



## UKRAINE'S FOREIGN INVESTMENT POLICY AND LEGISLATION

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### INVESTMENT INFRASTRUCTURE AND CLIMATE

#### A. Foreign Investment Policy/Legislation

Ukraine has taken decisive steps in an attempt to attract foreign investment, including signing protocols of economic cooperation with most Western nations and guaranteeing the protection of all foreign investment from nationalization or wrongful expropriation.

For instance, Canada signed a Foreign Investment Protection Agreement with the USSR in November 1991. Ukraine, as a successor state has agreed to accede and to honour the agreement, thereby extending the guarantees of Ukraine to private and public investors. In addition, the *Law on Foreign Investment*, passed March 13, 1992 guarantees foreign investment against nationalization or confiscation.

The pieces of legislation of utmost importance to Western companies seeking to do business in Ukraine are the *Law on Foreign Economic Activities*, dated April 16, 1992 and the *Law on Foreign Investment*. The *Law on Foreign Economic Activities* explicitly permits all foreign business enterprises to engage in every type of business activity in Ukraine, other than those prohibited by law. The *Law on Foreign Investment* governs the establishment of foreign business interests in Ukraine and goes further by offering certain economic benefits to foreign investors. The Law also guarantees that the ability to receive a return on foreign investment will not be removed by subsequent legislation.

Specifically, the *Law on Foreign Investment* provides incentives for both domestic and foreign participants in business ventures involving foreign investment in the form of tax relief. To qualify for

these foreign investment benefits, the foreign participant must invest more than 20% of the share capital of a new business entity, or make an investment of at least U.S. \$100,000. This investment should be made to the Charter or "Statutniy" Fund. One of the examples of the tax relief offered by the law involves tax holidays for joint Western-Ukrainian trading companies for a period of two or three years from first profit, with a subsequent tax reduction of 30% of the taxes that would otherwise be applicable to that specific activity. All other business entities with the qualifying foreign investment listed above receive a five year tax holiday from first profit, after which time the applicable tax rate is reduced by 50% for a subsequent period of ten years. Furthermore, goods required for the production or manufacture of products are exempt from import duties for a period of five years from first profit. For instance, foreign investment in the form of equipment or machinery imported from western sources would be exempt from import duties.

The Law guarantees the foreign investment benefits that existed at the time of registration of the foreign investment vehicles, thereby providing stability in this element of investment planning.

It is important that all foreign investment be registered with the Ministry of Finance and Ministry of Foreign Economic Relations to ensure exemption from the payment of any applicable duties. Should investment be undertaken over a lengthy period of time, it is strongly suggested that a comprehensive registration of the entire package of foreign investment be undertaken early in the establishment of the new business entity, so as to avoid the need of registering each individual component of the planned foreign investment. This would assist in avoiding any potential adverse changes to the foreign investment legislation that may occur in the future which may not provide such exemptions from the payment of duties.

Wholly-owned subsidiaries of foreign companies enjoy reduced tax exemptions which are limited to the amount of foreign capital invested in the subsidiary.

Western investors should plan their

investment and business ventures in Ukraine in such a way so as to facilitate the repatriation of profits. Several mechanisms are available to accomplish this goal in the current legal regime and proper consideration should be given in choosing the vehicle appropriate for any one particular circumstance. Profits earned by business entities in Ukraine with foreign investment may be repatriated by the foreign investor after the payment of a 15% withholding tax.

All foreign investment tax benefits are protected even should the foreign investment legislation be amended in the future. Ukraine is presently working on draft amendments to the *Law on Foreign Investment* which contemplate a reduction of tax holidays and exemptions for future foreign investors. All business entities involving foreign investment which are registered prior to the passage of any amending legislation would enjoy the benefits found in the *Law on Foreign Investment* for at least a ten year period.

#### B. Banks and Banking

The current banking system, which was established pursuant to the *Law on Banks and Banking Activities* (passed March 20, 1991) consists of a Central Bank, the National Bank of Ukraine ("National Bank"), and commercial banks.

The National Bank has overall responsibility for forming and carrying out monetary, credit, and current circulation policies, as well as supervising the commercial banks. It is specifically forbidden to finance the state budget deficit; however the National Bank does service the state debt and performs operations connected with government borrowings. Moreover, it can act as guarantor of state debts if so requested by the Government. Although it is distinct and can generally act independently, it takes formal instruction from the Parliament, to whom the Chairman of the Bank reports.

Pursuant to the *Law on Banks and Banking Activity*, both the National Bank and commercial banks are required to keep customers' transactions, accounts, and deposits confidential, subject to exceptions as required by law.