Value Added Tax Rates

In general terms, VAT of 20% is levied on the supply of goods and services in the customs territory of Ukraine and on the importation of goods and services to Ukraine. For medical drugs and products the VAT rate is 7%.

Supplies of certain goods and services (for example, charitable aid, financial services, and so on) are exempt from, or not subject to, VAT. (That is, they are exempt without a right to a VAT credit).

Export supplies of goods are zero-rated. (That is, they are exempt with a right to a VAT credit).

9.2.1 Registration for VAT Purposes

Registration as a VAT payer is compulsory for all Ukrainian companies, individuals, and permanent establishments of non-resident companies that qualify as VAT payers (in other words, those whose volume of transactions subject to VAT exceeds UAH 1 million UAH (approximately EUR 39 246) for any preceding 12 months of operation.

Taxpayers whose volumes of transactions do not reach the mandatory threshold can voluntarily register as VAT payers.

9.2.2 VAT Mechanism

The amount of VAT that a registered VAT payer incurs on local purchases of goods and services (so-called input VAT) can be credited against the taxpayers VAT liabilities in computing the final VAT payable to (or refundable from) the government. The input VAT amount in excess of the taxpayers VAT liabilities may be used to offset VAT liabilities of subsequent tax periods, or it can be refunded in cash.

VAT on import of goods and services is collected through a reverse charge mechanism (sometimes referred to as "import VAT"). This mechanism requires self-assessment and payment of the 20% VAT by a Ukrainian importer to the customs when goods are imported to Ukraine, and self-assessment of the 20% VAT by a Ukrainian purchaser of imported services for the reporting month when the services are imported to Ukraine. The paid VAT can usually be claimed by the Ukrainian importer as a VAT credit in the same tax period. If the goods or services imported are used in transactions that are not subject to VAT, or for transactions outside the business activity of the Ukrainian importer, the import VAT cannot be recovered and it becomes a cost to the Ukrainian importer.

The reverse charge mechanism does not apply if a non-resident service provider has a PE registered as a VAT payer in Ukraine. In such a case, the PE is in charge of assessing VAT liabilities, offsetting them against the input VAT, and paying the difference to the government.

9.2.3 VAT Reporting

For VAT purposes, the reporting period is a calendar month (though in rare cases it can be a quarterly reporting period). VAT payers are required to file VAT returns within 20 days after the end of the reporting month. VAT payable, if any, should be remitted to the government within 30 days after the end of the reporting month.

9.3 Unified Tax

Legal entities and individual entrepreneurs may choose to pay taxes pursuant to so-called “simplified taxation system”, if they meet certain thresholds. In such cases, they can be registered as unified taxpayers (UT). Unified taxpayers are exempt from some taxes. For example, depending on the UT taxpayer group, UT is a substitute for corporate income tax, personal income tax regarding the business activity of an individual, VAT (unless the taxpayer chooses to pay Unified Tax at a reduced rate plus VAT), land tax (on land used for business purposes), and so on.

If a taxpayer engages in certain, specifically excluded types of business activities, they cannot qualify as unified taxpayers. The types of activities listed include, for example, currency exchange, export, import of excisable goods, gambling, financial services, and so on. Non-residents of Ukraine are also not allowed to be registered as unified taxpayers.

UT taxpayers are also subject to simplified tax reporting requirements.

The unified tax system consists of 4 groups. The reporting period for Groups 1, 2, and 4 is the calendar year, for Group 3 it is quarterly.

Details about Unified Tax Groups, as well as the income thresholds, types of activities UT taxpayers may engage in, and the UT rates are provided in Appendix 2.

10. Taxation of Individuals

10.1 Personal Income Tax

In Ukraine, individuals are subject to PIT depending on whether they are tax residents or not. Individuals who are tax residents of Ukraine are taxed on their worldwide income and non-residents are taxed on their Ukraine-sourced income only. Under Ukrainian law, Ukraine-sourced income is income derived by an individual as a result of any labour or business activity performed in Ukraine, including remuneration for the work performed in Ukraine, whether paid by a Ukrainian or a foreign company.

Under Ukrainian Law, an individual can be considered a tax resident of Ukraine if he/she meets the Ukrainian tax residency criteria, which are as follows:

- An individual is considered a Ukrainian tax resident if he/she has a domicile in Ukraine.
- if the individual also has a domicile in another country, the individual is deemed to be resident of Ukraine provided he/she has a permanent place of residence in Ukraine.
- if the permanent place of residence is also available in another country, the individual is deemed to be resident of Ukraine provided his/her centre of vital interests is situated in Ukraine.
- if it is not possible to determine the actual centre of vital interests, or if the individual does not have a permanent place of residence in any country, the individual is deemed to be tax resident of Ukraine if he/she stays in Ukraine at least 183 days during a calendar year.

In Ukraine, both resident and non-resident individuals are taxable at the same tax rates, which are as follows:

- A rate of 15% applies to monthly income up 10 times the minimum monthly wage (in 2015 that is UAH 12 180, which is approximately EUR 478);
- A rate of 20% applies to monthly income in excess of a threshold of 10 times the minimum monthly wage;
- Dividends income is taxed that the rate of 5% if the payer is a corporate income taxpayer and 20% in other cases;
- Interest on bank deposits and current accounts is taxed at the rate of 20%.

Generally, any benefit provided by the individual's employer or any refund of an employee's expenses is subject to tax in Ukraine, unless such benefit and/or reimbursement of expenses is provided by the Ukrainian employer and is connected with the employment duties of the employees according to the employment agreement or is prescribed in a collective agreement.

Under Ukrainian law, income received from foreign sources, or income from Ukrainian sources that was not taxed at source, is subject to taxation in Ukraine based on an annual tax return. The obligation to report this income in Ukraine and to pay the tax rests with the individual. The tax return is filed with the district/city tax authorities' office at the place of the individual's domicile in Ukraine.

The annual tax return is due by 30 April of the year after the end of the calendar year. The self-assessed tax is due by 31 July of the year after the end of the calendar year. The tax can be paid in UAH only.

However, if an individual's remuneration to an individual (whether the individual is a tax resident or non-resident) is paid through the payroll of a Ukrainian entity, the income tax is

withheld at source. In such cases the individual is not required to submit any tax return in Ukraine.

It should be emphasised that where Ukraine has an international treaty (that is, a double taxation treaty) that provides for tax treatment other than that provided under Ukrainian law, the rules of the international treaty prevail over domestic legislation.

In addition, a temporary “military charge” has been introduced from 3 August 2014. The military charge is 1.5% of employment income (withheld by the employer) and, effective from 1 January 2015 a military charge is applied in respect of other types of income that is subject to personal income tax.

11. Other Taxes

11.1 Customs Duty

Importation of equipment, machinery, materials, and other goods is usually subject to Ukrainian import duties. No import (customs) duties apply if a foreign shareholder (investor) contributes equipment and machinery to the share capital of its Ukrainian subsidiary, provided the Ukrainian company does not dispose of the contributed equipment and machinery within three years.

In-kind capital contributions are, however, subject to Ukraine's 20% VAT under the reverse charge regime.

Import (customs) duties are levied on the customs value of imported goods and are calculated in a variety of ways:

- as an ad valorem tax (that is, as a percentage of the customs value of the imported goods),
- as a certain fixed amount per imported item, or
- as a combination of the two.

Regular Ukrainian customs duty rates on import of specific goods are set out in the Law of Ukraine "On the Customs Tariff of Ukraine".

Reduced rates of customs duties apply to goods originating from most favoured nation countries (subject to providing certificate of origin). Full rates apply to goods from other countries.

An additional, temporary import duty was introduced for 2015. This temporary duty is 10% on goods in commodity groups 1-24 (food products) and 5% on goods in commodity groups 25-97 (other goods).

As noted, the import of goods is subject to 20% VAT that is paid using the reverse charge mechanism. The amount of VAT is assessed based on the customs value of the imported goods plus import customs duties and excise duties. Also, if excisable goods are imported in Ukraine (for example, cigarettes, alcohol products), the importer is required to pay excise duty before customs clearance.

Export of goods from Ukraine is generally subject to 0% Ukrainian VAT and is typically exempt from customs duties.

11.2 Excise Tax

Excise tax rates on imports are assessed at rates on the sum of the declared customs value and customs duties, without VAT. Payment should be made in Ukrainian currency at the Ukrainian National Bank exchange rate effective on the date of payment.

Excise tax is also paid by Ukrainian manufacturers of excisable goods.

Excise tax is paid on cars, tobacco, alcoholic beverages, petroleum products, and electric energy.

As well, a 5% excise tax was introduced on retail sales of excisable goods. This tax is charged by the retail sales companies.

11.3 Immovable Property tax

Property tax is being levied for the first time in 2016 based on property owned by taxpayers in 2015.

For property tax purposes, residential and non-residential property owned by individuals and legal entities are considered taxable objects. The tax base is the total area of residential and non-residential property. The tax rate is 2% (24.36 UAH) of the minimum wage per 1 sq.m of the taxable base. The taxable base of residential property owned by an individual is decreased as follows:

- by 60 sq.m for an apartment/apartments (regardless of their number)
- by 120 sq.m for a dwelling house/houses (regardless of their number)
- by 180 sq.m for various types of residential properties, including their parts (in cases where an individual simultaneously owns apartment/apartments and house/houses)

The tax period for property tax purposes is the tax year.

12. Unified Social Insurance Contribution

In addition to personal income tax (PIT), remuneration, allowances, and similar payments made to employees (whether Ukrainian or foreign nationals) through payroll by a Ukrainian entity or a local representative office are subject to the unified social security contribution (USC), which is paid by both the employer and the employee. Only foreign individuals working in a foreign company's representative office are not subject to USC.

The taxable base for USC is capped at 7 times the minimum subsistence allowances, which for 2015 is UAH 20 706/month (approximately EUR 812/month).

USC due from the employee is withheld at source by the employer. The employee's contribution is 3.6% of gross remuneration, up to the cap.

USC due from the employer is payable when the remuneration is paid. Employers' contributions range from 36.76% to 49.70% of the gross income, up to the cap, depending on the level of the occupational risk (for example, for office workers the contribution is usually 37%).

In 2015 employers have the right to pay the USC by applying a decreasing coefficient of 0.4 if the employer meets all the following conditions in 2015:

- the average monthly wage paid in 2015 by the taxpayer to its staff increased by at least 20% compared to the average wage in 2014;
- the average USC payment per employee (other insured person) in 2015 after applying the coefficient is not less than USC paid in 2014;
- the number of insured persons in a 2015 reporting month does not exceed 200% of the average monthly number of insured persons in 2014.

Starting from 1 January 2016 all USC payers have the right to apply the coefficient of 0.6 without any conditions.

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