



GUIDE TO DOING BUSINESS WITH UKRAINE

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This guide presents a general summary of the current legislative framework of Ukraine. Given the progress of reform in the various sectors, legal advice should be obtained before entering into any specific transactions.

THE BUSINESS CLIMATE IN UKRAINE

by Bohdan Onyshchuk

Ukraine has come a long way since the Declaration of Independence in August, 1991, confirmed by a national referendum in December, 1991. In less than two years, it has become one of the more interesting places for Western investment with one of the most liberal and attractive investment regimes in Eastern Europe.

Ukraine represented some 2.7% of the land area of the FSU (former Soviet Union), but contained some 16% of the population base and, more importantly, some 25% - 30% of the G.D.P. of the FSU. It is the second largest country in Europe by land mass, and the third largest by population - just behind France - with a nation of some 52 million, and its own cultural and linguistic heritage of over 1,500 years.

It has a substantial natural resource base (including large deposits of coal, iron, graphite, manganese, phosphorus, gold, amber, titanium - zirconium), and a very large heavy industrial base (with over 40% of the total rolled steel of the FSU, and huge railway, shipbuilding, aircraft, and machine complexes). It possesses one of the largest aerospace industries in the world, with an aerospace sector larger than that of France - a sector that was responsible for the entire Soyuz space programme for over 25 years with over 440 launches. It also has a very large agricultural sector, with some of the best agricultural lands in the world.

Since independence, it has attempted to re-orient itself towards Europe, and to a Western base economy — not without many fits and starts along the way. However, in the areas of law and invest-

ment legislation, it has made quite substantial progress, to the point that the basics for a business climate for investment are virtually in place at the present time, and Western business is beginning to move in with investments in a meaningful way.

In less than two years, Ukraine's Parliament has passed over eighty major pieces of legislation. Some of the important ones are:

- a Banking Law
- a Foreign Investment Law
- a Protection of Foreign Investment Law
- a Securities Law
- a Law on Stock Exchanges
- a Whole Series of Taxation Statutes and The Regime of Personal and Corporate Laws, Value Added Taxes, Duties and Customs
- Four Corporate Laws
- a Land Law (allowing long term lease ownership)
- a Law on Mortgages and Pledges
- a Law on Private Farming
- an Anti-Monopoly Law
- Three Privatization Laws and an entire Privatization Programme now being carried out
- a Bankruptcy Law
- Currency Exchange Controls
- an Environmental Protection Law.

Parliament is presently working on a whole raft of additional draft laws, including:

- an Intellectual Property Law, and
- an Insurance Law

Some of the more interesting aspects of the above laws are the following:

The Law on Foreign Investment is one of the most liberal and attractive in all of Eastern Europe. Foreign investment can

be 100% Western-owned, but the most attractive feature is that most Ukrainian-Western mixed companies are entitled to a five year tax free holiday after first profits, and then a tax rate of 50% of the normal corporate taxes applicable in Ukraine for a subsequent 10 year period. The law also guarantees the right to the return of one's investment in the currency in which it was invested in the country.

Ukraine has acceded to, and honours, the Canada-USSR Foreign Investment Protection Treaty, as a successor state of the FSU. It has signed a series of new bi-lateral FIPA's with a number of states, most recently Great Britain, and a Canada/Ukraine Agreement is in the works. Under the agreements, basic guarantees against expropriation are provided, with additional provisions for compensation.

Similarly, Ukraine honours a series of tax treaties against double taxation entered into by the FSU, and is in the process of replacing these treaties with new bi-lateral agreements. Between Canada and Ukraine, the agreement provides for 15% withholding tax on dividends and interest, and 10% on royalties. However, the tax treaties with Great Britain, Austria and Cyprus provide for 5% withholding tax, an important consideration for many tax structured transactions.

In the area of Banks and Banking, at last count over 130 banks were registered and operating in Ukraine, most of them large ones. Over 30 of them are licensed to carry on foreign currency operations. The number of foreign Western banks that have opened representative offices in Kyiv is increasing substantially; the main Western banks presently operating in Kyiv (and some of the other major centres) are: the Deutsche Bank, Credit Suisse, Credit Lyonnais, National Westminster Bank, Dresdner Bank, the