

# Ukraine: Investment Guide





# Making Law Work for You in Ukraine

# Introduction

As an experienced Ukrainian law firm, we often receive enquiries from foreign clients wanting to invest and set up a business in Ukraine or seeking to establish business relations with Ukrainian companies.

Most enquiries still concern general issues relating to setting up a business presence in Ukraine, the takeover of Ukrainian companies, investor support, employment, taxes, real estate purchase, trademark protection, etc.

Therefore, we have decided to publish the third edition of this guide for foreign investors, covering the general regulations in the most commonly referred to areas of the Ukrainian law. The first and second editions were issued in 2017 and 2019 respectively. Both were found useful by readers and assisted investors in making reasonable choices when planning their business activities in Ukraine.

This guide focuses on the most crucial aspects of regulations, so it is not overwhelming in legal details, making it a very flexible read for a person with no legal background. Thus, it will be helpful to both legal professionals and business people who often deal with the Ukrainian market and statutory provisions.

We would like to express our gratitude to our partners at GTAI Germany Trade & Invest and IT Ukraine Association for contributing their expert articles to this publication, adding helpful information and insights that will aid foreign investors in taking decisions to enter the Ukrainian market.

Our intention is for this guide to be useful to you and your business and to help in understanding the specifics of Ukrainian laws when setting up and managing your business in Ukraine. For further clarification of any information or facts contained in this guide, please do not hesitate to contact the lawyers of DLF attorneys-at-law who will be happy to give you specific and tailored advice.

March 2021

Igor Dykunskyy, LL.M.

*Partner*

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# Prospects for foreign direct investments

Ukraine provides many opportunities for investors – thanks to its nature and human resources and the vicinity to the EU. The Ukrainian government wants to drive forward the privatisation and stakes on PPP.

Following the deep economic collapse after the Euromaidan and the outbreak of the conflict with Russia, Ukraine has been on the recovering course since 2016. After experiencing hard times in 2020, the COVID-19 year, the Ukrainian economy will revive beginning in 2021.

With its vicinity to the European Union (EU), the Association Agreement, the large domestic market, natural resources and highly-qualified employees, Ukraine can become an interesting business location for investors.

## 1.1. From toll processing to increased added value

The government decided to introduce investment incentives for large investors. However, it is crucial to improve the general regulatory framework. The cooperation with the International Monetary Fund remains an essential signal for investors.

Having been interrupted by pandemic, the privatisation of large state enterprises is to be resumed in 2021. The State Property Fund is responsible for this field. Previous privatisation intentions lagged far behind the actual plans. But, given a reform of the State Property Fund and online auctions, the first success was delivered in 2020.

Build-Own-Operate-Transfer models and public-private partnerships should be used far more widely. The Law “On Concession” adopted in autumn 2019 provides a basis for this purpose. As a first step, the transfer of the ports Kherson and Olvia to private operators was accomplished in 2020.

Nearshoring and better integration into supply chains with the EU hold a huge potential.

Ukraine can benefit from its geographic vicinity to the EU and the implementation of standards within the Association Agreement, as well as from favourable labour and production costs. Ukraine could become Europe's workbench.

Despite the appearance of toll processing companies in the car and textile industries, Ukraine is still lacking integration into international supply chains. The major part of the exports accounts for products with a low added value, such as agricultural products and metals.

In the face of decreasing labour force and growing wages, Ukraine is challenged to get more attractive for capital-heavy industries. Owing to old industrial traditions and skilled labour force, there are quite good conditions in sight. The powerful IT sector as well as agriculture, food and mining industries are also showing strong potential.

## 1.2. Volume of foreign direct investments

According to UNCTAD, the volume of foreign direct investments (FDI) in Ukraine amounted USD 48.9 billion in late 2019. This corresponds to an amount of nearly USD 1,170 per head. It is one of the weakest results in Europe and considerably lower than in the neighbouring country, Poland (USD 236.5 billion). About one third of the FDI volume falls at the reflows of the Ukrainian capitals from offshore centres.

The FDI inflow considerably waned in the corona year 2020. The balance of payments provided by the National Bank of Ukraine (NBU) has indicated a net outflow in amount of USD 420 million for 2020. From 2016 to 2019, nearly USD 4.3 billion per year were still flowing on average into the country. The downfall was caused by the COVID-19 pandemic and difficulties in renewable energies: the subsequent reduction of the guaranteed feed-in tariffs and high arrears towards the producers. In the last few years, the renewables stood for a large part of the direct investments.

For 2021, the NBU counts on an FDI inflow in the amount of USD 3 billion. In the following years, this could increase to between USD 4 and 5 billion.

The major part of the FDI volume in Ukraine comes from Cyprus (31.2% in 2019) and the Netherlands (22.8%). Germany was in the fourth place in 2019. German investors operate, in particular, in motor vehicle and building materials production, as well as in trade. The most companies represent small and medium-sized businesses.

## 1.3. Incentive measures

The attraction of foreign direct investments is a priority of the Ukrainian government. Since the Euromaidan, the government has founded different institutions which should facilitate this development, such as:

- National Investment Council (consulting on policy in economic issues; founded: 2014; members: foreign large-scale businesses);

- Business Ombudsman Council (support for foreign and domestic companies in disputes with governmental authorities; founded: 2014);
- UkraineInvest (investment promotion body; founded: 2016).

Foreign and domestic companies are of equal status in Ukraine. There are restrictions for foreign investors in agriculture, publishing industry, and critical infrastructure objects. The future opening of the agricultural land market for foreign investors should be decided by a referendum.

In the course of the crisis in 2014/15, Ukraine imposed restrictions on capital transactions. As a result of the macroeconomic stabilisation, the regulations have been widely eased since then.

## 1.4. Industrial parks

Regulatory changes regarding industrial parks should contribute to attracting more investors. The Law “On Industrial Parks” has been in force since 2012, though. Currently, there are 46 industrial parks countrywide, but the major part of them exists only on paper, without basic infrastructure, without utility lines and roads.

To improve the situation, several bills were introduced before the parliament in the last months. The primary objective is to provide opportunities to support the connection and infrastructure development of industrial parks.

There are nine special economic zones in Ukraine. However, their tax privileges and other benefits were eliminated in 2005.

## 1.5. Decentralisation

With the decentralisation that started in the previous years, the competences and fiscal scope of the communities have been enlarged. In this way, larger opportunities are presenting themselves and creating more attractive investment conditions at the local level.

The program “Affordable loans 5-7-9%”, started on 1 March 2020, is improving the access to credits for small and medium-size businesses. Concurrently, the state is subsidising a part of the credit costs.

Ukraine is going to implement new conditions for IT within the framework „Diia City“.

## 1.6. Progress in Doing Business Ranking

Since the Euromaidan, Ukraine has tangibly progressed in the Doing Business Ranking of the World Bank. From 2014 to 2020, the country moved up from place 112 to 64. In this regard, the progress was marked by the reduction or elimination of bureaucracy. The important steps include the launching of centralised service centres in public administration, the introduction

of Prozorro, the online bidding platform for public procurement, and the liberalisation of foreign exchange regulation.

The government is striving for Ukraine to move upwards to rank 30. The progress in the digitalisation of the public administration could yield a positive effect on the future ranking. The government's goal is a "State in the Smartphone".

For this purpose, the program Diia was launched in 2020 as a framework for the future digitalisation of all state services. This would also limit the leeway for corruption.



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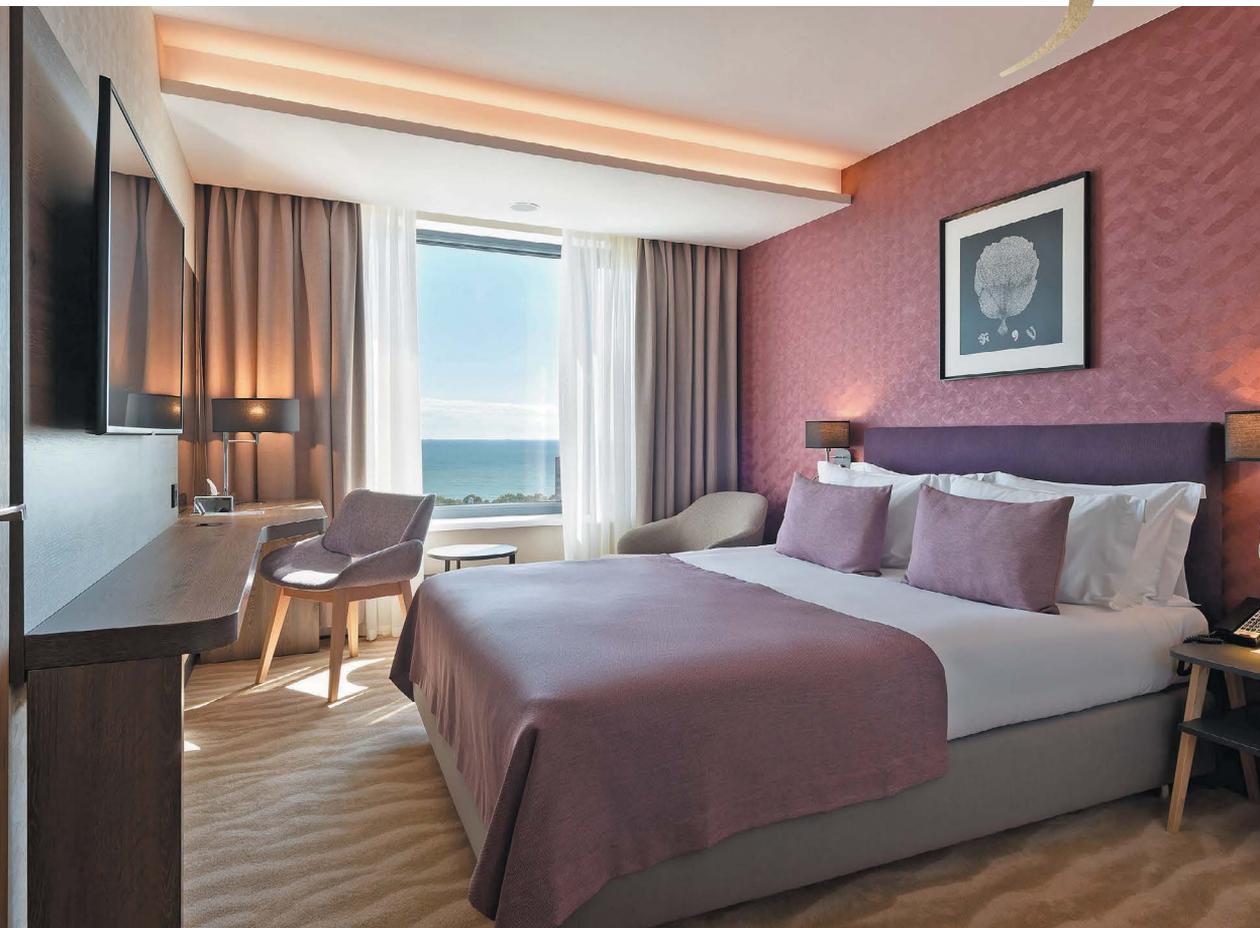
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# Ukrainian IT industry in numbers: going global

## 2.1. General overview of the sector

In the last 5 years, Ukraine has recommended its developer pool as a powerful global tech market player. Expert estimations show that Ukraine's impact on the world economy will further increase. Showing a 20-25% IT Services market growth rate, Ukrainian talent pool is ready to meet the increasing global demand for software engineers.

According to the Global Innovation Index 2020, Ukraine performs best in Knowledge & Technology outputs. Also GII finds that Ukraine's main strengths are:

- Human capital & research: shows strengths in the Government funding/pupil, Pupil-teacher ratio and Tertiary enrolment indicators,
- Market sophistication: the Applied tariff rate indicator reveals a strength,
- Business sophistication: displays strength in the Females employed w/advanced degrees indicator,
- Knowledge & technology outputs: reveals strengths in the Utility models by origin and ICT services exports indicators,
- Creative outputs: exhibits strengths in the Trademarks by origin, Industrial designs by origin and Mobile app creation indicators.

Ukraine performs better in innovation outputs than innovation inputs in 2020, and ranks 71st in innovation inputs, higher than last year and higher compared to 2018. Also the data shows that relative to GDP, Ukraine is performing above expectations for its level of development. Ukraine produces more innovation outputs relative to its level of innovation investments.

Over 212,000 tech specialists engage in Ukraine's software development scene, making it the second-largest developer population in Eastern Europe.

About 85% of tech professionals have at least an intermediate English proficiency level. In the Education First 2020 ranking of English proficiency among non-native countries, Ukraine ranked 44th out of 100 moving up five positions since last year. IT Association members

work to further improve English language skills for future engineers.

In 2020, Ukraine's export of IT services exceeded USD 5 billion a year for the very first time.

According to the National Bank of Ukraine, IT industry exports increased by USD 853 million, or more than 20% per year. Thus, the share of computer services in total exports reached 8.3%.

Over the recent years, Ukraine's IT community has gained worldwide recognition and foreign investors' trust. The IT Services sector has become a significant contributor to the country's economy as the 3rd largest service exporter.

IT-companies are growing in number and size, making input into the country's financial, cultural, and infrastructural outlook more and more massive. By gathering into clusters and associations, tech businesses proactively cooperate with local communities and initiate big infrastructure projects.

## 2.2. Ukrainian IT community and global partnership

IT Ukraine Association now implements a number of global projects, such as IT Export Boost and First Ukrainian IT Export Alliance – brand Union.

IT Export Boost is a joint project of the IT Ukraine Association and the Exporters and Investors Council under the Ministry of Foreign Affairs of Ukraine. Its main task is to facilitate the proactive promotion of IT services export in priority countries through the network of diplomatic representative offices of the Ministry of Foreign Affairs of Ukraine abroad.

Export markets for Ukrainian IT companies are the markets of 19 countries, including the USA, Canada, Great Britain, Israel, UAE, Switzerland, Germany, Netherlands, Sweden, Denmark, Finland, Norway, Portugal, Spain, France, Austria, Singapore, South Korea and India. Ukraine's diplomatic representatives in these countries will help Ukrainian IT companies to establish contacts with potential customers from both the public and private sectors.

Export IT Alliance – brand Union – is a large-scale international initiative implemented by the IT Ukraine Association with the support of the USAID Competitive Economy of Ukraine Program. Initiative partner – State Institution "Export Promotion Office of Ukraine". 20 selected IT companies are granted with access to in-depth research of three markets (Germany, Finland and Norway), and participation in three trade missions, which will provide participants with contacts and a large number of business acquaintances.

As the global market seeks ways to combat the talent shortage, Ukraine's strengthening its positions as an emerging tech driver. The 2019 poll conducted by the American Chamber of Commerce in Ukraine conforms to the previous statement, indicating IT as the second most attractive Ukrainian industry for foreign investment.



# Support of large investors

## 3.1. General provisions

On 13 February 2021, the Law "On State Support of Investment Projects with Significant Investments" (hereinafter referred to as the Law) came into force. In addition to the sectors of state support for investment projects with significant investments and creation of new jobs, this Law, also defines the stimulation of economic development of regions and increases the competitiveness of Ukraine's economy.

A new type of investor has been distinguished – an investor with significant investments, as well as an investment project with significant investments. Moreover, the Law provides a number of benefits for such investors and defines forms (tools) for providing state support to investment projects with significant investments.

The Law provides for establishment of a special government agency that will support these investment projects, assist investors from the beginning and throughout project's process.

## 3.2. Investment project criteria

Under the Law, an investment project with significant investments must meet all the following requirements:

1. it must be implemented in the territory of Ukraine in the sectors of processing industry (except for production and circulation of tobacco products, ethyl alcohol, cognac and fruit, alcoholic beverages), mineral extraction for further processing or enrichment (except for coal and lignite, crude oil, and natural gas), waste management, transportation, warehousing, postal and courier operations, logistics, education, science, research and development, healthcare, arts, culture, sports, tourism, resorts and recreation;

2. the project must create at least 80 new jobs with an average salary of employees at least 15% higher than the average salary for the relevant activity in the region (where the project is implemented) for the previous calendar year;
3. amount of contribution in investment objects during implementation of the investment project with significant investments must exceed the equivalent of EUR 20 million;
4. the project must include construction, modernization, technical and/or technological re-equipment of investment objects, purchase of necessary equipment and its components, and may also include construction of the infrastructure necessary for the investment project at the expense of investor;
5. implementation period of the investment project with significant investments should not exceed five years.

### 3.3. Forms of support for investors

The Law stipulates that state support of investment projects with significant investments may be provided to an investor in the following forms:

- exemption from income tax for 5 years, as well as from payment of VAT and duties on import of new equipment;
- granting the preemptive right to use a state or municipal land plot for implementation of the investment project. This involves using (renting) a state or municipal land plot with rent to be paid under conditions provided by a special investment contract. Furthermore, the investor may be granted the preemptive right to acquire ownership of the land plot after expiration of the special investment agreement;



#### Tax incentives for large investors in Ukraine

This article describes the tax benefits for investors implementing investment projects with significant investments in Ukraine.

[View Tax incentives for large investors in Ukraine](#)

# Requirements to investment projects

## INDUSTRIES



### Processing industry

except for tobacco products, alcohol



### Mineral extraction for further processing or enrichment

except for coal and lignite, crude oil, and natural gas



### Transportation, warehousing, postal and courier operations, logistics



### Education, science, R&D



### Healthcare, resorts and recreation



### Arts, culture, sports, tourism



### Waste management

#### Salary

at least 15% higher than the comparable average salary in the region

#### Jobs

≥ 80 new jobs

#### Investment amount

> EUR 20 million

#### REQUIRED

construction, modernization, technical and/or technological re-equipment of investment objects, purchase of necessary equipment and its components



#### Implementation period

up to 5 years

# State support of large investors



## Tax benefits:

1. Exemption from income tax (for 5 years)
2. Full/partial exemption from payment of land rent and land tax
3. Exemption from payment of duties on import of new equipment
4. Exemption from import VAT



**Construction, restoration, major overhaul of related infrastructure at the expense of the state, local budgets, etc.**



**Support for the investor during the project design and implementation**



**Preemptive right to use (and potentially, acquire ownership of) a land plot**



**State guarantees of stable conditions for conducting business**

Tax benefits + Infrastructure construction/overhaul  
=  
**up to 30% of the investment amount**

[More information](#)

- provision of construction, reconstruction, restoration, major overhaul of related infrastructure (highways, communication lines, heat, gas, water, and electricity supply facilities, utilities, etc.) required for implementation of the investment project at the expense of the state, local budgets and other legal sources (state support in this form will be provided starting from 1 January 2022).

Total amount of state support is to be set in a special investment contract and should not exceed 30% of the planned amount of significant investments in the investment project with significant investments.

### 3.4. Special investment contract

Special investment contract is concluded for a period agreed by the parties, but not more than for 15 years. The contract defines the period of implementation of the investment project with significant investments, which may not exceed 5 years from the commencement date of the contract.

Information on the total amount of state support and the amount of actually provided state support under a special investment contract is public, entered in the register of investment projects with significant investments and published on the official website of the Ministry of Economy of Ukraine.

An applicant, who intends to implement an investment project with significant investments and receive state support, prepares and submits to the Ministry of Economy of Ukraine the following:

- an application;
- documents confirming the applicant's compliance with the financial capacity requirements set by the Cabinet of Ministers of Ukraine, as well as his/her non-affiliation to the category of ineligible investors;
- the feasibility studies of the investment project with significant investments under the requirements set by the Cabinet of Ministers of Ukraine (with mandatory indication of the social effect after project implementation);
- the draft of a special investment contract.

The investment project with significant investments is evaluated by the Ministry of Economy within 60 calendar days from the date of receipt of documents from the applicant. The Anti-monopoly Committee of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine, the State Ecological Inspectorate of Ukraine, and the local self-government body (if state support for implementation of the investment project with significant investments is provided by such body) must be involved in the evaluation of the investment project with significant investments. Other state bodies may be also involved in the evaluation due to the competence.



## Markteintritt in der Ukraine

Diese Broschüre in deutscher Sprache ist eine umfassende Publikation, die sich speziell an die Informationsbedürfnisse von kleinen und mittleren Unternehmen richtet. Die Publikation vermittelt wichtiges Orientierungswissen für erste geschäftliche Aktivitäten in der Ukraine.

[Siehe die Publikation:  
Markteintritt in der Ukraine](#)

Based on the results of the evaluation of the investment project with significant investments, the Ministry of Economy prepares one of the following decisions:

- the decision on the expediency of the investment project and the conclusion of a special investment contract. In this case, the draft contract together with the draft decision on its conclusion is sent within 30 working days to the Cabinet of Ministers of Ukraine and the relevant local self-government body, which must become a party to the contract. The Cabinet of Ministers of Ukraine decides on the conclusion of the contract within 30 calendar days from the date of receipt of the draft contract and the decision of the relevant local self-government body;
- the decision on the inexpediency of the investment project and refusal to conclude a special investment contract. Such a decision can be appealed in court.

Liability under a special investment contract:

- the applicant is jointly and severally liable for the investor's failure to properly perform the contract;
- the lost profit of the contract's party due to the other party's failure to properly perform obligations thereunder is not subject to compensation;
- in case of a court or arbitration decision establishing the fact of non-compliance with the guarantees of stability of the investor's business conditions during the investment project implementation, the investor has the right to compensation for losses unless otherwise provided by a special investment contract;
- in case of the applicant's and/or investor's failure to properly perform its obligations, the Cabinet of Ministers of Ukraine has the right to terminate the contract unilaterally. In this case, the investor must pay the full amount of funds exempted

from taxation and to compensate the state for any other state support provided to him;

- in case of termination of the contract due to the investor's failure to properly perform obligations concerning the volume of investments and/or non-observance of the investment project implementation term established by the contract, the investor must pay the penalty in the full amount of provided state support. In addition, the investor must pay taxes and fees from which he was exempted. These provisions do not apply if such non-performance is due to a breach of the state obligations to provide state support under the contract or force majeure.

### 3.5. Ineligible investors for support

State support will not be provided for implementation of investment projects in the sectors of renewable energy, crop production, and the financial sector.

Following categories of investors will not be able to be applicants for state financial support:

- non-profit organizations;
- legal entities that have not disclosed information on their ultimate beneficial owners;
- enterprises registered in offshore zones, or enterprises with more than 50% of the authorized capital shares belonging to legal entities registered in offshore zones;
- legal entities registered in the Russian Federation and legal entities, whose beneficial owners of shares (stocks) are residents of the Russian Federation, etc.



#### Arabic-English Issue of Ukraine: Investment Guide

The Arabic-English issue focuses on the general regulations in the most commonly referred areas of the Ukrainian law, including foreign investment protection, corporate law, M&A, customs regulations, labour law, immigration issues, real estate, taxes, etc.

[View Arabic-English Issue of Ukraine:  
Investment Guide](#)

# 4

## Setting up a business in Ukraine

### 4.1. General provisions

The regulatory environment and terms of registering and doing business in Ukraine improve every year, which is evidenced by the steady rising of Ukraine's rank for conducting business in many international organizations. As of today, the scope of documents and terms of registration of companies in Ukraine is reduced and usually does not cause much difficulty. These changes alter the attitude of foreign investors to Ukraine and increase the presence of foreign business in the country.

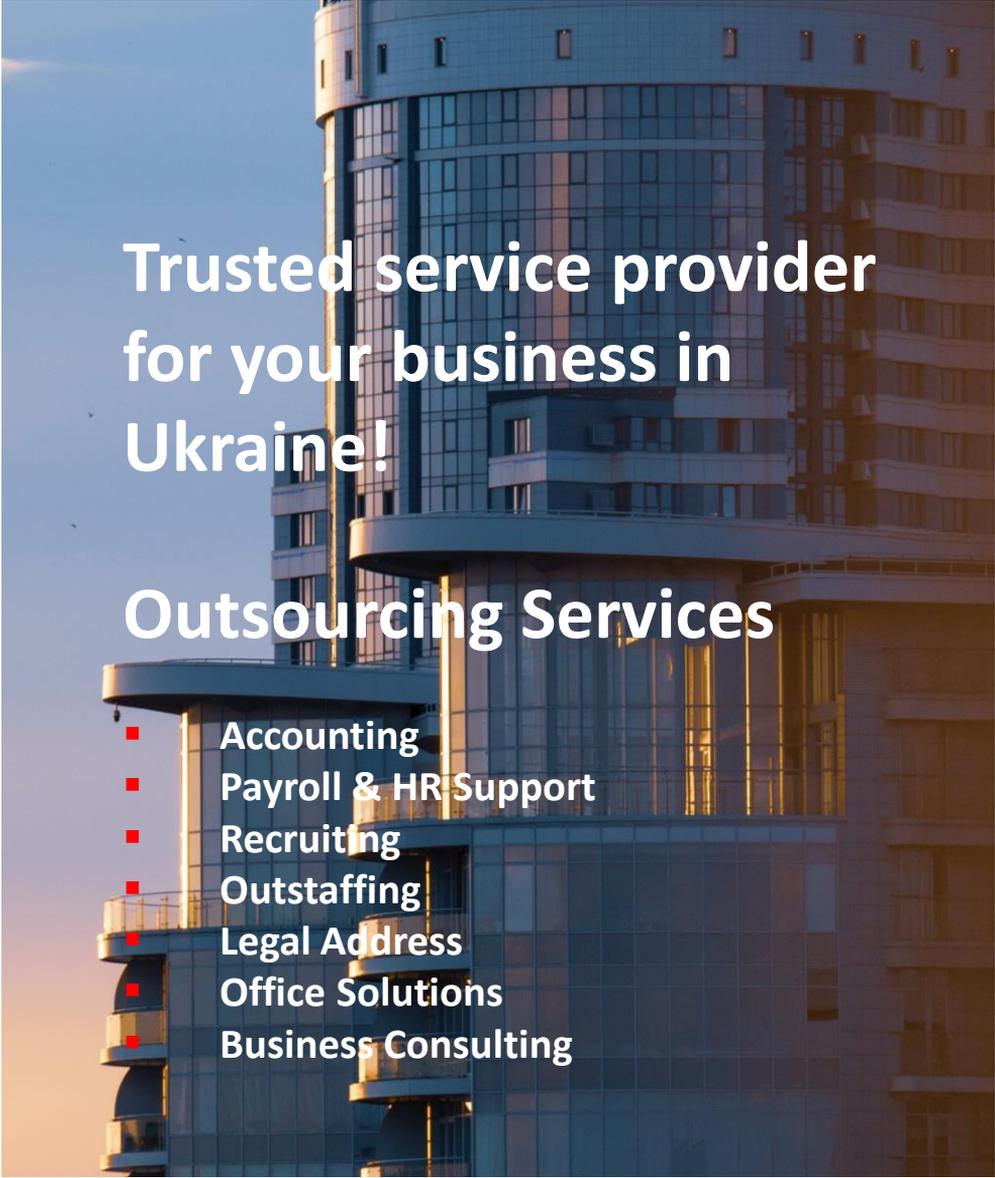
The most popular types of business companies that have shown themselves to good advantage in the eyes of foreign investors is a limited liability company, joint stock company and representative offices of a foreign company in Ukraine.

### 4.2. Private entrepreneur

The easiest way to carry out an economic activity in Ukraine is registration of an individual, including a non-resident, as a private entrepreneur. Registration as a private entrepreneur means that such a person shall own business without establishing a legal entity. Information about the private entrepreneur is entered into the Unified State Register, it is public and may be verified at any stage of activity of such a person.

One of the advantages of registering as a private entrepreneur is the option to choose the simplified tax system, which greatly facilitates financial reporting to the regulatory authorities and allows individuals to apply reduced fixed tax rates on income. However, this type of business is not for all market actors, as it sets certain limitations on the amount of allowable annual turnover, the number of employees and admissible activities.

Although carrying out economic activities as a private entrepreneur with or without use of the simplified tax system provides several advantages, one should not forget about liability related to the activities of an individual in such a legal status. Private entrepreneurs are re-

A photograph of a modern glass skyscraper at sunset. The building's curved facade and balconies are illuminated by the warm, golden light of the setting sun, creating a dramatic silhouette against the blue and orange sky.

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sponsible for liabilities associated with business activities for the full extent of their assets. At that, the Ukrainian law does not provide for apportion of property used by the entrepreneur for his/her business activity from the bulk of assets owned by an individual. Therefore, on the basis of a court ruling a penalty may be charged on all the debtor's property, regardless of whether it is used for business purposes or not.

In any case, a private entrepreneurship is the most mobile way of doing business in Ukraine, which does not require complex preparation of financial statements.

## 4.3. Limited liability company (LLC)

In Ukraine, entities may be established with a view to go beyond the limits set out for carrying out economic activities by private entrepreneurs, reduce the risk of the investor's personal liability and be able to combine equity and assets to achieve common financial goals. The most common legal type of a legal entity for doing business is a limited liability company.

Both foreign legal entities and foreign nationals can be founders (shareholders) of an LLC. There are no limits in this respect, including the share size in the authorized capital. Thus, a foreigner or a foreign legal entity can own 100% in the company's authorized capital.

### 4.3.1. LLC registration

Registration of an LLC in the state register can be done within 24 hours. Receiving all registration documents, opening a bank account, and registering an LLC with the customs can take up to several working days.



### Registration of an LLC in Ukraine: Frequently Asked Questions

This publication is intended to provide general answers to common questions we receive from our clients in connection with LLC registration in Ukraine.

[View Registration of an LLC in Ukraine:  
Frequently Asked Questions](#)

A limited liability company being registered, such a company shall comply with certain formal requirements: the limited liability company founders shall develop a charter (the main statutory document of a company), whereby they specify the company name, information on the company management bodies, their competence, the procedure for adopting resolutions; the procedure for joining and withdrawing from the company. The founders shall appoint the director and determine the person in charge of the state registration with the state authorities in the minutes on the company establishment.

The founders' presence while the charter and protocols being signed as well as at the registration procedure itself is not required. Signing statutory documents, registering the company, as well as receiving all the necessary documents may be exercised by an authorized representative on the basis of a notarized (legalized/apostilled) power of attorney.

### 4.3.2. Authorized capital

The minimum size of LLC's authorized capital is not determined by the legislation of Ukraine. Thus, the founders jointly determine the size of the shares at their discretion (optionally - their ratio). This means that the authorized capital can theoretically be UAH 1 or an amount in the national currency of Ukraine, equivalent to EUR 1/ USD 1. But in practice, evaluation of an authorized capital amount should be based on the fact that the company needs initial funding (e.g., for payment of rent, salaries, etc.) to support itself.

The contribution of a shareholder may be in cash, securities, or other property. An in-kind contribution must have a monetary value approved by a unanimous decision of the members' general meeting.

### 4.3.3. Shareholders of the company

Shareholders of a limited liability company may be individuals and legal entities, including non-residents. In addition, these persons do not necessarily have to be located or reside



#### Concerted Actions in Ukraine

The publication analyses the legal framework of concerted actions in Ukraine, defining the notion and the types of concerted actions, procedure for their approval, as well as sanctions for unapproved concerted behaviour.

[View Concerted Actions in Ukraine](#)



## Registrierung einer GmbH in der Ukraine: häufigste Fragen

Diese Veröffentlichung bietet allgemeine Antworten auf die häufigsten Fragen, die wir von unseren Mandanten im Zusammenhang mit der Registrierung einer ukrainischen GmbH erhalten. Sie darf nicht als Rechtsberatung betrachtet werden.

[Siehe PDF: Registrierung einer GmbH in der Ukraine: häufigste Fragen](#)

on the territory of Ukraine. To confirm the data on the non-resident legal entities as shareholders, the state registrar shall be provided with an extract from the commercial, banking or other registry of the country of registration of such persons, which, if necessary, shall undergo the legalization or apostillization procedure.

A limited liability company may be established by one shareholder, and the sole shareholder of a limited liability company (an individual) may act as the director of the company. The maximum number of members of a limited liability company is not limited.

### 4.3.4. Liability of the shareholder

Opting for a limited liability company as a legal type of business activity in Ukraine is attractive primarily due to the fact that shareholders are not liable for the obligations of the company. The shareholders assume the risk of loss related to the company's activities within the scope of their contributions.

However, it should be noted that in the event of a shareholder's personal debt, such as in case of his/her failure to satisfy creditors' claims by his/her other assets, an enforced collection of the property of a limited liability company proportionate to the share of such a shareholder in the authorized capital is allowed. Thus, personal debts of a shareholder of a limited liability company may lead to cessation of her/his participation in the company.

### 4.3.5. Governing bodies

The company's bodies are the general meeting of shareholders, supervisory board (in case it is created), and executive body. The general meeting of shareholders is the highest body of a company electing the supervisory board and executive body. The company's executive body can be individual ("director") or collegial ("board of directors" headed by a general director).

The general meeting of shareholders determines the company's main activities and appoints

the company director (board of directors) in charge of management over the company's operational activities (unless otherwise provided by the charter).

The director on behalf of the company shall sign any contracts. Therefore, upon the appointment of the director, the charter and the employment contract shall clearly stipulate the powers of the director in order to prevent abuse on his/her part.

The supervisory board may be established to monitor the director's activities in a limited liability company. In particular, the supervisory board competence may include electing the sole executive body or members of the company collegial executive body (any, all or some of them), suspending and terminating their powers, establishing remuneration to the company executive body members.

#### **4.3.6. Funding of activities**

Upon establishment, as well as at further stages of a limited liability company's activity, its funding may be carried out in several ways. This shall be done primarily by its shareholders' contributions to the authorized capital, non-repayable financial assistance from the company's shareholders or by providing a credit/loan by any of the shareholders to the company.

The Ukrainian law does not stipulate limits on the amount of credit that may be provided by shareholders to their company, but the shareholder granting loans shall take into account peculiarities of taxation of such loans and adhere to thin capitalization rules, as well as consider the requirements of the currency regulation of Ukraine, if such a loan is granted by a non-resident.

### **4.4. Joint stock company**

Another legal type that protects members against any personal liability for the company's debts is a joint stock company. The legal regulation of joint stock companies is very similar to the limited liability companies' regulation. However, joint stock companies have their own features, such as an amount of the authorized capital (the minimum amount equals to approximately USD 268,000), the requirement to register and submit reports to the National Commission on Securities and Stock Market.

It should be noted that the joint stock company registration procedure is more complicated than that of a limited liability company. To establish a joint stock company the founders shall make notification of intent to create a joint-stock company, subscribe for shares, hold a statutory meeting and carry out a joint stock company state registration with a number of regulatory authorities.

A joint stock company is also distinguished by the special requirements to the content of the charter. The charter shall contain information on the types of shares issued, their nominal value, ratio of different types of shares, the number of shares purchased by the founders, consequences of default on the redemption of shares, the term and procedure for annual payment of dividends at the end of a year, etc.



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## 4.5. Representative office of a foreign company

A foreign company may exercise certain activities in Ukraine without establishing a legal entity. Such activities are carried out through representative offices of a foreign company in Ukraine, acting on behalf of the foreign company they represent. A representative office of a foreign company does not have its own charter, as it acts as a separate unit of a foreign company. A head of a representative office acts under the power of attorney issued by a foreign company.

The procedure for registration of a foreign company representative office significantly differs from the procedure of business entities registration. Thus, the Ministry of Economic Development and Trade of Ukraine carries out registration of representative offices by adopting a decision on registration within 20 days.

Foreign companies open their representative offices in Ukraine usually for the purpose of non-commercial activities, such as representation of their interests, data collection, market analysis or monitoring.

## 4.6. Mergers and Acquisitions

Additionally, one may enter the Ukrainian market by purchasing shares in an already established company in Ukraine. The main advantage of the purchase of shares in an existing company is the fact that it has already built a management structure, it has assets necessary for its activity, contractual relationships with partners and customers, as well as experience in specific areas and a certain market share. To reduce the risk of hidden liabilities a purchaser needs to conduct a detailed legal and financial audit (due diligence) of the firm.

When purchasing a stake in a Ukrainian company one needs to remember to follow the provisions of the Ukrainian antimonopoly law.



### Merger Control in Ukraine: The Law Reviews

The Ukrainian Chapter of Merger Control Review (in English) covering the legal framework for merger and antitrust clearance of Ukrainian companies' acquisition, including merger clearance in connection with Joint Ventures establishment, as well as transactions subject to merger control, the notification procedure and review process, etc.

[View Merger Control in Ukraine:  
The Law Reviews](#)



## M&A transactions in Ukraine: antimonopoly aspects

This brochure provides a detailed description of the legal basis for the antimonopoly control over economic concentrations in Ukraine, in particular it deals with the structure and functions of the controlling authorities and principles of their functioning, covering the thresholds required for exercising of such control, liability for breach of antimonopoly law, etc.

[View M&A transactions in Ukraine:  
antimonopoly aspects](#)



## M&A-Transaktionen in der Ukraine: kartellrechtliche Aspekte

In dieser Broschüre werden die rechtlichen Grundlagen des Funktionierens des Systems der kartellrechtlichen Kontrolle, d.h. der Kontrolle über die wirtschaftliche Konzentration in der Ukraine, beschrieben, insbesondere die Struktur, die Funktionen und die Prinzipien der Tätigkeit der kontrollierenden Organe, die Schwellenwerte für die Durchführung einer solchen Kontrolle, die Verantwortlichkeit für die Verletzung der kartellrechtlichen Gesetzgebung, etc.

[Siehe die Publikation: M&A-Transaktionen  
in der Ukraine: kartellrechtliche Aspekte](#)

# How to control a Ukrainian debtor in times of crisis? 1/2

## 01

### Analysing the risk factors

- ✓ terms of agreement (payment terms, penalties, force majeure circumstances, applicable law and jurisdiction, etc.), estimated damage due to Ukrainian counterparty's potential failure to comply with the agreement
- ✓ nature of the counterparty's work
- ✓ counterparty's dependence on foreign currency
- ✓ current compliance with contractual obligations
- ✓ current cooperation history

## 02

### Tracking information

- ✓ changes in the Unified State Register (suspension of business activity, change of an owner/participant/shareholder or the legal address, etc.)
- ✓ counterparty's debt to the state (incl. a tax lien)
- ✓ initiation of enforcement proceedings
- ✓ notice of bankruptcy proceedings or notice on initiating counterparty's restructuring procedure
- ✓ alienation (re-registration) of counterparty's assets in favour of related companies
- ✓ initiation of litigations
- ✓ judicial calendar of proceedings

# How to control a Ukrainian debtor in times of crisis? 2/2

03

## Proactive measures

**1** the counterparty is facing temporary financial and/or organizational difficulties

- ✓ further monitoring of the situation
- ✓ debt restructuring (registering the right to pledge property or a share in the authorized capital; converting the debt into a share in the debtor's authorized capital)

**2** the counterparty is facing significant financial difficulties

- ✓ preparing for counterparty's potential failure to comply with its contractual obligations
- ✓ drafting the documents for filing a claim with a court (incl. PoAs)
- ✓ adhering to the established terms (e.g. for filing claims against a bankrupt counterparty)

**3** the counterparty has started the winding-up procedure

- ✓ getting actively involved in the process to protect your interests
- ✓ filing claims in a timely manner
- ✓ considering the peculiarities of the bankruptcy and liquidation procedures in Ukraine (e.g., short terms)

[More information](#)





# Ukrainian taxation system

## 5.1. Corporate income tax

### 5.1.1. Taxpayers and tax base

Corporate Income Tax (CIT) is paid by the resident companies, which receive income in Ukraine as well as abroad. CIT is also paid by the non-resident companies, which receive income from Ukrainian sources or conduct their business through permanent representative offices in Ukraine, or by other non-residents who are required to pay CIT in Ukraine.

Currently, a flat rate of 18% is established for all CIT taxpayers. However, for some activities a separate rate is applicable.

Temporarily, i.e. until January 1st, 2035, a large investor with significant investments (more than EUR 20 million), acting as a party to a special investment contract, is exempt from paying CIT. The exemption from CIT is applicable after the commissioning of an investment project object during 5 years within the special investment contract term. The exemption may be applied if the large investor has fulfilled its obligations under the special investment contract.

The CIT base is the income derived from Ukrainian sources of origin and abroad. The amount of tax is determined by adjustment of financial result (profit or loss) before tax, as calculated in accordance with the Ukrainian accounting standards or IFRS.

### 5.1.2. Taxation of non-residents

The income of non-resident legal entities derived from Ukrainian sources of origin is taxed by CIT at the rate of 15%. The CIT tax base is the income from interests, dividends, royalties, freight, as well as the proceeds of engineering, leasing and rent, profits from sale of real estate, investment assets (securities and corporate rights), and the proceeds of joint activities and entertainment activities.

In relation to the income from Ukrainian sources of origin, the following rates apply:

dividends – 15%, interest – 15%, royalty – 15%, freight – 6% and other profits from Ukrainian sources of origin -15%.

In certain cases, the lower tax rate might apply under the double taxation agreements. Ukraine has valid double taxation agreements with approximately 75 countries. It should also be noted that double taxation agreements with specific countries may provide for more favourable taxation arrangements.

### **5.1.3. Taxation of the activity through permanent representative offices**

Incomes of non-residents operating in Ukraine through a permanent representative office are taxable on general terms. For the purposes of taxation, such a permanent representative office is equated to a taxpayer performing its business independently of a respective non-resident.

Non-residents operating in Ukraine through separate divisions, including permanent representative offices, are required to register with the competent regulatory authorities. Simultaneously with the registration of a non-resident, his/her separate division (permanent representative office) is registered as well.



#### **Permanent representations of non-residents in Ukraine: tax aspects**

This article discusses the legislative changes with regard to permanent representations of non-residents in Ukraine in particular, the associated tax implications.

[View Permanent representations of non-residents in Ukraine: tax aspects](#)

## 5.1.4. Transfer pricing

For the purposes of correct CIT taxation, the control has been established over related-party transactions (it concerns the persons who, among other things, have at least 25% of corporate rights in a legal entity); foreign commercial transactions for the sale and/or purchase of goods and/or services by non-resident commission agents; commercial transactions with non-residents not paying corporate income tax on foreign income; as well as over commercial transactions between a non-resident and his/her permanent representative office. In addition, such control is also exercised over transactions with non-residents in low-tax jurisdictions.

Low-tax jurisdictions are determined on the basis of the following criteria:

- the general corporate tax rate in such countries is five or more percentage points lower than in Ukraine, or preferential taxation regimes are provided to business entities, or certain features of the taxable amount calculation actually allow business entities to pay no corporate tax in such countries or to pay corporate tax at a rate which is five or more percentage points lower than in Ukraine;
- Ukraine does not have any agreements on information exchange with such countries;
- countries, the competent authorities of which do not provide timely and complete exchange of tax and financial information.

The transfer pricing control is exercised over transactions, where:

- the taxpayer's revenue exceeds UAH 150 million for the tax year;
- the annual volume of the transactions with each counterparty (related person) exceeds UAH 10 million.

Business transactions between a non-resident company and its permanent representative office in Ukraine are considered to be controlled if the volume of such business transactions, determined in accordance with the accounting rules, exceeds UAH 10 million (net of indirect taxes) in the relevant tax (reporting) year.

## 5.1.5. Thin capitalization rules

In order to prevent tax base erosion and profit outflow from the country, there are the thin capitalization rules effective in Ukraine.

Under the thin capitalization rules, expenses of the resident in the current tax period include the amount of interest paid on loans, which does not exceed 30% of profits, expenses on repayment of interests. It should be noted that the amount of taxpayer's liabilities with a non-resident exceeds the equity ratio by more than 3.5 times.

## 5.2. Value-added tax

The value-added tax (VAT) rate is 20% (standard tax rate). 14% VAT rate is applied to the import and supply of certain agricultural products. 7% VAT rate is applicable inter alia for pharmaceutical products and provision of temporary accommodation (stay) provided by hotels and similar facilities.

It should be noted that 0% VAT rate is applied to export of goods in the customs regime from the territory of Ukraine.

Besides, 0% VAT rate is applicable also for the following:

- supply of goods for refuelling of ships, aircraft, spacecraft;
- international transportation of passenger and freights;
- services related to work with movable property previously imported into the customs territory of Ukraine to perform such work.

Temporarily, until 1 January 2035, importation transactions of equipment to be imported into the customs territory of Ukraine for the implementation of an investment project with significant investments under a special investment contract will be exempt from VAT. The equipment must be new and manufactured not earlier than three (3) years before the registration date of an investment project with significant investments. The list and volume of equipment must be defined by the Government of Ukraine with a conclusion of a special investment contract.



### Steuern in der Ukraine 2021

In dieser Broschüre wird eine allgemeine Information über die Sätze, die Objekte und die Steuer- und Gebührenbemessungsgrundlagen geboten, darunter auch die Besonderheiten der Besteuerung der einzelnen Steuerzahler. Besonders berücksichtigt werden die Besonderheiten der Besteuerung von Nichtresidenten.

[Siehe die Publikation:  
Steuern in der Ukraine 2021](#)

## 5.3. Simplified tax system

With the aim of facilitation and easement of small and medium business accounting, Ukraine introduced special taxation terms for such businesses. The taxpayers, both private entrepreneurs and legal entities, may choose to apply for a simplified taxation system in one of the following categories:

	I group	II group	III group
<b>Taxpayer</b>	Private entrepreneur	Private entrepreneur	Private entrepreneur/ legal entity
<b>Number of employees</b>	0	from 0 to 10	no restrictions
<b>Max. profit per one calendar year</b>	167 minimum wages (UAH 1,002,000 / approx. EUR 29.5 thousand)	834 minimum wages (UAH 5,004,000 / approx. EUR 146.5 thousand)	1167 minimum wages (UAH 7,002,000 / approx. EUR 205 thousand)
<b>Tax rate</b>	Up to 10% of subsistence minimum	Up to 20% of minimum wage	3% of income (VAT excluded);  5% of income (VAT included).

The IV group is designed for agriculture producers. The tax rate depends on the category of land, its location and amounts.

## 5.4. Personal income tax

The personal income tax (PIT) is paid by resident and non-resident individuals and tax agents. PIT rate is 18%, while PIT rate for dividend payments is 5%. However, for income in the form of dividends on shares and/or investment certificates, corporate rights owned by non-residents, collective investment institutions and companies that do not pay corporate income tax, the tax rate is 9%.

PIT is applied to:

Residents		Non-residents	
Monthly (annual) taxable income	Income from Ukrainian sources of origin, taxable at the time of its accrual (payments, compensation)	Income from foreign sources of origin	Monthly (annual) taxable income from Ukrainian sources of origin  Income from Ukrainian sources of origin, taxable at the time of its accrual (payments, compensation)

## 5.5. Single social contribution

The single social contribution is paid by the employers, private entrepreneurs, self-employed citizens. The single social contribution rate is established at 22%. However, the maximum taxable amount of the single social contribution shall not exceed 15 minimum wages.

The single social contribution is paid from the salaries and bonuses of employees and from the income of private entrepreneurs or those who carry out an independent professional activity.

## 5.6. Military duty

The military duty is paid by residents and non-residents or by tax agents, it amounts to 1.5%. The military duty is paid from wages, other incentive and compensation payments or benefits, which are paid to the taxpayer on the basis of his/her employment relations or civil agreements.



### Taxes in Ukraine 2021

This brochure deals with general information about tax rates, objects and bases of taxation in Ukraine, as well as peculiarities of taxation of certain categories of taxpayers. Taxation of non-residents is considered in detail.

[View Taxes in Ukraine 2021](#)



# Labour relations

## 6.1. Labour agreement

The main agreement, regulating relations between the employee and the enterprise is a labour agreement. Under the terms of such an agreement, the employee shall undertake to perform work determined in the agreement, and the enterprise shall pay salary to the employee and provide working conditions required for work performance.

The labour agreement may be entered into in the verbal or written form. However, Article 24 of the Labour Code of Ukraine stipulates cases where the written form of a labour agreement is mandatory. This applies in particular to the following cases:

- entering into a labour agreement in the regions with specific natural geographical and geological conditions and conditions of an increased risk for health;
- entering into a labour contract;
- if an employee insists on entering into a labour agreement in writing;
- entering into a labour agreement with a minor;
- entering into a labour contract with an individual;
- entering into a labour contract for remote (home-based) work.

The labour agreement may be:

- termless, that is entered into for an indefinite period of time;
- entered into for the definite period of time when labour relations may not be established for an indefinite period of time due to the subsequent work nature or of its performance conditions;

- entered into for the period of certain work performance.

However, it should be noted that the fixed-term labour agreement may be entered into only in certain cases prescribed by law, such as when the labour relations may not be established for an indefinite period of time, given the work nature or its performance conditions, or the employee's interests.

## 6.2. Labour contract

A special form of the labour agreement is a labour contract. The labour contract provisions may envisage its validity, rights, duties and responsibilities of the parties (including financial ones), employees' benefits and conditions, the contract termination. Cancellation terms may also be set by contract of the parties thereto.

The scope of the labour contract is determined by law. Thus, paragraph 4 of Article 65 of the Commercial Code of Ukraine stipulates that the labour contract shall be concluded with the head of an enterprise.

The labour contract may not be entered into with the head of a representative office of a foreign company in Ukraine. Paragraph 4 of Article 65 of the Commercial Code of Ukraine envisages the option of the labour contract conclusion between the head of an enterprise and an enterprise, i.e. a legal entity. Since a representative office of a foreign company in Ukraine is not a legal entity, the representative office head is entitled only to conclude a written labour agreement.

The labour contract is essentially an agreement between a highly qualified employee and an organization for which he/she shall perform important work at a high level, achieve certain specific results crucial for the organization, while the organization shall undertake to agree to certain conditions for remuneration, powers, labour conditions, duration, termination provisions etc.

## 6.3. Probation period

When entering into a labour agreement, the parties may agree on establishment of a probation period for the purposes of verification of the employee's relevance to the job entrusted thereto. That said, a provision of probation shall be specified in the order (an instruction) on employment. If the employee refuses to undergo the probation, the labour agreement shall not be deemed as concluded.

Within the probation period, employees shall be governed by the labour legislation. This means that, on the one hand, the employee is required to perform all work duties assigned to him/her by law and a labour agreement, and on the other hand, the probation does not entail any restrictions of labour rights, including salaries as well.

The probation period at employment may not exceed three months, and in certain cases,

as agreed upon with the respective body of a trade union organization, six months. If the employee has been absent from work within the probation period due to a temporary disability or for other good reasons, the probation period may be extended for the respective number of days, within which the employee has been absent.

If the probation period is over, and the employee continues to work, he/she is considered to have passed probation successfully, and subsequent termination of a labour agreement shall be allowed only on common basis. If within the probation period the employee's inconsistency with the job, for which he/she was employed, has been established, the employer shall be entitled to terminate the labour agreement.

## 6.4. Working hours

Employees' normal working hours may not exceed 40 hours per week. This being the case, working hours may not exceed the established periods for certain categories of employees. Thus, for workers aged 16 to 18, as well as workers employed in jobs with hazardous working conditions, working hours may not exceed 36 hours per week.

A five-day working week with two days-off shall be established for employees as a rule. In exceptional cases where the introduction of a five-day working week is impractical, a six-day working week with one day-off may be established. The working week duration shall be determined by the employer or the body authorized by the employer as agreed upon with the elective body of a primary trade union organization.

As a rule, overtime work shall not be allowed. The owner or the body authorized by the owner may use overtime work only in exceptional cases such as in case of necessity to complete the work started due to the result of unforeseen circumstances or accidental delay due to production conditions, which cannot be completed within normal working hours.



### Remote and home-based work, flexible working mode in Ukraine

This is an article looking into the timely law providing improved legal regulation of remote and home-based work, as well as flexible hours, in Ukraine.

[View Remote and home-based work, flexible working mode in Ukraine](#)

## 6.5. Labour remuneration and leave

The remuneration that the employer shall pay the employee for the performed work is determined by the labour agreement parties. This remuneration may not be lower than the minimum salary. It is worth noting that the minimum salary is a legally set amount of salary for simple, unqualified labour.

Salaries in Ukraine are paid in the Ukrainian currency.

Salaries shall be paid to the employee regularly on working days in the period established by the collective contract or a normative act of the employer, at least twice a month, not later than after 16 calendar days. If the pay day coincides with a day-off, holiday or non-working day, salaries shall be paid in advance.

Employees are entitled to a leave. In this case, employees shall be given both annual and additional leaves. The annual basic leave shall be given to employees for the period of at least 24 calendar days per working year worked. The annual additional leave shall be given to employees for work under harmful and severe working conditions, for specific character of work and in certain other cases. The legislation of Ukraine also stipulates a compensation for all unused days of the annual leave.

## 6.6. Labour relations termination

The important issue in labour relations is the procedure of dismissal, involving several grounds, such as the labour agreement or work permit expiration or the labour agreement early termination on the grounds provided by law at the initiative of the employee or the employer.

The procedure of the labour agreement termination on the employee's initiative depends on whether such an agreement is entered into for an indefinite or the definite (termed) period of time. The employee shall be entitled to terminate the labour agreement entered into for an indefinite period of time by way of sending a two-week notice to the employer in writing.

In case the employee's letter of resignation was caused by impossibility to continue working (movement to a new place of residence; transfer of a spouse to a job in another locality; entry to an educational institution; impossibility to live in this locality proven by the medical opinion; pregnancy; care of a child until it reaches the age of fourteen years old, or of a disabled child; care of an ill family member according to the medical opinion, or of a person of the first disability group; retirement; competitive employment, as well as for other good reasons), the employer shall terminate the labour agreement within the period requested by the employee.

The termed labour agreement shall be subject to early termination at the employee's request in case of his/her disease or disablement, which prevents work performance, violation of the labour legislation, a collective or a labour agreement (a contract) by the employer, and in cases, provided for termination of a labour agreement entered into for an indefinite period

of time on the employee's initiative.

As for the dismissal on the initiative of the employer, the labour legislation of Ukraine defines a number of reasons for this, in particular:

- changes in production and labour organization, including liquidation, reorganization, bankruptcy or conversion of an enterprise, reduction of the number or staff of employees;
- revealed inconsistency of the employee with the job or with the work performed (an insufficient qualification or state of health, preventing the employee from continuing this work);
- unexcused absence, absence from work (including absence from work for over three hours during a working day) without good reasons;
- failure to appear for work for more than four months in a row due to temporary labour incapacity, except maternity leave, unless the law establishes a longer period of job (position) retention for a particular disease;
- revealed inconsistency of the employee with the position he was employed for or with the work performed during a probation period;
- showing up for work intoxicated with alcohol, narcotics or other toxic substances;
- on-the-job embezzlement (including a petty one) of the employer's property;
- guilty actions of the enterprise director (which resulted in untimely salary payment or in the amounts lower than the minimum salary amount established by the legislation);
- one-time major breach of labour duties by the director of an enterprise (branch, representative office, division and other separate subdivision), his/her deputies, the chief accountant of an enterprise and his/her deputies;
- guilty actions of an employee who directly works with monetary, commodity or cultural valuables, if these actions break the owner's or his/her authorized body confidence.

The employee dismissal on the employer's initiative shall not be allowed within the period of the employee's temporary disablement (except for dismissal in case of absence from work within more than four successive months as a result of temporary disablement), as well as within the period of his/her staying on leave. This rule, however, shall not apply to cases of full liquidation of an enterprise.

## 6.7. Employment of foreign employees

To start working in Ukraine a foreign employee shall obtain a work permit in Ukraine. Getting a work permit is required also for employees of foreign companies sent to Ukraine to perform certain work or provide services under contracts with Ukrainian companies.

It is not a foreign national but an employer (company) who has to apply for a work permit. A work permit is issued to a particular person for a particular staff position (workplace). Therefore, a work permit in Ukraine is limited (it does not grant an unlimited access to the Ukrainian labour market) and tied to a particular employer.

A work permit is valid for the period specified in the labour agreement (the contract), but not more than for one year. For special categories of foreigners and foreign seconded employees a work permit is issued for up to three years. Ukrainian laws do not set a limit on the number of work permits in Ukraine. The application for renewal of a work permit must be submitted at least 20 calendar days before expiry date of a work permit in Ukraine.

A work permit in Ukraine is not required when it comes to:

- foreign nationals or stateless persons who have a permanent residence permit in Ukraine;
- employees of foreign representative offices in Ukraine;
- foreign nationals or stateless persons who are involved in the implementation of international technical assistance projects in Ukraine;
- other cases provided by the Ukrainian legislation.



### Work permit in Ukraine: 20 common questions

This publication contains answers to the most common questions we receive from our clients in connection with obtaining a work permit in Ukraine.

[View Work permit in Ukraine:  
20 common questions](#)

Validity term of a work permit:

- as a rule, a work permit is issued for up to one year;
- for specific categories of foreigners and foreign seconded employees a work permit is issued for up to three years;
- for internal corporate assignees a work permit is issued for the period of effect of the foreign company's decision on transferring the foreigner to work in Ukraine.

Work permits may be issued for shorter periods to be indicated in the employer's application.

Work permits are issued on condition that a foreigner is paid a monthly salary of at least:

- 5 minimum wages (UAH 30,000, approx. USD 1,060 as of 2021) – for foreign employees of public associations, charitable organizations and educational establishments;
- 10 minimum wages (UAH 60,000, approx. USD 2,130 as of 2021) – for all other categories of employees.

The requirement on the minimum wages is not applicable for special categories of foreign employees (highly-paid foreign professionals, founders and/or shareholders and/or ultimate beneficiaries (of a legal entity established in Ukraine, graduates of universities listed as top hundred in the world university rankings, foreign art professionals, foreign IT professionals).

Having obtained a work permit, a foreign citizen and an employer (a company) shall enter into a labour agreement (a contract) and submit a certified copy of such an agreement to the employment centre within 10 working days upon its signing.



## Arbeitserlaubnis für die Ukraine: 20 häufigste Fragen

Diese Veröffentlichung bietet allgemeine Antworten auf die häufigsten Fragen, die wir von unseren Mandanten im Zusammenhang mit der Beantragung einer Arbeitserlaubnis in der Ukraine erhalten.

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# Immigration issues

## 7.1. Permanent residence permit

### 7.1.1. Legal grounds

A permanent residence permit in Ukraine is issued for a period of 10 years, with its subsequent exchange for a new one valid 10 years at a low cost. Foreign citizens who have received a permanent residence permit shall have the right to reside in Ukraine without any time restrictions, and there are no limits on the number of their visits to Ukraine. In addition, such foreigners shall have the right to be employed without a need to obtain a work permit.

In order to apply for a permanent residence permit, a permit to immigrate to Ukraine must be obtained. The most common grounds for obtaining an immigration permit are kinship relations with Ukrainian citizens or other immigrants to Ukraine. If a foreign citizen does not have a family relationship in Ukraine, then making a foreign investment can serve as a legal basis for obtaining an immigration permit.

### 7.1.2. Investment of USD 100,000

According to the Law of Ukraine “On Immigration”, the right to obtain an immigration permit shall be granted to persons who have made a foreign investment in the economy of Ukraine in any foreign currency (US dollar, Euro, pound sterling, Canadian dollar, etc.) in the amount of USD 100,000 or more. The investment must be made in a foreign convertible currency in the amount equivalent to not less than USD 100,000 in accordance with the official exchange rate of the NBU on the date of such investment.

Since the legislation of Ukraine determines that such a foreign investment is to be made in the economy of Ukraine, the funds must be directed to the implementation of economic activities and receiving profit in Ukraine. The best option for making investments is to open your own company (e.g., an LLC) and to deposit the amount of USD 100,000 (or more)

in the foreign currency into its authorized capital, transferring the funds from a personal investment account in Ukraine to the current account of an established company. A foreign convertible currency is the only form of investment. Corporate rights, shares, and bonds are not considered investments in this case.

Purchase of property (apartments, houses, land plots) in Ukraine worth USD 100,000 is not considered an investment in the economy of Ukraine. However, it is possible to buy real estate for a Ukrainian company (having made a contribution to the authorized capital, i.e., having transferred funds from a personal investment account in Ukraine to the account of the established company) and then re-register such real estate directly in a foreigner's name. Another option is to lease real estate purchased and registered with the founded Ukrainian company under a lease agreement concluded between the given foreigner and his/her company.

### 7.1.3. Permit to immigrate to Ukraine

To obtain a permit for immigration to Ukraine, a foreign citizen (after making a foreign investment in the amount of USD 100,000) must submit the following documents:

- an application for an immigration permit. The application is submitted to an Embassy or Consulate of Ukraine (if the foreigner is abroad) or to the local office of the State Migration Service (at the place of residence in Ukraine). The application is to be submitted personally by a foreigner. In case of the foreigner's illness or due to a natural disaster it is allowed to submit it by proxy;
- three photos;
- a copy of the identity document;
- a document confirming the place of residence (the document on the place of residence in Ukraine, if a foreign citizen resides in Ukraine and the documents are submitted in Ukraine; the document confirming the place of residence outside Ukraine, if a foreign citizen permanently resides outside Ukraine and the documents are submitted to an Embassy or consulates of Ukraine);



#### Permanent residence permit in Ukraine: frequently asked questions

This publication provides answers to common questions we receive from our clients in connection with obtaining a permanent residence permit in Ukraine.

[View Permanent residence permit in Ukraine: frequently asked questions](#)

- information about the family composition, a copy of the marriage certificate (if the applicant is married);
- a document stating that the person does not have any chronic alcohol, toxic substances, drug addictions, or any infectious diseases. The list of such diseases is approved by the Ministry of Health of Ukraine;
- a copy of the Charter of the Ukrainian company and a certificate issued by the relevant Ukrainian bank stating that the investment account of the foreigner was credited with funds in the amount of at least USD 100,000, which are transferred to the company's account as a contribution to its authorized capital from the foreigner.

According to the law, the period for processing an application for an immigration permit shall not exceed 1 year. In practice, the Migration Service of Ukraine usually considers the application within 3-6 months.

## 7.1.4. Obtaining a permanent residence permit

After obtaining an immigration permit and arriving in Ukraine, a foreigner must apply for a permanent residence permit to the local office of the Migration Service of Ukraine at the place of his/her residence within 5 working days. The application must be accompanied by:

- a passport document of a foreigner with a type D visa (a long-term visa issued at the Consulate of Ukraine in the country of the foreigner's citizenship allowing him/her to enter Ukraine for the purpose of processing documents granting the right to stay or reside in Ukraine);
- a certified translation of a page of a foreigner's passport document with personal data into Ukrainian;
- a document confirming payment of the administrative fee (original);
- a copy of the resolution to grant an immigration permit.

The period for processing an application for a residence permit in Ukraine is 15 working days.



### Dauerhafte Aufenthaltsgenehmigung in der Ukraine: die häufigsten Fragen

Diese Veröffentlichung bietet allgemeine Antworten auf die häufigsten Fragen, die wir von unseren Mandanten im Zusammenhang mit der Beantragung einer dauerhaften Aufenthaltsgenehmigung in der Ukraine erhalten.

[Siehe PDF: Dauerhafte Aufenthaltsgenehmigung in der Ukraine: die häufigsten Fragen](#)

## 7.2. Temporary residence permit

### 7.2.1. Legal grounds

The right to get the temporary residence permit is granted inter alia to foreign citizens who arrived in Ukraine:

- with the purpose of employment;
- to work in representative offices of foreign companies;
- to work in branches or representative offices of foreign banks;
- or foreign citizens who are founders and/or members and/or beneficial owners of a legal entity registered in Ukraine. In this case, the size of the share in the authorized capital of the Ukrainian legal entity must be at least EUR 100,000 at the official exchange rate established by the National Bank as of the date of the foreign investment;
- to implement projects within the framework of international technical assistance;
- with the purpose of study;
- to participate in the activities of branches, offices and other structural units of public (non-governmental) organizations of other states;
- with the purpose of a family reunification with a Ukrainian citizen or a marriage to a Ukrainian citizen.

### 7.2.2. Necessary documents

When applying for the temporary residence permit, a foreign citizen must personally submit the following documents to the authorized Migration Service:

- a foreign passport or an identity card of a foreigner with a D type visa (a long-term visa, which is issued at the consulates of Ukraine), a copy of the passport with a visa stamp;
- a copy of the foreign passport of a foreigner with a translation into Ukrainian certified by a notary;
- a sickness insurance policy;
- a tax number of the foreigner (if any) - one copy certified by the signature of the foreigner;
- receipts to confirm the payment of state duty and document processing fee.

The necessity to submit other documents depends on the reasons for applying for the temporary residence permit. When applying for the temporary residence permit as a result of the marriage to a Ukrainian citizen, it is necessary to additionally present the following documents:

- a marriage certificate;
- a passport of the citizen of Ukraine, with whom a foreigner is married, to be submitted personally by the citizen of Ukraine.

When applying for the temporary residence permit for the employment, you must submit a copy of the work permit in Ukraine issued by the Employment Service. Since the issuance of such temporary residence permit, foreigners have the same legal status for the purposes of employment as the Ukrainian citizens. Foreigners employed by the investor under a production sharing agreement must provide a copy of the production sharing agreement, as well as a copy of the employment agreement indicating the position held by the foreigner.

### **7.2.3. Term of issuance and validity of the permit**

The temporary residence permit is issued within 15 working days after the submission of documents. The foreigner receives the temporary residence permit personally. Once the temporary residence permit in Ukraine is issued, the Migration Service makes a mark in the foreigner's passport.

Reasons for refusing to issue the temporary residence permit include, but are not limited to, creating a threat to the public order and the national security, as well as protecting the health, rights and legitimate interests of Ukrainian citizens, establishing the fact that a foreign citizen provided false information or forged documents.

As a general rule, the temporary residence permit is issued for a period of 1 year with the right to renew it. However, in some cases the permanent residence permit can be issued for another term:

- to foreigners who arrived in Ukraine with the purpose of employment, the permanent residence permit is issued for the period of work in Ukraine, which is specified in the work permit (up to 3 years);
- to foreigners who arrived in Ukraine to participate in the implementation of international technical assistance projects, registered in the prescribed manner, the temporary residence permit is issued for the implementation period of the international technical assistance project, which is specified in the project registration card;
- to foreigners who are founders and/or members and/or beneficial owners (controllers) of a Ukrainian legal entity, the permanent residence permit is issued for 2 years;
- to foreigners who came to Ukraine with the purpose of study, the temporary residence permit is issued for the period of study, which is determined by the order of the educational institution establishing the periods of study for foreign students.

### **7.2.4. Other information**

After issuing the temporary residence permit, a foreigner must register at the address in Ukraine, which was specified earlier in the documents. The registration can be carried out by the foreigner personally or by his/her authorized representative.

The registration of the foreigner at the specified address must be carried out within 30 days from the date of issuance of the temporary residence permit. The failure to register at the

address within this period may result in a fine.

When renewing a valid temporary residence permit in Ukraine, the same documents are submitted as in the process of its registration. The documents required for the temporary residence permit renewal shall be submitted not later than 15 working days before the expiration of the temporary residence permit. If a foreigner failed to observe this term, he/she is obliged to deregister from his/her place of residence and leave the territory of Ukraine.

## **7.3. Immigration of foreign IT specialists**

### **7.3.1. General provisions**

In 2021, Ukrainian companies are allowed to employ an additional 5706 highly qualified foreign professionals, including IT specialists. The introduction of a new immigration quota is due to a significant shortage of IT staff in the domestic market of Ukraine.

Annually, the country opens about 40,000 vacancies in the IT sector, while Ukrainian universities can qualify no more than 15,000-17,000 IT professionals in various fields. Besides, many graduates are employed abroad or prefer to be freelancers. It is expected that immigration quotas will partially reduce the existing shortage of highly qualified personnel in the IT sector.

From the regional perspective, this immigration quota is distributed as follows: Kyiv gets 2,611 employees, Kharkiv region – 1,293, Dnipropetrovsk, Odesa, and Lviv regions – 600 each.

### **7.3.2. Advantages of employment**

The major advantage of employment within the established immigration quota is the opportunity to obtain a permanent residence permit in Ukraine. That makes employment almost permanent and means that foreign IT professionals will enjoy the privilege to live and work freely in Ukraine for 10 years. The conditions of their employment are no different from those of Ukrainian citizens. Moreover, foreign IT professionals get the priority right to obtain Ukrainian citizenship and can immigrate to Ukraine with their families.

The permanent residence permit in Ukraine is issued in the form of an ID card for a 10-year period that can be subsequently exchanged for another permit valid for the next 10 years.

### **7.3.3. The employment procedure**

Foreign IT professionals seeking employment under the new immigration quota are subject to high qualification requirements. Compliance with these will be verified by the Ministry of Economy with the advisory support of the Ministry of Digital Transformation.

The employment procedure of foreign IT specialists under the new immigration quota consists of six stages.

The 1st stage involves collecting all the necessary documents. Advisory and practical support on this issue can be obtained at any territorial office of the State Migration Service (SMS), as well as the Ministry of Digital Transformation.

At the 2nd stage, the potential candidate shall submit documents along with an application for an immigration permit. If a foreigner stays within the territory of Ukraine legally, he/she can personally apply to the territorial branch/department of the SMS at the place of residence. In case a foreigner is outside Ukraine, he / she can apply to the consulate of Ukraine in the country of citizenship or legal residence.

The 3rd stage is the longest and involves verification of the candidate's file. This procedure is performed by the SMS and can last for 3-4 months (and in some 'complicated' cases – up to 1 year). If the results are positive, the foreign IT specialist is granted an immigration permit for 1 year.

Stages 4 and 5 involve obtaining a permanent residence permit. First, the foreigner applies for a permit to the relevant territorial branch or department of the SMS. It can be done only if such a foreigner legally stays within the territory of Ukraine and already has an immigration permit. The SMS bodies review the submitted application and make a decision on it within 15 working days.

If a foreigner is in another country and requires an entry visa to Ukraine, he/she must apply to the consulate of Ukraine in the country of residence.

After the territorial branch/department of the SMS has reviewed and satisfied the foreigner's application, the foreigner shall visit this branch/department and receive a permanent residence permit personally. The permit is issued according to the established procedure within no more than 1 working day.

And the final 6th stage is the registration of a place of residence. Upon receipt of a permanent residence permit, a foreigner is obliged to register a place of residence within 30 days.

Successful completion of this 6-step procedure minimizes permissive restrictions for foreign IT specialists and provides them with many other benefits. For one thing, they no longer need to obtain annual work permits for foreigners and stateless persons. For another, they have the opportunity to cross the border of Ukraine both ways without any restrictions – no visa will be required any longer. And finally, employment under the government quota is done without binding a foreign IT-specialist to a particular position or designation, which gives more flexibility to his/her career and professional growth opportunities.

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# 8

## Real estate

### 8.1. Real estate concept

The Civil Code of Ukraine defines real estate as land plots and facilities located on them, which may not be moved without their devaluation and change of their target use.

In practice, buildings are divided into residential and commercial real estate. The commercial real estate includes commercial, retail, warehouse and office premises. Residential buildings and premises are considered as the residential real estate.

The enterprise as an integral property complex is also considered as real estate in legal terms. The enterprise as an integral property complex includes all types of property intended for its activities, including land, buildings, equipment, inventory, raw materials, products, claims, debts and rights to trademarks or other marks and other rights.

In terms of legal regulation, land plots and buildings shall be paid a special attention, and they are subject to a special registration procedure.

### 8.2. Real estate acquisition

Real estate in Ukraine, as a rule, may easily be purchased and sold. Certain restrictions are applied to foreign individuals and legal entities, such as purchase of agricultural land plots. In addition, there are certain features when buying land of state and municipal property.

The peculiarity of the Ukrainian law on real estate is that a building as property in relation to land is of paramount importance. In this manner, the Civil Code of Ukraine and the Land Code of Ukraine stipulate that the buyer acquires the title to the land where the building is located.

#### 8.2.1. Acquisition of buildings

Pursuant to the Ukrainian legislation, a building is a construction system that consists of

bearing and enclosing structures or interconnects that form the ground or underground facilities intended for residence or stay of people, placement of equipment, management of animals, plants and labour objects.

In practice, a title to a building is obtained on the basis of a civil agreement or by law under the state act. The most common form of acquisition of ownership of a building is a purchase and sale agreement.

The purchase and sale agreement of the building shall be in written form and is subject to notarization. Before signing the purchase and sale agreement one shall verify encumbrances and restrictions on alienation on the real estate item. To this end, before notarizing a purchase and sale agreement of the building a notary shall verify the information in the public registers. First of all, these are the State Register of Mortgages, the Unified Register of Prohibitions of Alienation of Real Estate and the State Register of Titles to Real Estate.

The title to the real estate item shall be transferred to the buyer from the date of the purchase and sale agreement registration. A notary with the buyer's ID document shall perform registration of the real estate purchase and sale agreement. On the basis of the purchase and sale agreement, a notary or a state registrar shall enter information about the real estate item into the electronic State Register of Titles to Real Estate. The title to real estate shall be deemed as registered when the relevant decision is published in the register.

As noted, pursuant to the Ukrainian legislation, a building is considered to be prevalent to a land plot. According to the Land Code of Ukraine, the title to a land plot shall be transferred to the buyer along with transfer of ownership of the building located on that plot.

The size of a land plot transferred to the buyer shall be stipulated by the purchase and sale agreement of the building. If the purchase and sale agreement of the building does not provide for the size of a land plot transferred to the buyer, then the title shall be transferred



### **Buying real estate in Ukraine: 30 common questions**

This publication contains answers to the most common questions received from our clients in connection with real estate purchase in Ukraine.

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**Required documents**

- ▶ a copy of the international passport
- ▶ Ukrainian taxpayer registration number
- ▶ consent of spouse (if applicable)
- ▶ proof of payment of compulsory duties and fees

\*PoAs and other documents issued abroad require authentication (Apostille or Consular legalization, depending on the issuing country)



**Costs**

- ▶ 1% of the agreement price – state duty (to be paid by the purchaser)
- ▶ 1% of the agreement price – obligatory pension insurance duty
- ▶ Notary's fee (as agreed)

\*\*The total time required is usually shorter than the sum of the terms given above, as some of the steps can overlap

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to the land plot where the building is situated and to the part of the land plot required for servicing the building. In the event that the building is in an alien land plot, the buyer acquires the right to use the land plot where the building is located and the part of the land plot required for servicing the building.

## 8.2.2. Acquisition of land plots

Under the Ukrainian law, a land plot is a portion of the earth's surface with established boundaries and particular location, to which rights are assigned.

Pursuant to their intended purposes, all land plots are classified into nine categories:

- agricultural lands;
- residential and public building lands;
- lands of a nature reserve and another environmental protection purpose;
- lands of health purpose;
- recreational lands;
- lands of historical and cultural purpose;
- forest fund lands;
- water fund lands;
- lands of industrial, transportation, communications, energy, defence and other purposes.

Land plots shall be used only for their intended purpose. However, the Land Code of Ukraine allows changing the intended purpose of a land plot. Such being the case, the land plot owner shall explain the reasons for changing the intended purpose. Duration of the procedure for changing the intended purpose of a land plot is not defined in the legislation, but in practice, this takes quite long.

Both Ukrainian and foreign individuals and legal entities are entitled to acquire land plots. However, there are certain limitations for foreign nationals. These restrictions mainly concern the purchasing of agricultural land plots, communal and public property.

Foreign nationals may acquire the ownership right to non-agricultural land plots within the boundaries of settled areas, as well as non-agricultural land plots outside settled areas, on which the buildings, acquired by them, are located. In some cases, joint ventures based in Ukraine with participation of foreign legal entities and individuals may acquire ownership of non-agricultural land plots for business purposes.

Foreign legal entities may acquire the ownership right to non-agricultural land plots:

- within the boundaries of settled areas either if they acquire real estate items or items for construction of facilities related to the business activity in Ukraine;
- outside settled areas if they acquire real estate items.

State-owned land plots may be sold to foreign nationals by the Cabinet of Ministers of

Ukraine in coordination with the Parliament of Ukraine. The sale of land plots owned by the State and territorial communities to foreign legal entities shall be allowed on condition that the foreign legal entity has registered its permanent representative office and is entitled to conduct the business activity on the territory of Ukraine.

As in case of sale of buildings, the most common type of land acquisition is a purchase and sale agreement. The purchase and sale agreement of a land plot shall be in writing and is subject to notarization. Prior to purchasing a land plot, one shall verify encumbrances and restrictions on its alienation. The title to the land plot shall arise from its state registration.

### 8.3. Real estate use

The right to use real estate depending on the item (building or land plot) is divided into two groups:

- the right to use a building: lease, leasing and mortgage;
- the right to use a land plot: lease, easement, emphyteusis, superficies and mortgage.

### 8.4. Lease of buildings

Privately owned buildings and parts thereof are free to be leased to individuals and legal entities. The right to lease shall arise from a written lease agreement. The lease agreement shall be subject to notarization and state registration, having been entered into for more than three years or at the request of any of the parties. A notary shall carry out the state registration of a lease agreement following its notarization. Upon the transfer of the leased item, the parties shall sign the acceptance act certifying the transfer. The same act shall be signed when returning the leased item after the termination of the lease.



#### Immobilienwerb in der Ukraine: 30 häufigste Fragen

Diese Veröffentlichung bietet allgemeine Antworten auf die häufigsten Fragen, die wir von unseren Mandanten im Zusammenhang mit dem Immobilienwerb in der Ukraine erhalten.

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In case of sale of the subject of the lease agreement, the buyer shall acquire all rights and obligations under the lease. The parties may also agree that the lease agreement shall be terminated upon the sale of the leased item.

Sublease shall be allowed only with the consent of the lessor. Such a consent may be envisaged in the lease agreement or in the form attached thereto after the conclusion of the lease agreement.

The lessor shall be entitled to request termination of the lease agreement if:

- the lessee uses the leased item contrary to the agreement's scope or item's intended purpose;
- the lessee without the lessor's consent has given the subject of the lease to another person;
- negligent behaviour of the lessee threatens damage to the subject of the lease;
- the lessee has not started structural repairs of the subject of the lease unless the lessee bears no responsibility ensuring such structural repairs.

At the same time, the lessor may terminate the lease agreement if the lessee has delayed lease payments for more than three months.

The lessee shall be entitled to request termination of the lease if:

- the lessor has provided for use the subject of lease that does not comply with the scope of the agreement and its intended purpose;
- the lessor does not comply with its responsibility of carrying out structural repairs of the subject of the lease agreement.

The special regulation of the state-owned and municipal property lease is set out in the Law of Ukraine "On Lease of State-owned and Municipal Property". The law, inter alia, stipulates conditions of lease of state-owned and municipal communal property complexes and their structural units, specific facilities of state-owned and municipal property.

Communal property complexes and individual buildings, which are state-owned, shall be leased by the State Property Fund of Ukraine and its local bodies.

## 8.5. Land plot lease

The issue of land lease in Ukraine is governed by the Law of Ukraine "On Land Lease". Land plot lease shall mean a contractually based fixed-term paid ownership and use of the land plot required by the lessee for business and other activities.

Lessors of land plots are individuals and legal entities, owning land plots, or persons authorized by them. Lessors of the municipal land plots are rural, village and city councils within their powers. Lessors of the state-owned land plots are the executive authorities that transfer land plots for ownership or use pursuant to the law.

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The term of land lease shall be determined by an agreement, but it may not exceed 50 years. This provision shall be applied to all land plots regardless of their ownership.

A land lease agreement shall be concluded in writing and, at the request of one party, may be certified by a notary.

The substantive provisions of the land lease agreement are:

- subject of the lease (the cadastral number, land plot location and size);
- a lease agreement term;
- lease payments with indication of their size, indexing method and terms of payment, terms, procedure for their introduction and revision and liability for default in payments.

The parties to the lease of the land plot may indicate other conditions in the agreement.

# 9

## Land market

### 9.1. General provisions

On 1 July 2021 the Law “On Amendments to Some Legislative Acts of Ukraine on the Agricultural Land Circulation” (hereinafter referred to as the Law) will come into force. This Law shall introduce the land market in Ukraine. Since the date of the Law coming into effect, agricultural land owners shall be entitled to sell their plots. In the past, land owners could only lease the land.

The following individuals and entities shall be entitled to acquire the agricultural land ownership:

- Ukraine nationals;
- Ukrainian legal entities, members (shareholders) of which are only the Ukraine nationals;
- territorial communities;
- the state.

The following individuals and entities shall be prohibited to acquire the participatory interests in the authorized capital, the shares in, and be the members of legal entities (owning the agricultural land):

- stateless persons;
- Ukrainian legal entities, members (participants) or ultimate beneficial owners (controllers) of which are foreign nationals.

The abovementioned restriction does not apply to the foreigners owning the participatory interests in the authorized capital and being the bank ultimate beneficiaries.

Banks can also acquire the agricultural land ownership, but only under the procedure of enforcing recovery on them as on the pledged property. Such land plots shall be alienated by the banks at the land auction within two years from the date the ownership has been acquired.

Foreign nationals and Ukrainian legal entities, participants or ultimate beneficiaries of which are foreigners, will be allowed to purchase agricultural land in Ukraine only after the relevant decision has been made by the national referendum. The timing of such a referendum has not yet been set by the legislation.

## 9.2. Who will not be entitled to own the land

Under all conditions, the following individuals and entities will be prohibited to own the agricultural land:

- the legal entities, participants (shareholders) or ultimate beneficiaries of which are not the Ukraine nationals, may not acquire the ownership of the state and communal agricultural land and the agricultural land, allocated in kind (on the ground) to the land share owners, and which is located closer than 50 kilometers from the state border of Ukraine;
- the legal entities, the ultimate beneficiary of which may not be identified;
- the legal entities, ultimate beneficiaries of which are registered in offshore zones;
- the legal entities, participants (shareholders) or ultimate beneficiaries of which are the foreign states;
- the legal entities, participants (shareholders) or ultimate beneficiaries of which are the nationals of a state recognized by Ukraine as the aggressor state or the occupier country. Currently, such a state is the Russian Federation;
- the individuals and legal entities against whom or which special economic and other restrictive measures (sanctions) have been imposed or applied;
- the legal entities incorporated under the laws of Ukraine, but controlled by the individuals and legal entities registered in the countries included by the FATF in the list of the states not cooperating in the field of combating money laundering;
- the individuals belonging to terrorist organizations.

## 9.3. Limits on the land area and price

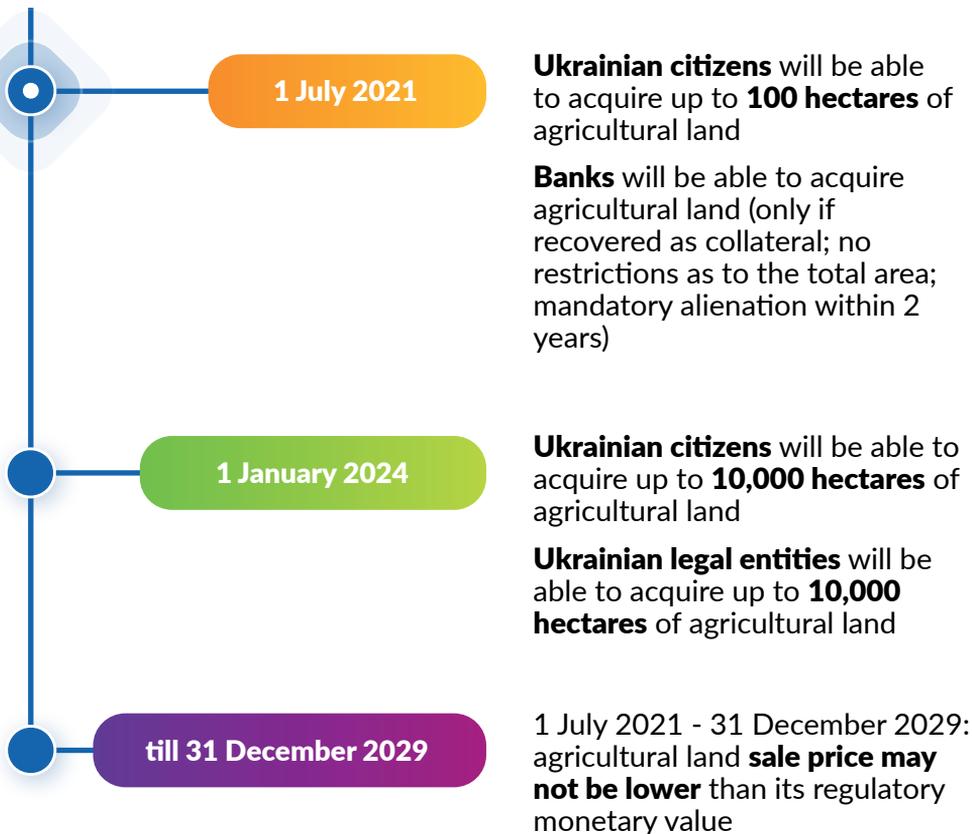
The total area of the agricultural land owned by a Ukraine national may not exceed 10,000 hectares. This rule will be effective from 1 January 2024. Up to now, every Ukraine national is entitled to own simultaneously no more than 100 hectares.

The total area of the agricultural land owned by a Ukrainian legal entity (excluding banks) may not exceed 10,000 hectares. Ukrainian legal entities shall be entitled to purchase the agricultural land only from 1 January 2024.

Violation of the abovementioned rules gives rise to invalidating a deed, under which the land ownership was acquired, and seizing the land.

The Law also provides for a lessee a pre-emptive right to the agricultural land. Moreover, the lessee has an opportunity to transfer the pre-emptive right to another person, but the

# Land market launch in Ukraine



**Foreign citizens** and Ukrainian legal entities, participants/ shareholders/ultimate beneficiaries of which are **foreigners**, will only be allowed to purchase agricultural land in Ukraine **upon approval by a national referendum**

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landowner shall be notified thereof in writing.

The following persons shall be entitled to purchase the respective land plots by installment over a 10-year period:

- Ukraine nationals owning the right of permanent use, lifelong inheritable right to use state and communal land plots, intended for keeping farming;
- land lessees.

If a land plot is purchased by installment, the ownership is transferred to the purchaser after the first installment payment.

The agricultural land sale price may not be lower than its regulatory monetary value. This rule shall be effective until 1 January 2030. The payment for the land plot purchase shall be made only in a cashless form.

The agricultural land ownership may not be acquired under non-gratuitous contracts, unless the purchaser possesses the documents confirming the sources of origin of the funds or other assets, out of which such an ownership is acquired.

## 9.4. Prohibitions on sale of certain land plots

It is prohibited to:

- sell state-owned and communal agricultural lands located on the temporarily occupied territory;
- alienate or change the land use of the agricultural lands located on the temporarily occupied territory (except for their inheritance).

# 10

## Concession

### 10.1. General provisions

On 20 October 2019, the Law of Ukraine “On Concession” (hereinafter referred to as the Law) came into force. On the one hand, the Law facilitates the increase of investment (including foreign investment) in order to upgrade and extend the infrastructure and provide high quality services of social significance. On the other hand, the Law creates conditions that will enable investors to profit from participating in a public-private partnership.

The Law has been developed in accordance with EU laws, which control the issue of a public-private partnership. When drafting the Law, the authors considered the international experience of concession projects implementation, which should considerably improve the Ukrainian investment climate in general, and eliminate some administrative barriers during concession projects implementation.

The Law introduces several positive novelties, aimed at simplifying the involvement of private capital of both domestic and foreign investors in public-private partnerships. The key novelties are as follows:

- a transparent procedure for the concessionaire selection on a competitive basis was introduced;
- the procedure of obtaining a land plot for the purposes of the concession project was simplified;
- additional guarantees for concessionaires and creditors, who fund or ensure the implementation of concession contracts were introduced, including the right to change a concessionaire by another concessionaire (creditor);
- any disputes in connection with a concession agreement can be resolved by an international commercial or investment arbitration.

Concession can be used for the implementation of projects in all fields of economic activities, except for the objects, which fall under the restrictions for concession according to the Ukrainian legislation.

## 10.2. State support for the concession

The concessionaire may be supported by state in the following forms:

- 1) by paying for the facility's operational readiness (usability);
- 2) in the form of acquiring by the concessionaire a certain amount of goods (works, services) produced (performed, provided) by the concessionaire in accordance with the concession agreement;
- 3) by supplying to the concessionaire, the goods (works, services) necessary to perform the concession agreement;
- 4) in the form of construction (new construction, reconstruction, overhaul, etc.) by state or municipal enterprises of related infrastructure (railways, highways, communication lines, engineering communications, etc.), which are not the objects of concession, but necessary to perform the concession agreement.

## 10.3. Selection of the concessionaire

Any legal entity (both domestic and non-resident), an association of legal entities (Ukrainian and /or non-resident) which fulfilled the requirements to acquire the status of a participant can take part in the selection procedure under concession. However, it should be pointed out that only a Ukrainian legal entity can become a concessionaire (a party to the concession agreement). This means that if the concession tender is won by a non-resident legal entity, such a legal entity shall register a legal entity under the Ukrainian law in order to enter the concession agreement.

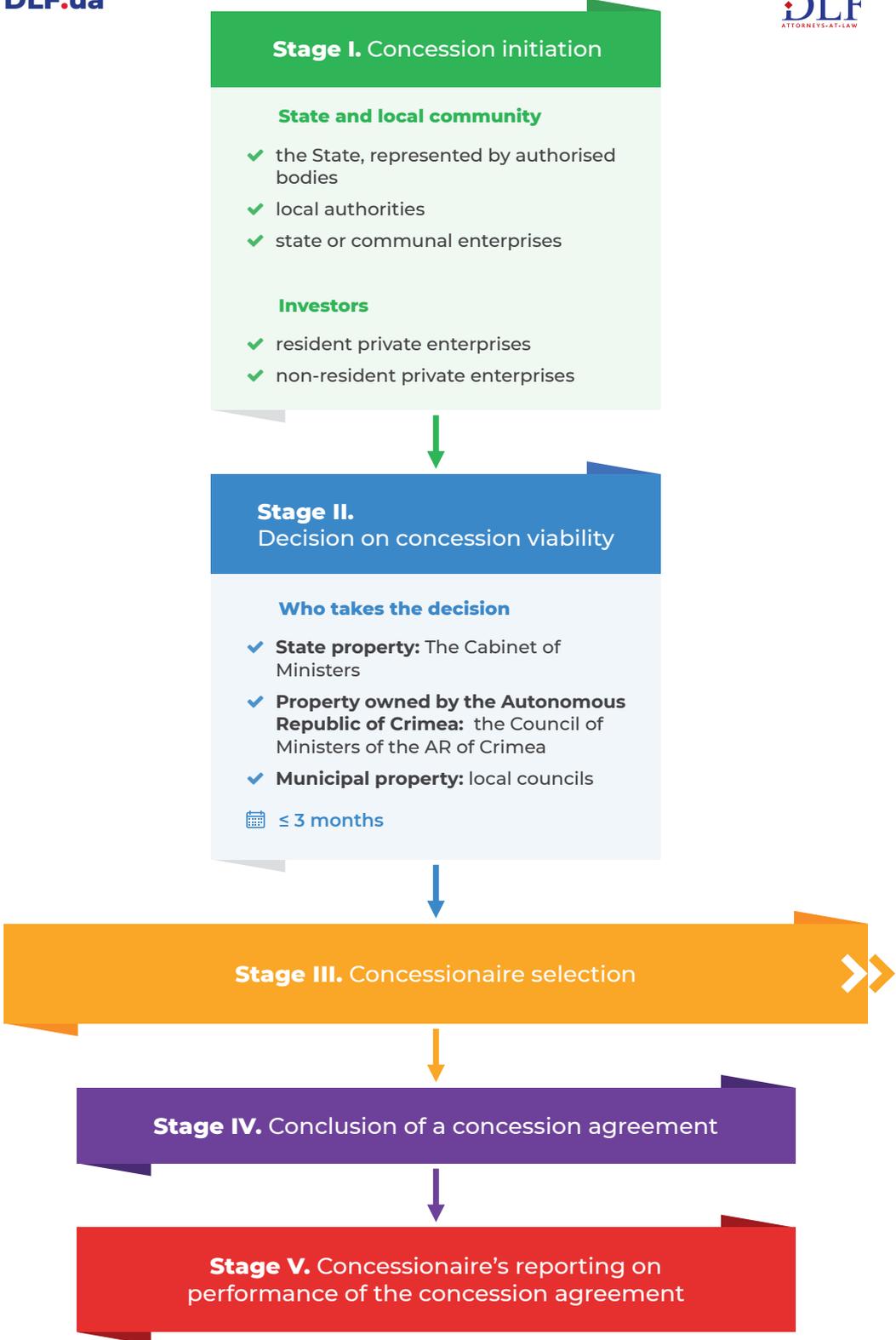
The conessor can select the concessionaire based on one of the following options:

- 1) by holding a concession tender;
- 2) as a result of competitive dialogue;
- 3) by means of direct negotiations with the tenant of the state property which is the object of concession.

For the organization and holding of a concession tender, the conessor forms the tender committee that includes representatives of relevant authorities, local government, the concessionaire, trade-union organizations. The tender committee evaluates the competitive proposals and provides conclusions as to the best terms of concession implementation as offered by the tender participants.

According to the decision of the conessor, the tender participants might be obligated to secure their competitive proposals by means of a guarantee or in other form, the amount of which cannot exceed 1% of the expected volume of capital investments of the project to be carried out under the terms of concession.

By results of consideration and assessment of all competitive proposals the tender committee within 30 calendar days from the date of deadline for submission of competitive proposals,



### Stage III. Concessionaire selection

Tender	Competitive dialogue	Direct negotiations
<p>Announcement of the concession tender</p> <p>📅 ≤ 10 days upon the decision</p>	<p>Prequalification</p>	<p>The tenant's proposal of concession</p>
<p>Prequalification of tender participants</p> <p>📅 ≤ 14 days for consideration</p>	<p>Submission of project proposals</p> <p>📅 ≥ 60 days</p>	<p>Approval of concession viability by the Ministry of Economy</p>
<p>Submission of competitive proposals</p> <p>📅 ≥ 60 days</p>	<p>Negotiations with the participants</p>	<p>The Government decision on concession viability</p> <p>📅 ≤ 3 months</p>
<p>Selecting the winner</p> <p>📅 ≤ 30 days</p>	<p>Developing tender conditions</p> <p>📅 ≤ 90 days</p>	<p>Negotiations with the potential concessionaire</p>
	<p>Proposal submission</p> <p>📅 ≥ 60 days</p>	<p>Proposal submission</p> <p>📅 ≥ 60 days</p>
	<p>Selecting the winner</p> <p>📅 ≤ 30 days</p>	<p>Concession approval</p> <p>📅 ≤ 30 days</p>

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prepares a conclusion about the winner of the tender. The results of the tender are subsequently published on the official website of the conessor.

Another way of identifying the concessionaire is a competitive dialogue which is partly regulated by the rules for holding a concession tender. Competitive dialogue is applied if a concessionaire may not clearly identify technical, qualitative characteristics of the project, or if it is unknown what technical, financial and legal solutions may be offered by potential tenderers. In this case, the negotiations with the participants should be held to allow for an optimal solution (e.g., in case of implementation of innovative projects, large complex infrastructure projects, etc.).

According to the Law, the tenant, with which the lease (agreement) was entered into before the Law came into force and which has duly complied with its obligations under the state property lease agreement and which intends to implement investment project on the terms of concession with the use of the leased property, may apply to the concessionaire for public-private partnership under the terms of concession. Meanwhile, the validity period of concession agreement may not exceed the period remaining until the lease term expires, but obligatorily should be at least 5 and not more than 50 years.

## 10.4. Concession agreement

According to the results of the concession tender, competitive dialogue or direct negotiations with the tenant of state property, the conessor shall enter into a concession agreement with the concessionaire.

Among the terms and conditions which should be included in the concession agreement the Law shall stipulate the following terms and conditions:

- subject matter of the concession agreement, including the type, scope and description of the works and/or socially significant services performed/provided under such an agreement;
- rights and responsibilities of the parties to be determined, in particular with regard to the risk sharing between the parties;
- procedure for providing the land plots required to implement the projects carried out under the terms of concession and a list of such plots;
- validity period of concession agreement;
- procedure, amount and terms of making concession payments;
- parties' liability for non-performance or improper performance of the obligations arising out of concession agreement;
- procedure for exercising control by concessionaire over the performance of agreement;
- procedure for resolving disputes between the parties.

Concession agreement may include other terms and conditions as agreed upon by the parties, in particular: conditions of the use of national materials during the concession, those of

employment and involvement of citizens of Ukraine, conditions of use of intellectual property rights, those of financing by a concessionaire the construction of related infrastructure facilities (railways, highways, engineering communications, etc.) and other terms as agreed upon by the parties. Prior to the execution of the concession agreement, the concessionaire has the right to involve third parties (contractors, suppliers and others), for which actions it will bear full liability.

An important provision of the Law, which protects the investor's rights, is the provision that the terms and conditions of the concession agreement shall be valid for the entire duration thereof, including the cases when after entering therein the rules will be introduced by legislative acts, which will worsen the concessionaire's situation.

## 10.5. Concession period and financial terms

Concession agreement should be entered into for the period which should be fixed thereby and should be at least 5 years and not more than 50 years. It should be noted that the concession contract period as to the construction and further operation of highways should be at least 10 years.

Concession agreement should provide for receipt by the concessionaire of payment from the users (consumers) for the publicly significant services provided by the concessionaire with the use of the object of concession.

Concession agreement may provide for the concessionaire's payments to the concessionaire and/or vice versa. The conditions and procedure for making such payments shall be determined by a concession agreement in accordance with the Law. Concessionaire's payments in favor of the concessionaire shall be possible, if the concessionaire may not receive full reimbursement of the investment made by it at the expense of the users (consumers) of services.

## 10.6. Ownership of the facility

Any actions as performed by the concessionaire in relation to the concession object (its complete construction, major repairs, reconstruction, technical re-equipment, etc.) do not result in acquiring by the concessionaire the ownership of such a constructed or reconstructed object. The ownership of concession object shall remain with the state or territorial community. Upon termination of concession agreement, such an object shall be returned to the concessionaire.

Concessionaire has the right to lease a part of the property constituting a part of the concession object, if it is stipulated by concession agreement. In such a case, concession agreement should contain an exhaustive list of the property which may be leased, as well as the terms of its lease.

As regards the movable property which was purchased by the concessionaire to perform the concession agreement, the concessionaire remains the owner of such property, unless

otherwise provided for by the concession agreement.

## 10. 7. Obtaining land plots for concession

The land plot of state or communal ownership, necessary to implement the concession project, shall be leased to the concessionaire for the term of concession agreement in the manner stipulated by the Land Code of Ukraine. The preparatory measures necessary to lease the land plot to the concessionaire, in particular development of land management documents and formation of the land plot required to implement the concession project, may be taken due to the concessionaire's efforts and at the expense of state or local budgets. The costs for development of the abovementioned documents may be reimbursed by the concessionaire in accordance with the terms and conditions of the concession agreement.

Unless the concessionaire acquires through the concessionaire's fault within one year from the date of concession agreement the right to lease the land plot necessary to implement the concession project, and if such a fact results in the concessionaire's failure to comply with its obligations and liabilities under the concession agreement, it shall have the right to terminate the concession agreement.

## 10.8. Guarantees of the rights of the concession activity entities

The Law also establishes the guarantees for concessionaire in case of amendments to the applicable legislation. The Law states that the concessionaire's rights and obligations, as determined by the concession agreement, shall be governed by the legislation of Ukraine, effective on the day of concession agreement (except for the legislation that reduces the amount of taxes or fees or abolishes them, simplifies regulation of economic activity, weakens the state supervision/control procedures in the field of economic activity, mitigates the concessionaire's responsibility or otherwise improves the concessionaire's position, which should apply from the date of entry into force of such legislation).

The above guarantees shall not cover the amendments in the legislation as to defense, national security, public order and environmental protection, licensing, rules and conditions for providing socially important services in markets in a state of natural monopolies.

## 10.9. Applicable law and dispute resolution

The Law enshrines the principle of a free choice of law that will apply to the concession agreement. However, if the applicable law is not chosen in the concession agreement, then such an agreement shall be governed by the law of Ukraine.

In accordance with the Law, the parties to the concession agreement may also freely choose the mechanism of dispute resolution, including mediation, non-binding expert evaluation, national or international commercial or investment arbitration, including arbitration with

location abroad (if concessionaire is a foreign-owned enterprise/company within the meaning of the Law of Ukraine "On Foreign Investment Regimes"), and procedural rules for dispute resolution.



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[View \*Renewable Energy in Ukraine: Getting the Deal through\*](#)



# Trademark protection

## 11.1. Trademark registration process

### 11.1.1. Application for trademark registration

Trademark registration in Ukraine is conducted by the State Enterprise "Ukrainian Intellectual Property Institute" (hereinafter referred to as "Ukrpatent").

Any person wishing to obtain legal protection to its trademark should file appropriate request along with the supporting documents to the Ukrpatent in order to receive relevant certificate indicating that such trademark is included into the State Register of Trademarks of Ukraine (hereinafter referred to as "the Register").

Pursuant to the Law of Ukraine "On Protection of Rights to Marks for Goods and Services" (hereinafter referred to as "the Law"), the request shall consist of:

- application for registration of a trademark;
- data about the applicant;
- clear image of a trademark;
- list of goods and services for which the trademark will be used.

Any individual or legal entity has the right to receive a certificate. An applicant with an earlier date of an application filing with Ukrpatent or, if priority is claimed, an earlier date of priority (provided that the application is not deemed withdrawn, has not been withdrawn, and Ukrpatent has not rejected trademark registration), has the right to receive a certificate.

The request (as well as the supporting documents) is further examined by the Ukrpatent in order to assess its compliance with the legal requirements under the Law. Usually this process may take up to 24 months from the date of submission of application. However, there is an option for fast-track registration, in which case it will be possible to register your trademark 6 within months.

If successful (and upon payment of the applicable state duty), the decision on issuance of a certificate on registration of a trademark is published in the official bulletin of the Ukrpatent and the relevant entry is made in the Register.

The scope of legal protection provided includes a trademark image and a list of goods and services entered in the State Register of Trademark Certificates of Ukraine and is certified by a certificate containing a copy of a trademark image and a list of goods and services entered in the Register. The certificate is valid for 10 years following the date of submission of the application and can be prolonged every 10 years (subject to payment of the state fee).

Under paragraphs 1 and 2 of Article 18 of the Law, no one other than the former owner has the right to re-register the trademark during two years following the termination of the certificate unless the owner of the terminated certificate consents to the registration of the trademark.

### 11.1.2. International registration

Furthermore, pursuant to the Law, any person may register a trademark in foreign jurisdictions.

According to the Madrid Agreement Concerning the International Registration of Marks 1891 and the Protocol Relating to that Agreement 1989, the application for international registration of a trademark shall be submitted through the Ukrpatent along with the payment of national fee.

Even if the international application for a trademark is approved, the Ukrpatent shall also conduct expertise of a trademark application pursuant to Ukrainian law. Therefore, there might be cases when a trademark is approved for registration under the Madrid Agreement, but is not granted protection pursuant to Ukrainian legislation. It is always worth checking whether a trademark enjoys legal protection under Ukrainian legislation with the Ukrpatent.



#### Trademark protection in Ukraine

In this brochure, general guidance on legal protection of trademark in Ukraine is provided, including with regard to the process and requirements for proper registration, possible court actions for protection, fair use conditions, criminal, antimonopoly, and customs aspects of trademark usage.

[View Trademark protection in Ukraine](#)

## 11.2. Trademark disputes

### 11.2.1. Out-of-court settlement procedures

While out-of-court settlement and pre-dispute resolution procedures could be very useful and, probably, the most correct way for resolving any disagreements regarding use of a trademark, it may not be the most efficient option in order to get the violator to stop breaching the IP rights.

Pursuant to the Law the owner of the trademark may demand the violator to stop breaching the IP rights and reimburse incurred losses. In particular, the owner has the right to demand the removal of the goods, the product packaging, labels, badges, or other object attached to the goods with the illegally used trademark, including prohibiting storage of such product, its subsequent offering for sale, import and export. Furthermore, the owner may prohibit use of a trademark by other persons during offering and provision of any services for which the trademark was registered, including in business documentation or in advertising and in the Internet or even to demand destruction of the images of such trademarks.

Unfortunately, under the current state of affairs the violators rarely agree to stop breaching IP rights in Ukraine in the out-of-court settlement arrangements. However, we advise the lawful owners of trademarks to use any pre-trial procedures only upon gathering of enough and proper evidence base against the violator, with which it would be easier to prove the violation in court in case of unsuccessful out-of-court settlement.

We also note that any pre-trial procedures are not mandatory under the Ukrainian legislation, and any person may choose to refer to the court immediately upon discovering of a violation.

### 11.2.2. Court hearings

In the event that the out-of-court settlement has not resulted in elimination of the violation, the rightful owner of a trademark has only one option, which is to refer to a court.

Pursuant to the Law, the main methods of protection of the breached trademark right in courts are:

- establishment of the rightful owner of the trademark;
- issues of conclusion and performance of the licensing agreements;
- breach of the trademark owner's rights;
- failure to comply with the legal terms and conditions for protection of the trademark;
- existence of elements of the mark which were not represented in the submitted application for registration of the trademark;
- issuance of the certificate for a trademark with violation of the other persons' rights.

The dispute is heard in a commercial court of general jurisdiction of Ukraine. The dispute shall be resolved within two months following receipt of a claim. However, a court may prolong the term for resolving a dispute by 15 days, if there are some special circumstances present in the case and taken into consideration by the court.

### **11.2.3. Evidence in court**

Special attention in disputes relative to trademarks shall be given to the issue of gathering of evidence in the Internet, including fixation of violations.

There is positive court practice regarding fixation of violations in the Internet in Ukraine. Thus, a respondent may be prohibited from use of a disputed trademark, including in the Internet advertisement or domain names. However, any violation committed in the Internet should be properly evidenced, such as represented on the website of the violator, in its domain name, in the advertisement, etc., which would undoubtedly lead to establishment of the fact of violation.

According to the established court practice in Ukraine, the mere fact of placement of a trademark or other object on the website of the respondent constitutes a violation, unless the respondent can provide evidence of the rightful placement of the disputed IP object. Reproduction of a trademark from the other website without confirmation of the lawful use of the IP object shall not be the ground for release of the respondent from any liability. The court shall aim to establish whether the website and information contained therein are in ownership of the respondent and how the violation of the trademark right is evidenced.

Under the current Ukrainian procedural legislation, web-pages treated as the electronic documents, which cannot be taken to the court. However, some information contained in such webpages might be useful for the case. Therefore, the court may decide to conduct examination of webpages with specification of all findings in the respective protocol, video or audio recording.

Generally, the print-outs of Internet webpages are not accepted as evidence in court. However, written evidence may include any certificates issued by the providers or online search services.

The reliability and validity of the evidence from the Internet for confirmation of the circumstances by the court are debatable if the communication files were sent without a digital signature. E-mail, messenger communication are treated as an electronic document and can be used as proper evidence in court, only if signed with an electronic digital signature. Otherwise, the document in electronic form is not deemed to be created and doesn't allow identifying the author and confirming the integrity of the document.

Any judgment of a commercial court in Ukraine shall be mandatorily implemented. Writs of execution can be presented for enforcement within three years.

## 11.3. Antimonopoly aspects of trademark protection

Pursuant to the Law of Ukraine “On Protection from Unfair Competition”, unfair competition is any action in the competition, contradicting trade and other fair customs in economic activities. Unfair competition in this sense also includes: use of name, commercial brand, trademark, advertisement, packaging, other marks and periodicals, etc., without consent of the business entity which has been using such marks previously or use of similar or identical marks, which results in confusion with activities of such entity.

Thus, the peculiarity of antimonopoly protection of a trademark is that it could be enjoyed by a person not on the basis of the document (certificate), but based on the actual primacy of use by the owner of such trademark.

The Antimonopoly Committee of Ukraine performs the following activities during implementation of the antimonopoly policy of Ukraine:

- establishment of the fact of unfair competition;
- termination of unfair competition;
- official refutation (at the expense of the violator) of untrue, incorrect or incomplete statements or data;
- confiscation of goods under the illegally used trademark.

Use of unfair competition practices leads to a fine of up to 5% of income from turnover of the entity for the last fiscal year. Limitation period for any unfair competition violation is three years from the date of commitment or, in case of the on-going violation, from the date of the completed violation.

## 11.4. Trademarks and customs

### 11.4.1. Update of the register of IPR objects

An updated register of intellectual property rights (IPR) is now published on the Unified State Information Web Portal “Single Window for International Trade”. The weekly update of the register is another step in the implementation of customs legislation reform in the field of intellectual property rights protection.

The reforms are intended to bring the provisions of Ukraine’s customs legislation in line with EU standards and practices. They will help to increase the level of prevention of and counteraction to the goods’ transfer that violates intellectual property rights across the customs border of Ukraine, and, as a consequence, to purify the domestic market from pirated and counterfeit products.

## 11.4.2. Applying for IPR registration

To register an IPR object in the customs register, the applicant submits a written application to the State Customs Service of Ukraine for registration of an IPR object in the customs register or sends its scanned copy by electronic means. An application can also be submitted in electronic form using information and telecommunication systems of the State Customs Service.

It should be noted that, as of today, the application may include several objects of intellectual property rights at the same time.

The following documents shall be attached to the application for registration of an IPR object in the customs register:

- a copy of the copyright protection registration in Ukraine or international registration of IPR;
- power of attorney (or its duly certified copy) – if the application is submitted by an authorized representative of the right holder;
- description and photographic image of the IPR object;
- description of the identification method of the IPR object presence – in case the applicant submits an invention, industrial design, plant variety, or design of semiconductor products for registration in the customs register;
- photographic image of goods suspected of violating IPR, counterfeit, pirated goods, etc. (if available) or samples of such goods (optional);
- copies of documents based on which the producer of the goods uses an IPR object – if the right holder is a resident of Ukraine and the producer of the goods is a non-resident located outside Ukraine.

The term for the application processing is 30 working days from the date of the application registration. During this term, the IPR object is either registered or rejected from registration in the customs register of Ukraine.

## 11.4.3. Protection of IPR

After registration of the object of intellectual property rights in the customs register of IPR objects, the customs authorities of Ukraine shall take actions to ensure the protection of IPR based on such register's data. In particular, in case of revealing the goods suspected of violating the IPR, the goods customs clearance is delayed based on the customs register. Delay of goods customs clearance (except for perishable goods) may also occur at the initiative of the customs authority of Ukraine. The right holder and the declarant are notified on the delay on the day of the relevant decision.

By responding to the notification, the right holder confirms or does not confirm the conclusion of the customs authority that the goods are charged with violating IPR, or reports that the goods are original, and notifies of his/her intention or lack of intention to take cooperation actions or gives consent to renewal of their customs clearance. Whereas, the declarant sends the objection or the consent of the goods' owner to the destruction of the goods (the absence of objections constitutes consent).

Based on the right holder's and the declarant's answers, destruction of goods with delayed customs clearance may be carried out on charges of violating the IPR. In case of agreement between the right holder and the owner of the goods, there is also a possibility of preterm release of goods with delayed customs clearance on charges of violating the IPR. It is allowed to change the identification marks or markings on the goods or their packaging in the process of customs clearance to eliminate the signs of violation of intellectual property rights, provided that such actions are agreed with the right holder or done at their request.

It should be emphasized that the reimbursement of costs associated with the storage, as well as the destruction of goods with delayed customs clearance on charges of violating the IPR, is carried out at the expense of the right holder. It is worth noting that actions to ensure the protection of IPR do not apply to original goods.



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# Contacts

## **DLF attorneys-at-law**

IQ Business Centre  
13-15 Bolsunovska Street, 8th floor  
01014 Kyiv  
Ukraine

T +380 44 384 24 54  
[info@DLF.ua](mailto:info@DLF.ua)  
[www.DLF.ua](http://www.DLF.ua)